

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
January 15, 2020
Part of
Public Record

Finance Docket No. 35347 (Sub-No. 2)

ELKHART & WESTERN RAILROAD CO.
—AMENDED LEASE AND OPERATION EXEMPTION
CONTAINING INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

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Counsel for Elkhart & Western
Railroad Co.

Date: January 15, 2020

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VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. § 1150.41 *et seq.*, Elkhart & Western Railroad Co. (“EWR”), a Class III rail carrier, hereby files this Verified Notice of Exemption (“the Notice”) to continue to lease and operate approximately 23.0 miles of rail lines from Norfolk Southern Railway Company (“NSR”) extending from Milepost I 108.6+/- at Argos, IN to Milepost I 131.6+/- at Walkerton, IN (the “Line”).

In accordance with the requirements of 49 C.F.R. § 1150.43, EWR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

The full name and address of the applicant herein is as follows:

Elkhart & Western Railroad Co.
1318 S. Johanson Road
Peoria, IL 61607

Applicant's Representative: 49 C.F.R. § 1150.43(b)

EWR's representative to whom correspondence regarding this transaction should be sent is W. Karl Hansen, Stinson LLP, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402, (612) 335-7088.

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

In 2010, EWR entered into a lease agreement with NSR. *See Elkhart & W. R.R. Co.—Lease and Operation Exemption—Norfolk S. Ry. Co.*, FD 35347 (STB served Feb. 19, 2010). The parties amended the lease in 2016. *See Elkhart & W. R.R. Co.—Amended Lease and Operation Exemption Containing Interchange Commitment—Norfolk S. Ry. Co.*, FD 35347 (Sub-No. 1) (STB served Oct. 14, 2016). On July 25, 2019, EWR and NSR agreed to further amend the lease to extend the term through July 31, 2029 and modify certain other specific terms of the agreement. This amendment will take effect upon the effective date of any decision or notice served by the Board.

Operator of the Property: 49 C.F.R. § 1150.43(d)

Upon consummation of the transaction, EWR will continue to lease and operate the Line.

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

With the amendment, EWR and NSR are modifying the lease to extend the term to July 31, 2029 and change certain operating and investment provisions.

(1) The name and address of the railroad transferring the subject property:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

(2) Proposed time schedule for consummation:

EWR intends to consummate the proposed lease amendment upon the effective date of the exemption.

(3) Mileposts of the subject property, including any branch lines:

EWR will continue to lease a portion of NSR's Michigan City Branch extending between Milepost I 108.6+/- at Argos, IN, including track extending from the clearance point of the east

switch of the track connecting the Michigan City Branch to NSR's Argos Yard, continuing to the end of the right-of-way at Argos, and Milepost I 131.6+/- at Walkerton, IN, including all ancillary trackage and property, but excluding the trackage and diamonds between the northbound and southbound home signals at CP West Argos (which trackage NSR will retain to protect the crossing of NSR's Chicago District).

(4) Total route miles being acquired:

The Line that EWR will continue to lease is approximately 23.0 miles.

Map: 49 C.F.R. § 1150.43(f)

A map of the Line is attached as Exhibit A.

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

EWR's projected revenues will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45. Certification is made with the verification of this Notice.

Interchange Commitment: 49 C.F.R. § 1150.43(h)

EWR will continue to interchange traffic with NSR at a track in the vicinity of the Argos Yard. The lease does not prohibit or limit EWR from interchanging with third-party connecting carriers that connect to the Line, nor set forth terms governing EWR's interchange of traffic with such third party carriers. In fact, the lease as modified by the amendment continues to contain a provision specifically permitting EWR's unrestricted interchange with other carriers. The lease and as amended does, however, contain lease credits. After the initial 2010 exemption, the Board has deemed lease credits to be a type of interchange commitment.¹ Although EWR does

¹ See *Information Required in Notices and Petitions Containing Interchange Commitments*, EP 714, slip op. at 7-8 (STB served Sept. 5, 2013); see also *Piedmont & Atlantic R.R. Co. Inc., D/B/A Yadkin Valley R.R. Co.—Lease Exemption Containing Interchange Commitment—Norfolk S. Ry. Co.*, FD 35841 (STB served Sept. 18, 2014).

