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March 22, 2023
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Justin J. Marks
T (202) 772-0916
F +12027720919
Email:jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue N.W.
Suite 1300 South
Washington, DC 20004
T (202) 772-0909
F (202) 772-0919

March 22, 2023

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Rochester & Erie Railway, LLC
– Operation Exemption –
Fulton County, LLC, D/B/A Fulton County Railroad
Surface Transportation Board Finance Docket 36671

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a verified notice of exemption filed pursuant to 49 C.F.R. §1150.31. The filing fee has been paid via pay.gov.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Rochester & Erie Railway, LLC

Enclosure

FILED
March 22, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
March 22, 2023
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36671

ROCHESTER & ERIE RAILWAY, LLC
– OPERATION EXEMPTION –
FULTON COUNTY, LLC, D/B/A FULTON COUNTY RAILROAD

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §1150.31

(includes color images)

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
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*Attorneys for Rochester & Erie Railway,
LLC*

Dated: March 22, 2023

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36671

ROCHESTER & ERIE RAILWAY, LLC
– OPERATION EXEMPTION –
FULTON COUNTY, LLC, D/B/A FULTON COUNTY RAILROAD

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §1150.31

Rochester & Erie Railway, LLC (“RERY”), a non-carrier, files this Notice of Exemption pursuant to 49 C.F.R. §1150.31(a)(2) and (a)(4) to exempt from regulation under 49 U.S.C. §10901 its entry into a contract to operate 11.7 miles of rail line between milepost I-108.6 near Argos and milepost I-96.9 at Rochester, in Marshall and Fulton Counties, Indiana (the “Subject Line”).¹ The Subject Line includes a short stub-ended spur extending west from approximately milepost 98.1 terminating at U.S. Route 31. RERY is entering into an operating agreement to operate the Subject Line on behalf of the owner of the Subject Line, Fulton County, LLC, d/b/a Fulton County Railroad (“FCRR”), a Class III carrier. In addition to operating the Subject Line, under the operating agreement, RERY will have the rights to operate on behalf of FCRR, FCRR’s incidental trackage rights over Norfolk Southern Railway Company’s (“NSR”) tracks between milepost I-108.6 and NSR’s Argos Yard, a distance of 1.1 miles.²

¹ The Board has previously held that a contract to operate the property of another carrier requires STB authority unless the arrangement is truly a black letter law agency relationship. *See Kansas City Transportation Company LLC – Lease and Assignment of Lease Exemption – Kansas City Terminal Railway Company and Kaw River Railroad, Inc.*, STB Finance Docket 34830 (served May 21, 2007).

² In addition to the incidental trackage rights, FCRR has the authority from NSR to operate between milepost I-108.6 and NSR’s Argos Yard as interchange tracks. RERY would use the interchange rights to connect with NSR on behalf of FCRR. The use of tracks for interchange are not subject to Board approval.

Local service has been provided by Elkhart & Western Railroad Co. (“EWR”) under a local trackage rights agreement between EWR and FCRR. However, the local trackage rights agreement has expired, and EWR has advised FCRR and shippers on the Subject Line that it will no longer provide local service.

This Notice is related to STB Docket No. FD 36684, in which Jason Grube is filing a notice of exemption pursuant to 49 C.F.R. §1180.2(d)(2) to continue in control of RERY once RERY commences operations and becomes a common carrier.³

RERY will enter into the operating agreement with FCRR to operate and provide common carrier service over the Subject Line and incidental trackage rights on behalf of FCRR.

Notice

In accordance with 49 C.F.R. §1150.33, RERY hereby provides the following information:

- (a) The full name and address of Applicant:

Rochester & Erie Railway, LLC
1552 East Lucas Street
Rochester, IN 46975

- (b) Applicant’s Representatives:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
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ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
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Washington, DC 20004

³ Jason Grube currently indirectly controls FCRR, a Class III rail carrier.

