

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

THOMAS J. LITWILER  
(312) 252-1508  
tlitwiler@fletcher-sippel.com

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ENTERED  
Office of Proceedings  
May 21, 2018  
Part of  
Public Record

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

May 21, 2018

## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

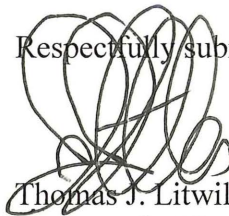
Re: **Docket No. FD 36198 (Sub-No. 1)**  
**New Orleans Public Belt Railroad Corporation -- Temporary**  
**Trackage Rights Exemption -- Illinois Central Railroad Company**

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Petition to Partially Revoke Class Exemption and Allow Expiration of Trackage Rights** of New Orleans Public Belt Railroad Corporation, dated May 21, 2018. A check in the amount of \$300.00, representing the appropriate fee for this filing, has been delivered to your office today by overnight courier.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler  
Attorney for New Orleans Public Belt  
Railroad Corporation

TJL:tl

Attachment

FEE RECEIVED  
May 21, 2018  
SURFACE  
TRANSPORTATION BOARD

FILED  
May 21, 2018  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36198 (SUB-NO. 1)

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY

---

**PETITION TO PARTIALLY REVOKE CLASS EXEMPTION  
AND ALLOW EXPIRATION OF TRACKAGE RIGHTS**

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1508

**ATTORNEY FOR NEW ORLEANS PUBLIC  
BELT RAIL ROAD CORPORATION**

Dated: May 21, 2018

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36198 (SUB-NO. 1)

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY

---

**PETITION TO PARTIALLY REVOKE CLASS EXEMPTION  
AND ALLOW EXPIRATION OF TRACKAGE RIGHTS**

New Orleans Public Belt Railroad Corporation ("NOPB Corp.") hereby petitions the Board pursuant to 49 U.S.C. § 10502(d) to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the extended temporary trackage rights proposed by concurrently-filed notice of exemption in Docket No. FD 36198 to expire by their own terms on January 31, 2020. The proposed action is consistent with the provisions of the Rail Transportation Policy, 49 U.S.C. § 10101, and with the Board's prior treatment of similar transactions.

As is explained in the notice of exemption in Docket No. FD 36198, NOPB Corp.'s predecessor previously obtained temporary overhead trackage rights on approximately 6.3 miles of Illinois Central Railroad Company ("IC") rail line in the New Orleans area to interchange traffic with The Kansas City Southern Railway Company ("KCS") on KCS trackage in New Orleans on a trial basis.<sup>1</sup> The temporary trackage rights were scheduled to expire on

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<sup>1</sup> See *New Orleans Public Belt Railroad -- Temporary Trackage Rights Exemption -- Illinois Central Railroad Company*, Docket No. FD 36067 (STB served October 14, 2016 and January 30, 2017). NOPB Corp. acquired its predecessor's interest in the temporary trackage rights arrangement as part of the transaction authorized in *New Orleans Public Belt Railroad Corporation -- Acquisition and Operation Exemption -- Public Belt Railroad Commission of the City of New Orleans*, Docket No. FD 36149 (STB served December 27, 2017) at 3, n.4.

January 31, 2018, but based on the parties' experience to date with the arrangement IC has agreed to a further extension. A Second Amendment to the Temporary Trackage Rights Agreement dated January 31, 2018 between the parties specifically provides that the extended trackage rights will expire on January 31, 2020.

While IC and NOPB Corp. have expressly agreed on the duration of the proposed extended rights, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. In appropriate circumstances, however, the Board will grant trackage rights exemptions for a limited time period rather than in perpetuity. *See, e.g., The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (Sub-No. 1) (STB served February 9, 2017) ("*INRD/CSXT*"); *Indiana Southern Railroad, LLC -- Temporary Trackage Rights Exemption -- Norfolk Southern Railway Company*, Docket No. FD 35965 (Sub-No. 1) (STB served November 25, 2015) ("*ISR/NS*"). Indeed, the Board has an existing class exemption for temporary trackage rights that involve overhead operations and will have a duration of one year or less. 49 C.F.R. § 1180.2(d)(8); *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003).<sup>2</sup>

Approval of temporary trackage rights through a notice of exemption under 49 C.F.R. § 1180.2(d)(7) and a petition to partially revoke the class exemption is well-established. *Railroad Consolidation Procedures*, 6 S.T.B. at 911 n.5 (explaining process used prior to adoption of the 49 C.F.R. § 1180.2(d)(8) class exemption); *INRD/CSXT*; *ISR/NS*. The Board will partially revoke the class exemption and allow the exempted trackage rights to expire on a certain date pursuant to 49 U.S.C. § 10502 when it finds that: (1) continued regulation is not

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<sup>2</sup> That class exemption is not available in this case given that the extension of NOPB Corp.'s temporary trackage rights is for longer than one year.

necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

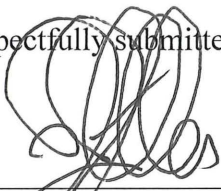
Here, NOPB Corp.'s extended temporary trackage rights will already be authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). Granting the relief sought in this petition will eliminate the need for a second pleading seeking discontinuance authority or exemption when the agreement expires, thereby promoting the Rail Transportation Policy goals at 49 U.S.C. §§ 10101(2), (4), (5), (7) and (15). *See Railroad Consolidation Procedures*, 6 S.T.B. at 913 n.8; *ISR/NS* at 2. Detailed scrutiny of a subsequent discontinuance application or petition is not required to carry out any other element of the Rail Transportation Policy.

Limiting the term of the proposed trackage rights is consistent with the limited scope of the class exemption under 49 C.F.R. § 1180.2(d)(7) and the exempted transaction itself, which simply involves continuation of a previously-authorized arrangement for the handling of interchange traffic within a single terminal. Because the extended trackage rights would not have been granted by IC in the absence of a temporary duration, expiration of the trackage rights will not adversely affect the current competitive situation of any shipper and further regulation is not needed to protect against an abuse of market power.

Upon a granting of this petition, NOPB Corp. will not require separate discontinuance authority from the Board to end service under the extended trackage rights when the Second Amendment expires on January 31, 2020. The expiration of the extended trackage rights will, however, be subject to the employee protection conditions set forth in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979). *See Railroad Consolidation Procedures*, 7 S.T.B. 587 (2004).

WHEREFORE, NOPB Corp. respectfully requests that the Board partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the extended trackage rights proposed in Docket No. FD 36198 to expire on January 31, 2020.

Respectfully submitted,

By: 

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Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
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