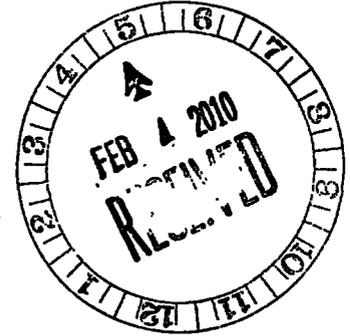


226400



BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE (202) 663-7820
FACSIMILE (202) 663-7849

Robert A. Wimbish

Direct Dial. (202) 663-7824

E-Mail: rwimbish@bakerandmiller.com

February 4, 2010

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

FEB 5 - 2010

Part of
Public Record

Re: ***Elkhart & Western Railroad Co. – Lease and Operation Exemption – Norfolk Southern Railway Company***
STB Finance Docket No. 35347

*** COLOR COPY INCLUDED**

Dear Ms. Brown:

Enclosed are an original and eleven copies of a Verified Notice of Exemption (“Notice”) under 49 CFR 1150.41, pursuant to which Elkhart & Western Railroad Co. will lease and operate a rail line owned and/or leased by Norfolk Southern Railway Company. Also enclosed are a caption summary in the prescribed format, and an electronic version of the Notice. Accompanying the Notice are documents tendered in connection with the requirements of 49 CFR 1150.43(h), which documents are highly confidential, have been segregated from the balance of the filing, and are submitted under seal in keeping with the aforementioned regulation and 49 CFR 1104.14(a).

Pursuant to 49 CFR 1002.2(f)(14)(ii), enclosed is a check for \$1,800.00 covering the applicable filing fee. Please acknowledge receipt and filing of the Notice by time stamping the eleventh copy and returning it to the courier for return to me. If there are any questions about this

matter, please contact me directly, either by telephone: (202) 663-7824 or by email:
rwimbish@bakerandmiller.com.

Respectfully submitted,

A handwritten signature in black ink that reads "R. A. Wimbish". The signature is written in a cursive style with a large, stylized initial "R".

Robert A. Wimbish
Attorney for Elkhart & Western
Railroad Co.

Enclosures

Cc: Daniel A. LaKemper
John M. Scheib

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35347

ELKHART & WESTERN RAILROAD CO.
- LEASE AND OPERATION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

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ENTERED
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Public Record

Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7824
Facsimile: (202) 663-7849

Attorney for Elkhart & Western
Railroad Co.

* COLOR COPY INCLUDED
February 4, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35347

ELKHART & WESTERN RAILROAD CO.
– LEASE AND OPERATION EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

Pursuant to 49 U.S.C. 10502 and 49 CFR 1150.41, et seq., Elkhart & Western Railroad Co. (“EWR”), a Class III rail common carrier,¹ hereby provides notice of its invocation of the class exemption from the formal requirements of 49 USC 10902 for a transaction wherein EWR will lease from Norfolk Southern Railway Company (“NSR”) and will operate a rail line extending between Milepost I 108.6+/- at Argos, IN, and Milepost I 131.6+/- at Walkerton, IN (“the Line”) as more fully described below.

In support of this Notice of Exemption, EWR submits the following information as required by 49 CFR 1150.43:

(a) Full name and address of applicant:

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

¹ See Pioneer Railcorp and Michigan Southern Railroad Company – Corporate Family Transaction Exemption, STB Finance Docket No. 33941 (STB served Oct. 10, 2000).

(b) Applicant's Representative:

Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7824
Facsimile: 202-663-7849
Email: rwimbish@bakerandmiller.com

(c) Statement that an agreement has been reached or details about when an agreement will be reached:

EWR has executed, and NSR will shortly to execute, an agreement pursuant to which EWR will lease and operate the Line.

(d) Operator of the property:

Upon consummation of the proposed transaction, EWR will operate the property (the Line).

(e) Summary of the proposed transaction –

(1) The name and address of the railroad transferring operating interests in the subject property:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

(2) The proposed time schedule for consummation of the transaction:

The parties intend to consummate the proposed transaction on or after March 6, 2010.

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

EWR will lease from NSR and will operate a rail line segment generally referred to as a portion of the Michigan City Branch extending between Milepost 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 Milepost 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) The total route miles being acquired:

Approximately 23.0 route miles.

