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ENTERED
Office of Proceedings
July 14, 2022
Part of
Public Record

Crystal Zorbaugh

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July 14, 2022

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Evansville Western Railway, Inc. – Temporary Trackage Rights
Exemption – Illinois Central Railroad Co., FD 36622 (Sub-No. 1)

Dear Ms. Brown:

Evansville Western Railway, Inc. (“EVWR”), hereby files in the above-captioned proceeding a verified notice of Temporary Trackage Rights Exemption for the acquisition of temporary overhead trackage rights over an approximately 11.7-mile line of railroad of Illinois Central Railroad Company (“CN”) between Sugar Camp, Illinois (Milepost 61.9), and Dial, Illinois (Milepost 73.6). These temporary overhead trackage rights continue to be necessary to permit EVWR to load Unit Coal Trains at Pond Creek Mine near Dial until the Sugar Camp Mine reopens following its closure due to a mine fire.

If there are any questions concerning this filing, please contact me by telephone at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh

Attorney for Evansville Western Railway, Inc.

FILED
July 14, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 14, 2022
SURFACE
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36622 (Sub-No. 1)

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

EXPEDITED CONSIDERATION REQUESTED

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***Attorneys for Evansville
Western Railway, Inc.***

Dated: July 14, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36622 (Sub-No. 1)

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

EXPEDITED CONSIDERATION REQUESTED

Evansville Western Railway, Inc. (“EVWR”), a Class II rail carrier, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) to extend temporary overhead trackage rights¹ currently held by EVWR over an approximately 11.7-mile line of railroad of Illinois Central Railroad Company (“CN”) between Sugar Camp, Illinois (Milepost 61.9), and Dial, Illinois (Milepost 73.6).

¹ It is unclear whether an extension is necessary here, but out of an abundance of caution EVWR is seeking one. While 49 CFR 1180.2(d)(8), states if the operations contemplated by the exemption “will not be concluded within the 1-year period, the parties may, prior to the expiration of the period, file a request for a renewal of the temporary rights for an additional period of up to 1 year, including the reason(s) therefor,” the temporary trackage rights class exemption when created stated that the class exemption was intended to “permit the authorization of trackage rights for a limited period of time” and “would terminate automatically on the date specified.” See Railroad Consolidation Procedures – Exemption for Temporary Trackage Rights, EP 282 (Sub-No. 20) (STB served May 23, 2003). The trackage rights here have been in place for less than 2 months; however, as noted in the initial notice of exemption seeking trackage rights, the underlying trackage rights agreement between the parties was subject to early termination per the terms of the original written Temporary Trackage Rights Agreement (“TRA”) between the parties dated as of May 23, 2022, which provided the temporary trackage rights granted to EVWR would terminate on the earlier of (i) July 15, 2022, or (ii) the re-opening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal. See Decision ID 51275 (STB served June 8, 2022). Thus, given the rapidly approaching termination date, EVWR is submitting this extension request to extend its existing temporary trackage rights through the earlier of: (i) August 15, 2022 or (ii) the re-opening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal” per the terms of the First Amendment to the Temporary Trackage Rights Agreement (“Amended TRA.”)

The proposed temporary overhead trackage rights continued to be necessary due to the ongoing temporary closure of the Sugar Camp Mine, as the result of a mine fire.² These temporary trackage rights will continue to permit EVWR to load Unit Coal Trains at Pond Creek Mine near Dial until the Sugar Camp Mine reopens, and avoid disruptions in shipper service. Per the Amended TRA, the temporary trackage rights will remain in place through the earlier of: (i) August 15, 2022 or (ii) the re-opening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal.” The trackage rights, which are already in place are subject to an existing protective order in FD 36622.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), EVWR submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

EVWR is a Class II common carrier shortline railroad operating in the southern Illinois and Indiana region. It is one of three regional railroad subsidiaries owned and operated by P&L Transportation. The proposed temporary overhead trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine near Dial, IL until EVWR’s service at the Sugar Camp Mine can be restored following closure due to a mine fire. Because the Sugar Camp Mine is expected to remain inoperable for several more weeks, EVWR has entered into the written Amended TRA with CN by which EVWR will be granted the temporary, nonexclusive right to operate, in overhead freight service only to load unit trains of coal at the Pond Creek Mine, its trains, locomotives, cars, and equipment with its own crews, between CN's connection with Sugar Camp Mine trackage at or near Milepost 61.9 at South Sugar Camp in Sugar Camp, IL and CN’s connection with Pond Creek

² The Sugar Camp Mine consists of two separate mines, M Class and Viking. M Class was forced to shut down due to a fire at the mine. Viking, which is a major supplier to coal-fired generating stations in the Southeast, must now close to accommodate the relocation of long wall mining equipment to another location at the mine.

