

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35347 (Sub-No. 1)]

Elkhart & Western Railroad Co.—Amended Lease and Operation Exemption Containing
Interchange Commitment—Norfolk Southern Railway Company

Elkhart & Western Railroad Co. (EWR), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to continue to lease and operate approximately 23.0 miles of rail line from Norfolk Southern Railway Company (NSR) between MP I 108.6+/- (at Argos, Ind.) to MP I 131.6 +/- (at Walkerton, Ind.) (the Line).¹

According to EWR, it first entered into a lease agreement (Original Agreement) with NSR in 2010. See Elkhart & W. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35347 (STB served Feb. 19, 2010). On July 21, 2016, EWR and NSR agreed to amend the Original Agreement (1st Agreement Amendment) to extend the agreement's termination date an additional five years, through December 31, 2024, and amend certain other specific terms of the agreement.² EWR states that the 1st Agreement Amendment will take effect on or after the effective date of the notice of exemption.

¹ EWR also has local trackage rights over approximately 13 miles of rail line owned by Fulton County, LLC, extending from MP 1-95.6 at Rochester, Fulton County, Ind., to MP I-108.6, where it connects with the Line. Elkhart & W. R.R.—Trackage Rights Exemption—Fulton Cty., LLC, FD 35453 (STB served Feb. 9, 2011).

² EWR filed a confidential, complete version of the 1st Agreement Amendment with its notice of exemption to be kept confidential by the Board under 49 C.F.R. § 1104.14(a) without the need for the filing of an accompanying motion for protective order under 49 C.F.R. § 1104.14(b).

According to EWR, it will continue to interchange traffic with NSR at a track in the vicinity of the Argo Yard. EWR states that the Original Agreement, as modified by the 1st Agreement Amendment, does not prohibit or limit EWR from interchanging with third-party connecting carriers that connect to the Line, nor does the modified agreement set forth terms governing EWR's interchange of traffic with such third-party carriers.

According to EWR, the Original Agreement, as modified by the 1st Agreement Amendment, contains a provision specifically permitting EWR unrestricted interchange with other carriers. However, EWR certifies that the Original Agreement, as modified by the 1st Agreement Amendment, does contain lease credits, a type of interchange commitment. As required under 49 C.F.R. § 1150.43(h)(1), EWR has disclosed in its verified notice that the Original Agreement, as modified by the 1st Agreement Amendment, affects the interchange point of MP I 131.6+/- (at Walkerton, Ind.) and MP 118.3 (at Plymouth, Ind.). EWR has also provided additional information regarding the interchange commitment.

EWR also certifies that the projected annual revenues do not exceed those that would qualify it as a Class II or Class I rail carrier and would not exceed \$5 million.

The proposed transaction may be consummated on October 29, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed). 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 effectiveness of the

exemption. Petitions to stay must be filed no later than October 21, 2016 (at least seven days before the exemption becomes effective.)

An original and ten copies of all pleadings, referring to Docket No. FD 35347 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicant's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037.

Board decisions and notices are available on our website at "WWW.STB.GOV."

Decided: October 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.