(f) Map:

Attached hereto as Exhibit A.

(g) Certificate of compliance with the provisions of 49 CFR 1150.43(g):

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 1150.45.

(h) Interchange commitments:

EWR will interchange traffic with NSR at a track in the vicinity of Argos Yard. However, the lease agreement that will govern the subject transaction does not prohibit EWR from interchanging with other carriers that connect with the Line, and it will not set forth terms governing EWR's interchange of traffic with such third party carriers. In fact, the lease agreement contains a provision specifically permitting EWR unrestricted interchange with other carriers.

EWR believes that the lease agreement it will enter into with NSR does not contain an interchange commitment that would impede EWR's ability to interchange with third party carriers, and, for this reason, EWR is of the opinion that the terms of the lease do not need to be disclosed under the Board's rules. Nevertheless, the lease contains a rental credit provision, which EWR

sought in negotiations to afford it greater financial flexibility to, among other things, improve the Line's infrastructure. Out of an abundance of caution and in strict adherence to the requirements of 49 CFR 1150.43(h) (and the confidentiality terms set forth therein), the parties have agreed to submit under seal a confidential version execution copy of the lease agreement that EWR has signed and that NS shortly will sign, subject to 49 CFR 1104.14(a).

Other information and supporting materials:

As indicated above, EWR's projected revenues following consummation of the subject transaction would continue to be below the Class II carrier threshold, and, accordingly, EWR will remain a Class III rail carrier. In addition, EWR's projected annual revenues from the combination of its operation of the Line and its existing rail operations are not expected to exceed \$5 million. (See the certification attached as Exhibit B). For this reason, EWR is not required to comply with the 60-day advance notice and posting requirements set forth at 49 CFR 1150.42(e).

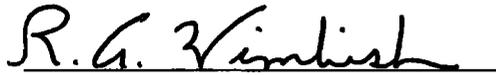
A caption summary in the prescribed form is attached as Exhibit C to this notice.

The proposed transaction is not subject to environmental review because the action proposed herein will not exceed any of the thresholds set forth at 49 CFR 1105.7(e)(4) or (5). See 49 CFR 1105.6(c)(2)(i).

In addition, this transaction is exempt from historic review under 49 CFR 1105.8(b)(1), because the transaction contemplates continued rail operation. Further STB approval would be required for the parties to abandon service, and there are no plans to dispose of or to alter properties

subject to STB jurisdiction that are 50 years or older. This action will not significantly affect the quality of the human environment or energy conservation.

Respectfully Submitted,



Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037

Attorney for Elkhart & Western
Railroad Co.

DATED: February 4, 2010

VERIFICATION

Pursuant to 28 U.S.C. 1746, I 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 notice of exemption is true and correct to the best of my knowledge and belief.



