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September 29, 2016

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ENTERED
Office of Proceedings
September 29, 2016
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Public Record

BY HAND DELIVERY

Cynthia T. Brown
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Elkhart & Western Railroad Co. – Amended Lease and Operation Exemption
Containing Interchange Commitment – Norfolk Southern Railway Company, FD
35347 (Sub-No.1)

Dear Ms. Brown:

Enclosed please find an original and eleven copies of a Verified Notice of Exemption (“Notice”) under 49 C.F.R. §1150.41, et. seq. filed on behalf of Elkhart & Western Railroad Co.

Be advised that the Notice includes confidential documents tendered in connection with the requirements of 49 C.F.R. § 1150.43(h). These specific documents are included in a separate envelope and are submitted under seal in keeping with the aforementioned regulation and 49 C.F.R. § 1104.14(a). Additionally, this submission includes an electronic copy of the entire filing and a separate word version of a draft Federal Register notice.

Please acknowledge receipt and filing of the Notice by date-stamping the enclosed eleventh copy and returning it to the courier to return to me. Finally, pursuant to 49 C.F.R. 1002.2(f)(14)(ii), enclosed is a check for \$1,900.00 covering the applicable filing fee.

FILED
September 29, 2016
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
September 29, 2016
SURFACE
TRANSPORTATION BOARD

BAKER & MILLER PLLC

September 29, 2016

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If there are any questions about this matter, please contact me directly or contact my associate Crystal Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Respectfully submitted,



William A. Mullins
Attorney for Elkhart & Western
Railroad Co.

Enclosures

Cc: Daniel A. LaKemper

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



FD 35347 (Sub-No. 1)

**ELKHART & WESTERN RAILROAD CO.
– AMENDED LEASE AND OPERATION EXEMPTION CONTAINING INTERCHANGE
COMMITMENT –
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

**Daniel A. LaKemper, Esq.
ELKHART & WESTERN RAILROAD CO.
1318 S. Johanson Road
Peoria, Illinois 61607
Tel: (309) 697-1400
Fax: (309) 697-8486**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

Dated: September 29, 2016

**Attorneys for Elkhart & Western Railroad
Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 35347 (Sub-No. 1)

**ELKHART & WESTERN RAILROAD CO.
– AMENDED LEASE AND OPERATION EXEMPTION CONTAINING INTERCHANGE
COMMITMENT –
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

INTRODUCTION

Elkhart & Western Railroad Co. (“EWR”), a Class III rail carrier, submits this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E – Exempt Transactions Under 49 U.S.C. 10902, to permit EWR to continue to lease and operate approximately 23.0 miles of rail lines extending between MP I 108.6+/- (at Argos, IN) to MP I 131.6+/- (at Walkerton, IN) (referred to herein as “the Line”)¹ from Norfolk Southern Railway Company (“NSR”).

REQUIRED INFORMATION

In support of this Notice of Exemption, EWR submits the following information as required by 49 C.F.R § 1150.43:

¹ EWR also has local trackage rights over an approximately 13 mile rail line owned by Fulton County, LLC extending from MP I-95.6 at Rochester, Fulton County, Indiana, to MP I-108.6, where that line connects with the NSR line. Elkhart & Western Railroad Co. – Trackage Rights Exemption – Fulton County, LLC D/B/A/ Fulton County Railroad, FD 35453 (STB served Feb. 9, 2011).

(a) Full name and address of applicant:

Elkhart & Western Railroad Co.
1318 S. Johanson Road
Peoria, IL 61607

(b) Applicant's representatives:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

(c) Statement concerning agreement:

EWR first entered into a lease agreement (“Original Agreement”) with NSR in 2010. See Elkhart & Western Railroad Co. – Lease and Operation Exemption – Norfolk Southern Railway Company, FD 35347 (STB served Feb. 19, 2010). On July 21, 2016, EWR and NSR agreed to amend the parties Original Agreement (“1st 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. The 1st Amendment will take effect upon the effective date of any decision or notice of exemption served by the Board.

(d) Operator of the property:

Upon consummation of the transaction, EWR will continue to lease and operate the Line.

(e) Brief summary of the proposed transaction:

Through the 1st Amendment, EWR and NSR are modifying the Original Agreement to: (1) extend the termination date of the existing lease agreement to December 31, 2024; and (2) change certain investment and compensation provisions.

