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Eric M. Hocky  
T (215) 640-8523  
F (215) 640-8501  
Email: ehocky@clarkhill.com

Clark Hill  
Two Commerce Square  
2001 Market Street, Suite 2620  
Philadelphia, PA 19103  
T (215) 640-8500  
F (215) 640-8501

May 2, 2023

BY E-FIING

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

Re: Elkhart & Western Railroad Co.LLC-  
Discontinuance of Trackage Rights Exemption -  
In Marshall and Fulton Counties, Indiana

*Expedited Consideration Requested*

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are the following documents filed on behalf of Fulton County, LLC d/b/a Fulton County Railroad:

- (1) Request to Amend Procedural Schedule and Extend Time for Replies (expedited consideration requested)
- (2) Motion to Compel Responses to Discovery

Copies are being served by email on counsel shown below.

Sincerely,

CLARK HILL

*/s/ Eric M. Hocky*

Eric M. Hocky

EMH:  
Enclosures

cc: Robert A. Wimbish  
Thomas J. Healey

**Before the**  
**SURFACE TRANSPORTATION BOARD**

Docket No. AB 1329X

**ELKHART & WESTERN RAILROAD CO. LLC**  
**-DISCONTINUANCE OF TRACKAGE RIGHT EXEMPTION –**  
**IN MARSHALL AND FULTON COUNTIES, INDIANA**

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**REQUEST OF FULTON COUNTY, LLC D/B/A FULTON COUNTY RAILROAD**  
**TO AMEND PROCEDURAL SCHEDULE AND EXTEND TIME FOR REPLIES**

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**EXPEDITED CONSIDERATION REQUESTED**

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

Justin J. Marks  
Clark Hill PLC  
1001 Pennsylvania Ave. N.W.  
Suite 1300 South  
Washington, DC 20004  
(202) 772-0916  
[jmarks@clarkhill.com](mailto:jmarks@clarkhill.com)

*Attorneys for Fulton County, LLC d/b/a  
Fulton County Railroad*

Dated: May 2, 2023

**Before the**  
**SURFACE TRANSPORTATION BOARD**

Docket No. AB 1329X

**ELKHART & WESTERN RAILROAD CO. LLC**  
**-DISCONTINUANCE OF TRACKAGE RIGHT EXEMPTION –**  
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**REQUEST OF FULTON COUNTY, LLC D/B/A FULTON COUNTY RAILROAD**  
**TO AMEND PROCEDURAL SCHEDULE AND EXTEND TIME FOR REPLIES**

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**EXPEDITED CONSIDERATION REQUESTED**

On April 13, 2023, the Board issued a notice (the “April 13 Notice”) that Elkhart & Western Railroad Co. LLC (“E&W”) had filed a petition for exemption for the discontinuance of its local trackage rights over the 11.7-mile rail line owned by Fulton County, LLC (“FCRR”).<sup>1</sup> The April 13 Notice provided that replies to the E&W petition were due by May 3, 2023.

Concerned about some of the representations made by E&W in its petition, FCRR served a limited set of document requests on E&W on April 17, 2023, asking for responses by May 1, 2023. On the Friday before the May 1 due date, counsel for E&W advised the undersigned that E&W would not provide any documents in response to the document request. Accordingly, contemporaneously with this Motion, FCRR is filing a Motion to Compel Responses to Discovery.

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<sup>1</sup> Fulton County, LLC does business as Fulton County Railroad.

Because the documents requested are critical to whether and what FCRR would say in a reply to the petition, FCRR requests that the date for replies be extended until four business days after E&W produces whatever documents the Board requires E&W to produce.

Given the current due date for replies, and the short period that FCRR had since learning no documents would be produced, FCRR respectfully requests that Board grant the relief requested herein on an expedited basis.

Respectfully submitted,

*/s/ Eric M. Hocky*

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

Justin J. Marks  
Clark Hill PLC  
1001 Pennsylvania Ave. N.W.  
Suite 1300 South  
Washington, DC 20004  
(202) 772-0916  
[jmarks@clarkhill.com](mailto:jmarks@clarkhill.com)

*Attorneys for Fulton County, LLC d/b/a  
Fulton County Railroad*

Dated: May 2, 2023

## **CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing Request for Production of Documents was served by email on counsel for Elkhart & Western Railroad Co. LLC and Patriot Rail Company, LLC:

Robert A. Wimbish  
[rwimbish@fletcher-sippel.com](mailto:rwimbish@fletcher-sippel.com)  
Thomas J. Healy  
[THealey@fletcher-sippel.com](mailto:THealey@fletcher-sippel.com)  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 800  
Chicago, IL 60606-3208

*/s/ Eric M. Hocky*

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Eric M. Hocky

Dated: May 2, 2023