Mine trackage at or near Milepost 73.6 at Dial in Dial, IL on CN's Bluford Subdivision, a distance of approximately 11.7 miles. Given EVWR's need to provide continuous uninterrupted service to shippers, EVWR is asking for expedited consideration.

Pursuant to 49 C.F.R. § 1180.2(d)(8), and as provided in the TRA, the temporary trackage rights authorized herein will automatically expire no later than August 15, 2022. See Railroad Consolidation Procedures, 6 S.T.B. 910 (2003).

The full name and address of EVWR is as follows:

Evansville Western Railway, Inc.
818 West 2nd Street
Mt. Vernon, IN 47620

Any questions concerning this Notice should be sent to EVWR's representatives at the following address:

William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
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wmullins@bakerandmiller.com

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

EVWR intends to consummate the temporary trackage rights proposed in this notice immediately upon issuance of a Board decision.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed temporary overhead trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine, which has been shut down due to a mine fire and the unrelated, but necessary relocation of long wall mining equipment. The closure has removed millions of tons

from the market, and these temporary trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine until the Sugar Camp Mine reopens.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

EVWR owns and operates over rail property in the States of Illinois and Indiana.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail line over which EVWR proposes to acquire temporary trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the Amended TRA dated as of July 12, 2022, between EVWR and CN is attached hereto as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, EVWR agrees to the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980). EVWR's discontinuance of operations upon expiration of the temporary trackage rights on or before August 15, 2022, will be subject to the employee protective conditions established in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979). See Railroad Consolidation Procedures, 7 S.T.B. 587 (2004).

Trackage Rights Information: 49 C.F.R. § 1180.4(g)(1)(ii)

- (A) The tenant railroad is Evansville Western Railway, Inc.
- (B) The landlord railroad is Illinois Central Railroad Company.
- (C) EVWR will obtain temporary, nonexclusive limited overhead trackage rights on CN's Bluford Subdivision between CN's connection with Sugar Camp Mine trackage

at or near Milepost 61.9 at South Sugar Camp in Sugar Camp, IL and CN's connection with Pond Creek Mine trackage at or near Milepost 73.6 at Dial in Dial, IL for the sole purpose of loading unit trains of coal at the Pond Creek Mine.

- (D) The proposed temporary trackage rights will be consummated immediately upon the effectiveness of a Board decision.
- (E) The proposed temporary trackage rights will automatically expire no later than August 15, 2022.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(2)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of temporary trackage rights is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), EVWR's proposed temporary trackage rights also are exempt from historic preservation reporting requirements.

Respectfully submitted,

/s/ Crystal M. Zorbaugh

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Attorneys for Evansville Western Railway, Inc.

Dated: July 14, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36622 (Sub-No. 1)