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

January 29, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35347

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

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

**EXHIBIT A
MAPS**



Elkhart & Western
Argos
Walker ton

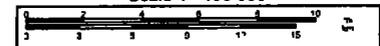
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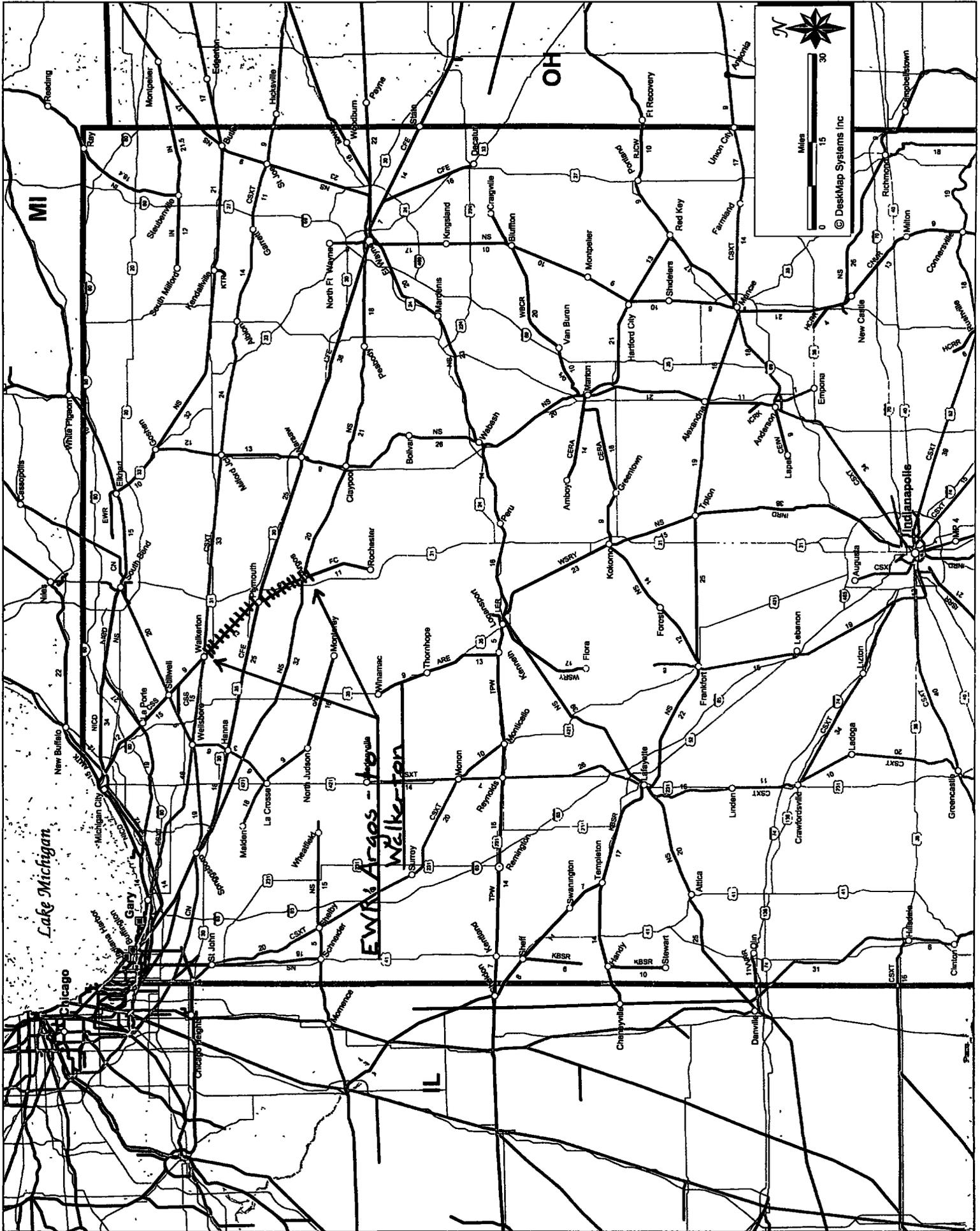
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1" = 6.31 mi

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INDIANA



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35347

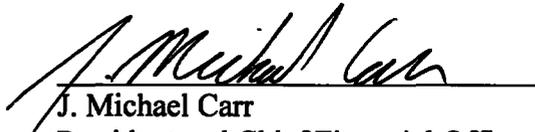
**ELKHART & WESTERN RAILROAD CO.
– LEASE AND OPERATION EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

**EXHIBIT B
CERTIFICATION**

CERTIFICATION

I, J. Michael Carr, President and Chief Financial 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 CFR 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 Financial Officer
Elkhart & Western Railroad Co.

January 29, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35347

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

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

**EXHIBIT C
CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 35347

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

Elkhart & Western Railroad Co. (“EWR”), an existing Class III rail carrier, has filed a verified notice of exemption to lease from Norfolk Southern Railway Company (“NSR”) and to operate a rail line owned by NSR generally referred to as a portion of the Michigan City Branch extending between Milepost 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 Milepost I 131.6+/- at Walkerton, IN, 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) (“the Line”), a total distance of approximately 23.0 route miles. The subject rail line acquisition (by lease) and operation transaction qualifies for use of the class exemption pursuant to 49 CFR 1150.41.