not agree that lease credits in this case constitute an interchange commitment, EWR certifies that based on Board precedent the lease contains an interchange commitment. Accordingly, pursuant to 49 C.F.R. § 1150.43(h), EWR provides the following information:

(i) Existence of agreement and identification of affected interchange points:

The lease, as modified by the amendment, contains lease credits. EWR crosses CSXT mainline trackage at Walkerton, IN at or near Milepost I 131.6+/- . Although the current track configuration does not allow for physical interchange of traffic between EWR and CSXT, out of an abundance of caution, EWR includes Walkerton as an affected interchange point. EWR interchanges with Chicago, Ft. Wayne & Eastern Railroad ("CFE") at or near Milepost 118.3 at Plymouth, IN.

(ii) Confidential complete version of the documents:

Confidential versions of the lease and the amendment are filed separately under seal pursuant to 49 C.F.R. § 1104.14(a).

(iii) List of shippers that have used the line over the past two years:

Bomarko, Inc.
Del Monte Foods, Inc.
Pregis Innovative Packaging, Inc.
Rossborough/Opta Minerals
Viking Paper Corporation

(iv) Aggregate number of carloads the shippers originated or terminated over the Line:

The aggregate number of carloads the named-above shippers originated or terminated within the last two years is filed separately under seal pursuant to 49 C.F.R. § 1104.14(a).

(v) Certification that shippers have been provided notice of the transaction and the interchange commitment:

A Certificate of Service, certifying that the above-named shippers have been served a copy of this Verified Notice of Exemption, is attached as Exhibit B.

- (vi) List of third party railroads that could physically interchange with the Line:

EWR interchanges with CFE at at Plymouth, IN. The current track configuration does not allow for physical interchange of traffic between EWR and CSXT at Walkerton, IN.

- (vii) Estimate of the difference between the lease price with and without the interchange commitment:

An estimate of the difference between the lease price with and without the interchange commitment is filed separately under seal pursuant to 49 C.F.R. § 1104.14(a).

- (viii) Identification of existence of interchange commitment in case caption:

The case caption of this Verified Notice of Exemption identifies the existence of the interchange commitment.

Advance Notice: 49 C.F.R. § 1150.42(e)

EWR's annual revenue is not anticipated to exceed \$5 million and, accordingly, the 60-day advance notice and posting requirements of 49 C.F.R. § 1150.42(e) are not applicable. Certification is made with the verification of this Notice.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), EWR's proposed lease of the Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), EWR's lease of the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.42(a)

A caption summary in appropriate form is attached as Exhibit C to this Notice.

Respectfully submitted,

/s/ W. Karl Hansen
W. Karl Hansen
Stinson LLP
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Attorneys for Georgia Southern Railway Co.

