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SERVICE DATE - MAY 3, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1329X

ELKHART & WESTERN RAILROAD CO. LLC—DISCONTINUANCE OF TRACKAGE
RIGHTS EXEMPTION—IN MARSHALL AND FULTON COUNTIES, IND.

Decided: May 3, 2023

On March 24, 2023, Elkhart & Western Railroad Co. LLC (E&W), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue trackage rights over approximately 11.7 miles of rail line owned by Fulton County, L.L.C. (FC), extending from milepost I-108.6 near Argos, Ind., to milepost I-96.9 at Rochester, Ind., in Marshall and Fulton Counties, Ind. (the Line). Notice of the petition was served and published in the Federal Register on April 13, 2023 (88 Fed. Reg. 22,513). The notice stated that replies to the petition were due on May 3, 2023.

On May 2, 2023, FC filed a motion to amend the procedural schedule and extend the time for replies and a motion to compel responses to discovery. FC states that it served document requests on E&W on April 17, 2023, asking for responses by May 1, 2023. FC states that, on April 28, 2023, E&W advised FC's counsel that E&W would not provide any documents. (FC Motion to Amend 1.) FC therefore "requests that the date for replies be extended until four business days after E&W produces whatever documents the Board requires E&W to produce." (*Id.* at 2.) FC's request will be denied at this time. However, in light of the short period between E&W's response to the document request and the May 3, 2023 reply deadline, the deadline for replies to the petition for exemption will be extended to May 8, 2023. A future decision addressing the motion to compel may provide for further replies to the petition should discovery be ordered.

E&W will be ordered to reply to the motion to compel by May 12, 2023.

It is ordered:

1. FC's motion to amend the procedural schedule is denied in part.
2. The amended deadline to reply to the petition for exemption is May 8, 2023.
3. E&W's reply to the motion to compel is due by May 12, 2023.

4. This decision is effective on the date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.