(202) 772-0916
jmarks@clarkhill.com

- (c) The operating agreement is in the process of being finalized by RERY and FCRR. Under the operating agreement, RERY will assume the operations of the Subject Line on behalf of and in the name of FCRR.
- (d) RERY will enter into a contract with FCRR to operate the Subject Line and the incidental trackage rights on behalf of FCRR.
- (e) Brief Summary of the Proposed Transaction: Under the proposed operating agreement, RERY will operate common carrier service over the Subject Line on behalf of the owner of the Subject Line FCRR. RERY will also acquire the right to operate on behalf of FCRR, FCRR's incidental trackage rights (and interchange rights) over NSR's tracks between milepost I-108.6 and NSR's Argos Yard, a distance of 1.1 miles, to allow for a direct connection with NSR.⁴ Upon commencement of operations under the operating agreement, RERY will be a Class III carrier.
 - i. The name and address of the company transferring the common carrier service obligations over the Subject Line:

Fulton County, LLC, d/b/a Fulton County Railroad
1552 East Lucas Street
Rochester, IN 46975
 - ii. The proposed schedule for consummation of the transaction is after April 21, 2023, the effective date of this Notice of Exemption.

⁴ FCRR received authority from the Board to operate the Subject Line and the incidental trackage rights in *Fulton County, LLC – Acquisition and Operation Exemption – Norfolk & Western Railway Company*, STB Finance Docket No. 33477 (served October 31, 1997).

- iii. The mileposts of the Subject Line are milepost I-108.6 near Argos and milepost I-96.9 at Rochester, in Marshall and Fulton Counties, Indiana. The Subject Line includes a short stub-ended spur extending west from approximately milepost 98.1 terminating at U.S. Route 31. The transaction also includes incidental trackage rights over NSR's tracks between milepost I-108.6 and NSR's Argos Yard.
- iv. The total mileage to be operated on behalf of FCRR is approximately 11.7 miles, plus the spur and an additional 1.1 miles of incidental trackage rights.
- (f) Attached as **Exhibit A** to this Notice of Exemption is a map of the Subject Line and the incidental trackage rights.
- (g) RERY certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.
- (h) Interchange Commitment: RERY certifies that FCRR is not subject to any interchange commitments, and the new operating agreement will not impose or include an interchange commitment.
- (i) Although not required, RERY is providing notice to the current shippers on the Subject Line by serving them with a copy of this Notice of Exemption as indicated in the attached certificate of service.

Labor Protection

Pursuant to 49 U.S.C. §10901(c), approval of this transaction may not be subject to labor protection.

Environmental and Historic Reports

Pursuant to 49 C.F.R. §1105.6(c)(2), no environmental documentation should be required

because this proceeding involves the continued operation by RERY of service on the Subject Line that will not result in significant changes to carrier operations, and as a result the changes will not exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (e)(5). Further Board approval is required for RERY to discontinue service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(1); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as **Exhibit B** is the caption summary required by 49 C.F.R. §1150.34.

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Conclusion

Accordingly, RERY requests that the Board issue a notice allowing RERY to enter into an operating agreement with FCRR to operate the Subject Line on behalf of FCRR effective at any time after 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



Eric M. Hocky
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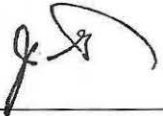
Attorneys for Rochester & Erie Railway, LLC

Dated: March 23, 2023

VERIFICATION

I, Jason W. Grube, Member, of Rochester & Erie Railway, LLC, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March 23, 2023.