(1) Name and address of the railroad transferring the subject property:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

(2) Proposed time schedule for consummation:

The transaction is expected to be consummated on or after October 31, 2016
(greater than 30 days after filing the Notice).

(3) Mileposts of the subject property, including any branch lines:

The mileposts the Line that will continue to be leased by EWR include: a portion of the Michigan City Branch extending between MP I 108.6+/- (at Argos, IN), including track extending from the clearance point of the east switch of the track connecting the Michigan City Branch to NSR's Argos Yard, continuing to the end of the right-of-way at Argos, and MP I 131.6+/- (at Walkerton, IN), including all ancillary trackage and property, but excluding the trackage and diamonds between the northbound and southbound home signals at CP West Argos (which trackage NSR will retain to protect the crossing of NSR's Chicago District).

(4) Total route miles being acquired:

The Line that EWR will continue to lease is approximately 23.0 miles.

(f) Map:

A map of the Line is attached as Exhibit A.

(g) Certification of Revenues

Attached as Exhibit B is a certificate affirming that EWR's projected revenues as a consequence of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing of this notice under 49 C.F.R. § 1150.45. As a result of this transaction, EWR

will remain a Class III rail carrier. Additionally, EWR's combined annual revenues do not now exceed \$5 million and are not projected to exceed \$5 million following consummation of the subject transaction. Therefore, EWR need not comply with the 60-day advance notice and posting requirements set forth at 49 C.F.R. § 1150.42(e).

(h) Interchange commitments:

EWR will continue to interchange traffic with NSR at a track in the vicinity of the Argos Yard. The Original Agreement, as modified by the 1st Amendment, does not prohibit or limit EWR from interchanging with third-party connecting carriers that connect to the Line, nor does the Original Agreement, as modified by the 1st Amendment set forth terms governing EWR's interchange of traffic with such third party carriers. In fact, the Original Agreement, as modified by the 1st Amendment, actually contains a provision specifically permitting EWR unrestricted interchange with other carriers. However, the Original Agreement, as modified by the 1st Amendment, does contain lease credits. Since the filing of the Original Agreement, the Board has deemed agreements that contain lease credits to be a type of interchange commitment.² While EWR does not agree that lease credits equate to an interchange commitment, EWR certifies that based on Board precedent, the Original Agreement, as modified by the 1st Amendment, does contain an interchange commitment.

Accordingly, pursuant to 49 C.F.R. § 1150.43(h), EWR provides the following information:

(i) Existence of agreement and identification of affected interchange point

For the Original Agreement, as modified by the 1st Amendment, the affected interchange point is MP I 131.6+/- (at Walkerton, IN) and MP 118.3 at Plymouth, IN.

² See Information Required in Notices and Petitions Containing Interchange Commitments, EP 714, slip op. at 7-8 (STB served Sept. 5, 2013); see also Piedmont & Atlantic Railroad Co. Inc., D/B/A Yadkin Valley Railroad Company – Lease Exemption Containing Interchange Commitment – Norfolk Southern Railway Company, FD 35841 (STB served Sept. 18, 2014).

(ii) Confidential complete version of document

The confidential version of the Lease Amendment is being filed with the Board by separate cover under 49 C.F.R. § 1104.14(a).

(iii) List of shippers that have used the line over past two years

The following shippers or consignees (“Shippers”) located on the Line are currently using the Line to ship or receive freight by rail or have done so since 2014:

Opta Minerals, Del Monte, Pregis, and Bomarko

(iv) Aggregate number of carloads the Shippers originated or terminated over the Line

The aggregate number of carloads the Shippers named above originated or terminated within the last two years is being filed by separate cover under 49 C.F. .R. § 1104.14(a).

(v) Certification that shippers have been provided notice of proposed transaction and interchange commitment

Attached hereto is Certificate of Service, certifying that the Shippers have been served a copy of this Verified Notice of Exemption.

(vi) List of third party railroads that could physically interchange with the Line.

CSXT at Walkerton, IN and Chicago and Fort Wayne & Eastern Railroad at Plymouth, IN.

(vii) Estimated difference between sale or lease price with and without interchange commitment.

An estimate of the difference between the sale or lease price with and without the interchange commitment is being filed by separate cover under 49 C.F.R. § 1104.14(a).

(viii) Identification of interchange commitment in case caption.

The case caption of this Verified Notice of Exemption identifies the existence of an interchange commitment.

