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SERVICE DATE – APRIL 13, 2023

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1329X]

Elkhart & Western Railroad Co. LLC—Discontinuance of Trackage Rights Exemption—
in Marshall and Fulton Counties, Ind.

On March 24, 2023, Elkhart & Western Railroad Co. LLC (E&W), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue trackage rights over approximately 11.7 miles of rail line owned by Fulton County, L.L.C. (FC), extending from milepost I-108.6 near Argos, Ind., to milepost I-96.9 at Rochester, Ind., in Marshall and Fulton Counties, Ind. (the Line). The Line traverses United States Postal Services Zip Codes 46501 and 46975.

According to E&W, until recently, it was the exclusive service provider on the Line, pursuant to a trackage rights agreement (Agreement) with FC. E&W states that the Agreement expired on March 15, 2023, and, on the same day, Patriot Rail Company, LLC, which indirectly controls E&W, embargoed the Line due to unsafe track conditions. E&W notes that FC has a common carrier obligation on the Line as well as a plan for a corporate affiliate, Rochester & Erie Railway, LLC (RERY), to operate the Line, see RERY, Notice of Exemption, Rochester & Erie Ry.—Operation Exemption—Fulton Cnty., LLC, FD 36671. Therefore, according to E&W, RERY will be affiliated with the

Line as its operator, and shippers will have access to common carrier service, should FC and RERY determine that operations can be resumed safely.

E&W states that it does not believe that the Lines contain federally granted rights-of-way. E&W also states that any documentation in its possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b). A final decision will be issued by July 12, 2023.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. See 49 C.F.R. §§ 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 C.F.R. § 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.¹ Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by April 24, 2023, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. See 49 C.F.R. § 1152.27(c)(1)(i).

¹ The filing fee for OFAs can be found at 49 C.F.R. § 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 1329X and 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 must be served on E&W's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208. Replies to the petition are due on or before May 3, 2023.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0294. If you require accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

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

Decided: April 7, 2023.

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