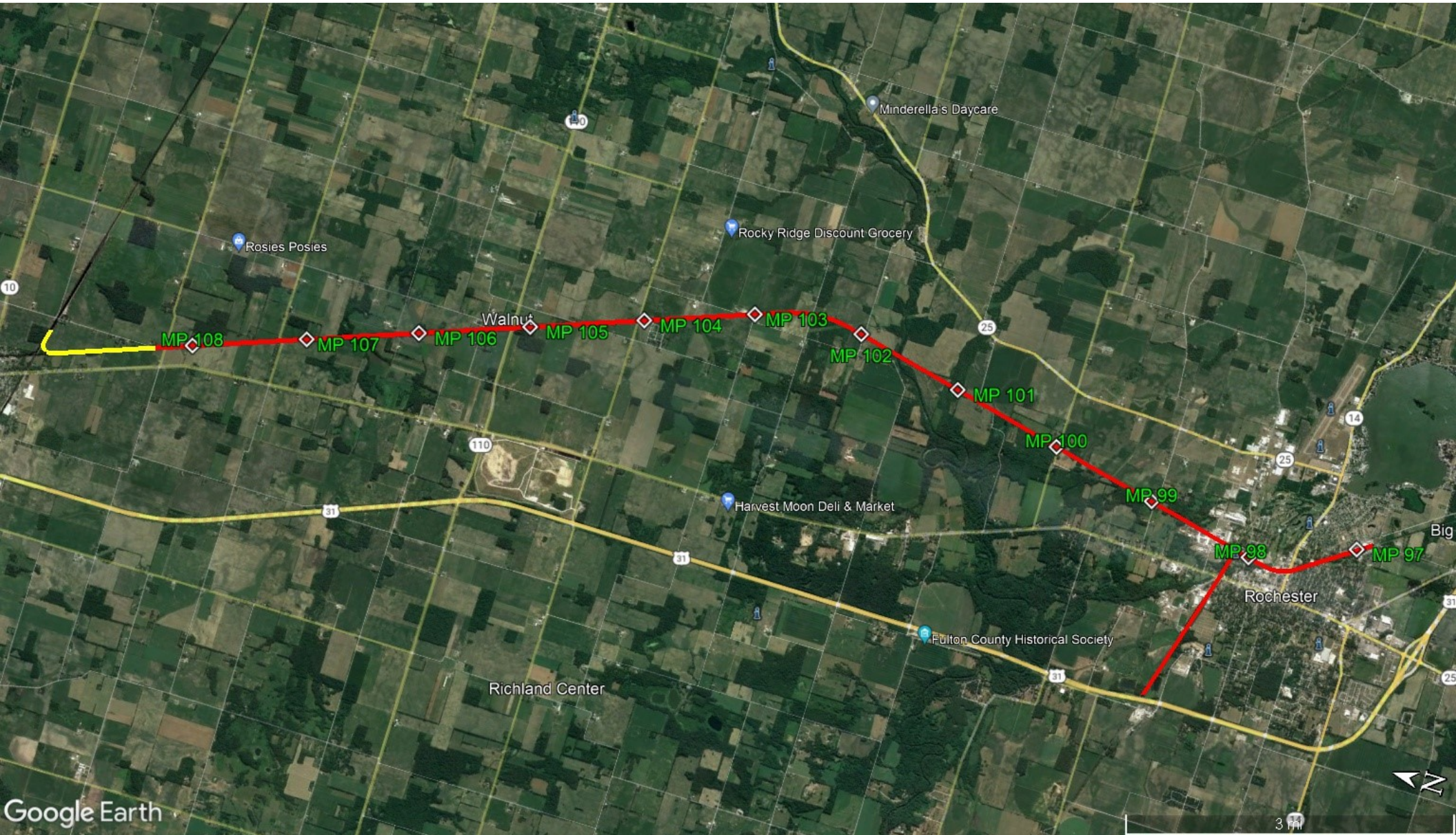


Jason W. Grube

EXHIBIT A

MAP

FULTON COUNTY RAILROAD



KEY
Red Line = FCRR Subject Line
Yellow Line = Incidental Trackage Rights

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36671

**ROCHESTER & ERIE RAILWAY, LLC
– OPERATION EXEMPTION –
FULTON COUNTY, LLC, D/B/A FULTON COUNTY RAILROAD**

VERIFIED NOTICE OF EXEMPTION

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This Notice is related to STB Docket No. FD 36684, in which Jason Grube is filing a notice of exemption pursuant to 49 C.F.R. §1180.2(d)(2) to continue in control of RERY once RERY commences operations and becomes a common carrier.

The proposed transaction does not include an interchange commitment.

Comments must be filed with the Board and served on RERY’s representative:

Eric M. Hocky

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2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
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The Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2023.

By the Board, Mai Dinh, Director, Office of Proceedings

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice was served by email or by US first-class mail, postage prepaid, on the following persons:

Shippers

Prairie Mills Products LLC
401 E. 4th Street
Rochester, IN 46975

Rochester Iron & Metal, Inc
1551 E. Lucas Street
Rochester, IN 46975

Wilson Fertilizer & Grain Co.
1827 E. Lucas Street
Rochester, IN 46975

Wilson Fertilizer & Grain Inc.
408 E. 9th Street
Rochester, IN 46975



Justin J. Marks

Dated: March 22, 2023