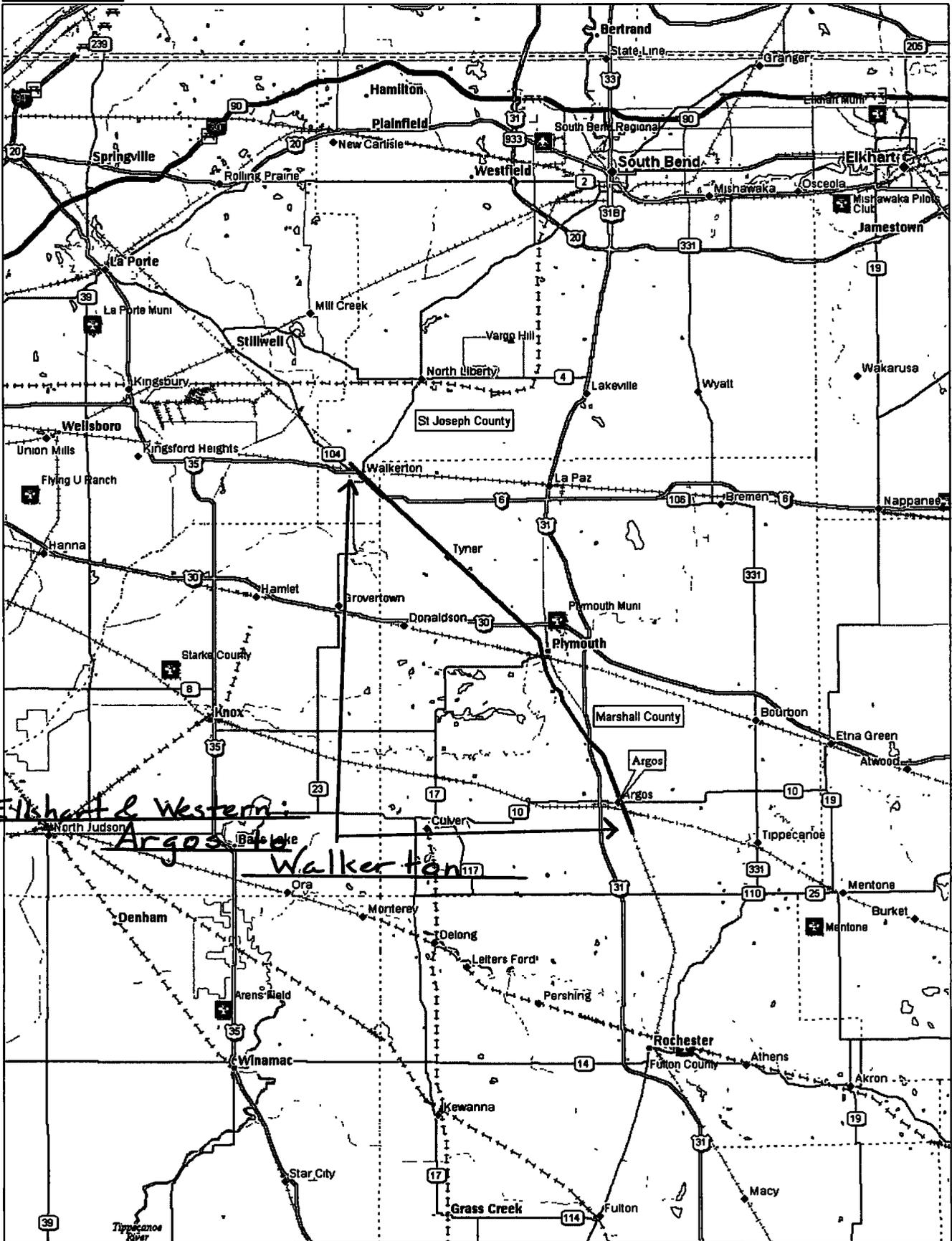
EWR certifies that, upon consummation of the transaction, EWR’s projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. In addition, EWR’s combined annual revenues from the operation of its existing lines and the Line that is the subject of this notice of exemption will not exceed \$5 million, and, therefore, the requirements of 49 CFR 1150.42(e) do not apply here.

The transaction is expected to be consummated on or after March 6, 2010.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding 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. Stay petitions must be filed by June 8, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35347, must be filed with the Surface Transportation Board, 395 E street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on EWR’s representative, Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.



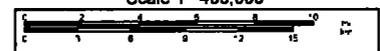
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1" = 63.1 mi

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