VERIFICATION AND CERTIFICATION

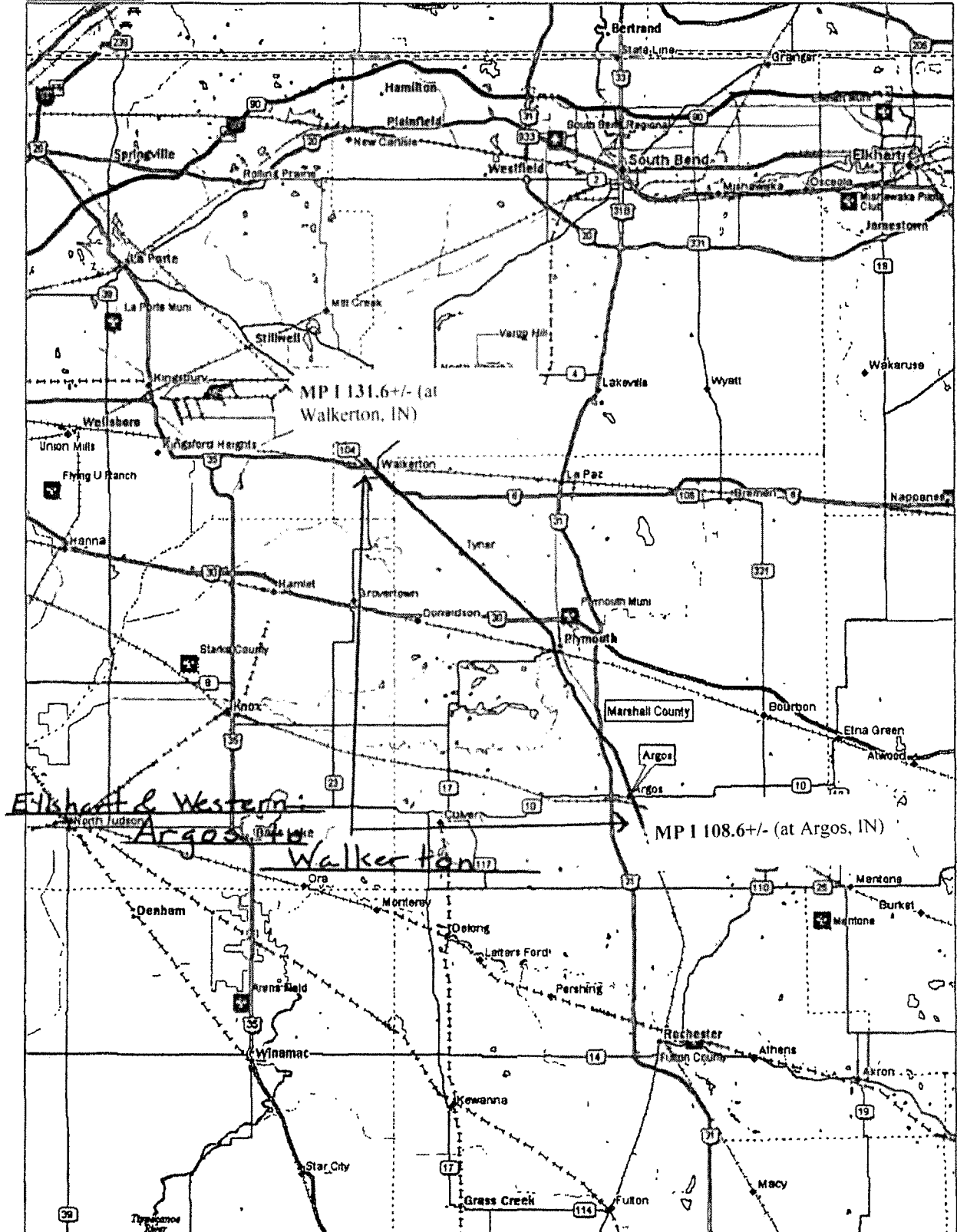
I, Alex Yeros, declare under penalty of perjury that I am the President and Chief Executive Officer of Elkhart & Western Railroad Co. ("EWR") and am duly designated to verify and file this Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information and belief.

I certify that the annual rail revenues will not result in EWR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201(1-1). I further certify that EWR's annual revenue is not anticipated to exceed \$5 million.



ALEX YEROS

EXHIBIT A
Map



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www.delorme.com

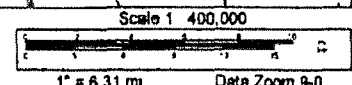


EXHIBIT B
Certificate of Service

I, W. Karl Hansen, hereby certify that on January 15, 2020, pursuant to 49 C.F.R.
§ 1150.43(h)(l)(v), a true copy of Elkhart & Western Railroad Co.'s verified notice of exemption
was served by first-class mail, postage prepaid, on

Bomarko, Inc.
Del Monte Foods, Inc.
Pregis Innovative Packaging, Inc.
Rossborough/Opta Minerals
Viking Paper Corporation.

/s/ W. Karl Hansen
Counsel for Elkhart & Western Railroad Co.

EXHIBIT C

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NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Elkhart & Western Railroad Co., (“EWR”) a carrier, has filed a verified notice of exemption to continue to lease and operate a portion of Norfolk Southern Railway Company's (“NSR”) Michigan City Branch line between Milepost I 108.36+/- at Argos, IN and Milepost I 131.6+/- at Walkerton, IN. Comments must be filed with the Board and served on W. Karl Hansen, Stinson LLP, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402.

The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.