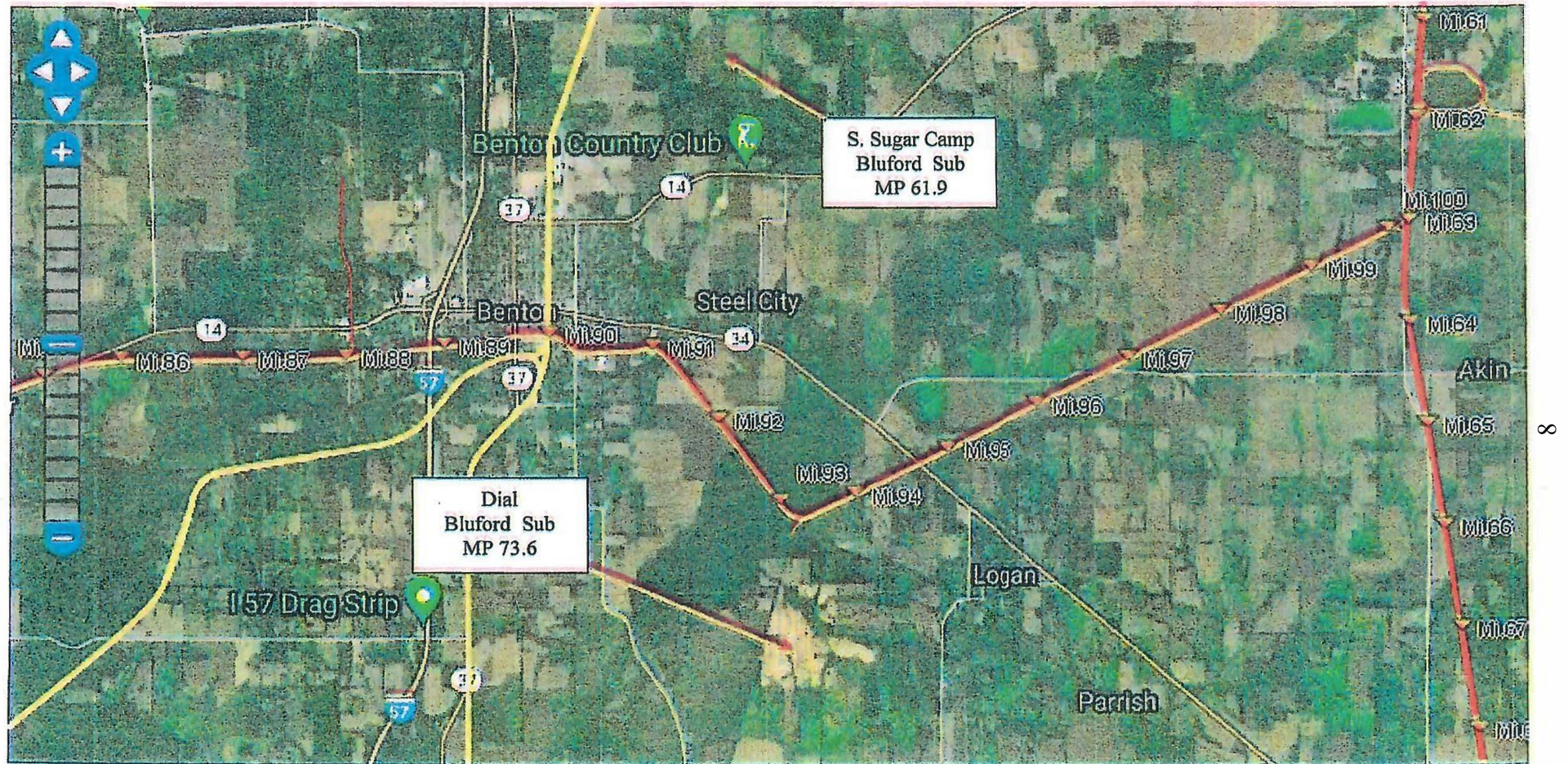
**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

EXPEDITED CONSIDERATION REQUESTED

Exhibit 1

MAP

Exhibit A



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36622 (Sub-No. 1)

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– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

EXPEDITED CONSIDERATION REQUESTED

Exhibit 2

FIRST AMENDMENT TO TEMPORARY TRACKAGE RIGHTS AGREEMENT

**FIRST AMENDMENT TO THE
TEMPORARY TRACKAGE RIGHTS AGREEMENT**

THIS FIRST AMENDMENT ("Amendment") to the Temporary Trackage Rights Agreement is made by and between **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "**CN**" or "**OWNER**") and **EVANSVILLE WESTERN RAILWAY, INC.**, (hereinafter referred to as "**EVWR**" or "**USER**"). EVWR and CN are hereafter sometimes individually referred to as a "**Party**" and jointly as the "**Parties.**"

RECITALS

- A. The Parties entered into a Temporary Trackage Rights Agreement dated May 23, 2022 ("**Agreement**") which provided for, among other things, EVWR to operate on CN's trackage between Sugar Camp, IL. and Dial, IL
- B. The Parties hereto now desire to amend the term of the Agreement as provided for in Section 3.9 of the Agreement subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Amendment, and the covenants, obligations, and agreements hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, EVWR and CN covenant and agree to amend and modify the Agreement as follows:

- 1. Section 3.9 of the Agreement is hereby deleted in its entirety and replaced with the following:

"3.9 The temporary trackage rights granted herein to EVWR and this Agreement shall expire and terminate on the earlier of: (i) August 15, 2022 or (ii) the re-opening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal."
- 2. To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this Amendment, the provision or provisions of this Amendment shall take precedence and control. Capitalized terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Agreement. Except as modified by this Amendment, the remaining terms, covenants, provisions, and conditions of the Agreement shall remain in full force and effect.

*****Signature Page to follow*****

12th IN WITNESS WHEREOF, the Parties have entered into this Amendment on this day of July, 2022.

EVANSVILLE WESTERN
RAILWAY, INC.:

By: J. Thomas Garrett

Name: J. Thomas Garrett

It's: President & CEO

ILLINOIS CENTRAL RAILROAD
COMPANY:

By: [Signature]

Michael Matteucci

Senior Director Interline Services