

50112

SERVICE DATE – JANUARY 31, 2020

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35347 (Sub-No. 2)]

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 milepost I 108.6+/- (at Argos, Ind.) and milepost I 131.6 +/- (at Walkerton, Ind.) (the Line).

The verified notice states that EWR entered into a lease agreement with NSR in 2010. See Elkhart & W. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35347 (STB served Feb. 19, 2010). The parties amended the lease in 2016. See Elkhart & W. R.R.—Amended Lease & Operation Exemption Containing Interchange Commitment—Norfolk S. Ry., FD 35347 (Sub-No. 1) (STB served Oct. 14, 2016). According to the verified notice, EWR and NSR have agreed to further amend the lease agreement to extend the term of the lease to July 31, 2029, and to modify certain other specific terms of the agreement.¹ EWR states that the amended lease agreement will take effect upon the effective date of the notice of exemption.

¹ A copy of the amended agreement with the interchange commitment was submitted under seal. See 49 C.F.R. § 1150.43(h)(1).

According to EWR, it will continue to interchange traffic with NSR at a track in the vicinity of the Argos Yard. EWR states that the lease agreement, as amended, does not prohibit or limit EWR from interchanging with third-party connecting carriers that connect to the Line, nor does the agreement set forth terms governing EWR's interchange of traffic with such third-party carriers. However, as required under 49 C.F.R. § 1150.43(h)(1), EWR has disclosed in its verified notice that the lease agreement, as amended, contains an interchange commitment in the form of lease credits. EWR has also provided additional information regarding the interchange commitment as required by 49 C.F.R. § 1150.43(h).

EWR certifies that its 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 February 14, 2020, 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 February 7, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 35347 (Sub-No. 2), must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be

served on EWR's representative, W. Karl Hansen, Stinson LLP, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402.

According to EWR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 27, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.