

51659

SERVICE DATE- APRIL 7, 2023

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

Docket No. FD 36671

Rochester & Erie Railway, LLC—Operation Exemption—Fulton County, LLC, d/b/a
Fulton County Railroad

Rochester & Erie Railway, LLC (RERY), a noncarrier, has filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 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, Ind. (the Line). The Line includes a short stub-ended spur extending west from approximately milepost 98.1 and terminating at U.S. Route 31.

The verified notice states that the Line is owned by Fulton County, LLC, d/b/a Fulton County Railroad (FCRR), a Class III carrier, and local service has been provided on the Line by Elkhart & Western Railroad Company (EWR) under a local trackage rights agreement. According to the verified notice, that local trackage rights agreement has expired and RERY is entering into an agreement to operate the following on behalf of FCRR: (1) the Line; and (2) 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. RERY states that EWR has advised the shippers on the Line that it will no longer provide service.¹

¹ EWR has filed a petition for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its local trackage rights over the Line. See Pet. for

This transaction is related to a concurrently filed verified notice of exemption in Grube—Continuance in Control Exemption—Rochester & Erie Railway, Docket No. FD 36684, in which the Jason W. Grube seeks to continue in control of RERY upon RERY's becoming a Class III rail carrier.

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. The verified notice states that, upon commencement of operations under the operating agreement, RERY will be a Class III rail carrier. RERY also certifies that FCRR is not subject to any interchange commitments and the new operating agreement will not impose or include an interchange commitment.

The transaction may be consummated on or after April 21, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than April 14, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36671, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading

Exemption, Elkhart & W. R.R.—Discontinuance of Trackage Rts. Exemption—in Marshall & Fulton Cntys., Ind., AB 1329X (Mar. 24, 2023).

must be served on RERY's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to RERY, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b).

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

Decided: April 4, 2023.

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