ENVIRONMENTAL AND HISTORIC IMPACTS

Under 49 C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements because the proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § § 1105.7(e)(4) or (5).

Also, under 49 C.F.R. § 1105.8(b)(1), the proposed transaction is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Board approval would be required for EWR to discontinue or NSR to abandon service. There are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

CAPTION SUMMARY

A caption summary in appropriate form (49 C.F.R. § 1150.44) is attached as Exhibit C to this Notice.

Respectfully submitted,



Daniel A. LaKemper, Esq.
ELKHART & WESTERN RAILROAD CO.
1318 S. Johanson Road
Peoria, Illinois 61607
Tel: (309) 697-1400
Fax: (309) 697-8486

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Dated: September 29, 2016

Attorneys for Elkhart & Western Railroad Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 35347 (Sub-No. 1)

**ELKHART & WESTERN RAILROAD CO.
– AMENDED LEASE AND OPERATION EXEMPTION CONTAINING INTERCHANGE
COMMITMENT –
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

EXHIBIT A

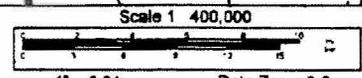
MAP



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**BEFORE THE
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WASHINGTON, DC**

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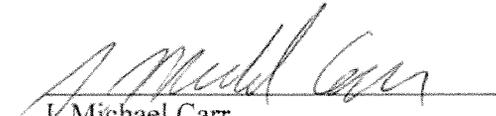
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

EXHIBIT B

CERTIFICATION OF REVENUES

CERTIFICATION

I, J. Michael Carr, President and Chief Executive Officer of Elkhart & Western Railroad Co. ("EWR"), hereby certify that EWR's projected annual revenues will not as a consequence of the transaction result in EWR becoming a Class II or Class I rail carrier so as to require processing the foregoing notice of exemption under 49 C.F.R. § 1150.45. I also hereby certify that EWR's combined annual revenues do not now exceed \$5 million and are not projected to exceed \$5 million following consummation of the subject transaction.



J. Michael Carr
President and Chief Executive Officer
Elkhart & Western Railroad Co.

September 27, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 35347 (Sub-No. 1)

**ELKHART & WESTERN RAILROAD CO.
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**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

EXHIBIT C

CAPTION SUMMARY

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 35347 (Sub-No. 1)

**ELKHART & WESTERN RAILROAD CO.
– AMENDED LEASE AND OPERATION EXEMPTION CONTAINING INTERCHANGE
COMMITMENT –
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

Elkhart & Western Railroad Co. (“EWR”), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41, et seq. to continue to lease and operate a portion of Norfolk Southern Railway Company’s (“NSR”) Michigan City Branch line between MP I 108.6+/- (at Argos, IN) to MP I 131.6+/- (at Walkerton, IN).

Comments must be filed with the Board and served on EWR’s representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7823. This notice is filed under 49 C.F.R. § 1150.41, et. seq.. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

Decided:

By the Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 35347 (Sub-No. 1)

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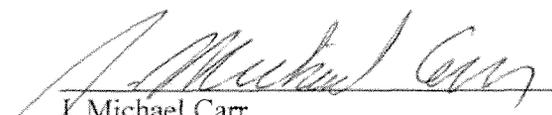
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

VERIFICATION

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, J. Michael Carr, declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Elkhart & Western Railroad Co. and that the foregoing verified notice of exemption is true and correct to the best of my knowledge and belief.

Executed this 27 day of September 2016



J. Michael Carr
President and Chief Executive Officer
Elkhart & Western Railroad Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
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FD 35347 (Sub-No. 1)

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**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

**CERTIFICATE OF SERVICE ON SHIPPERS PER 49 C.F.R.
§ 1150.43(h)(1)(iii) AND 49 C.F.R. § 1150.43(h)(1)(v)**

CERTIFICATE OF SERVICE

I, William A. Mullins, hereby certify that on September 29, 2016, a true copy of Elkhart & Western Railroad Co.'s verified notice of exemption was served by first-class mail, postage prepaid, or by a more expeditious manner on the following: Opta Minerals, Del Monte, Pregis, and Bomarko pursuant to 49 C.F.R. § 1150.43(h)(1)(iii) and 49 C.F.R. § 1150.43(h)(1)(v).



William A. Mullins
Attorney for Elkhart & Western Railroad Co.