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ENTERED
Office of Proceedings
May 21, 2018
Part of
Public Record

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May 21, 2018

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: **Docket No. FD 36198**
New Orleans Public Belt Railroad Corporation -- Temporary
Trackage Rights Exemption -- Illinois Central Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of New Orleans Public Belt Railroad Corporation Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated May 21, 2018. A check in the amount of \$1,300.00, representing the appropriate fee for this filing, has been delivered to your office today by overnight courier.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for New Orleans Public Belt
Railroad Corporation

TJL:tl

Attachment

FEE RECEIVED
May 21, 2018
SURFACE
TRANSPORTATION BOARD

FILED
May 21, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36198

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
ILLINOIS CENTRAL RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

**ATTORNEY FOR NEW ORLEANS PUBLIC
BELT RAILROAD CORPORATION**

Dated: May 21, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36198

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
ILLINOIS CENTRAL RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

New Orleans Public Belt Railroad Corporation ("NOPB Corp."), a Class III common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for its extension of temporary overhead trackage rights on lines of railroad of Illinois Central Railroad Company ("IC") in New Orleans, Louisiana, a total distance of approximately 6.3 miles. The proposed transaction will further extend a temporary trackage rights arrangement between NOPB Corp. and IC that was previously authorized by the Board.

NOPB Corp. is filing concurrently herewith, in Docket No. FD 36198 (Sub-No. 1), a petition to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the extended temporary trackage rights to expire on January 31, 2020.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), NOPB Corp. submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

NOPB Corp. is a Class III switching and terminal railroad and a wholly-owned subsidiary of the Board of Commissioners of the Port of New Orleans that provides terminal, interline and intermediate switching services to local shippers and six Class I railroads in the

New Orleans area. NOPB Corp. began operations on February 1, 2018 upon acquisition of all of the railroad operating assets of the Public Belt Railroad Commission of the City of New Orleans ("Public Belt"). *New Orleans Public Belt Railroad Corporation -- Acquisition and Operation Exemption -- Public Belt Railroad Commission of the City of New Orleans*, Docket No. FD 36149 (STB served December 27, 2017), 82 Fed. Reg. 61,362 ("*NOPB Corp. Acquisition*").

Pursuant to a September 16, 2016 temporary trackage rights agreement and subsequent amendment dated December 28, 2016 between Public Belt and IC,¹ Public Belt previously obtained temporary overhead trackage rights on approximately 6.3 miles of IC rail line in the New Orleans area to interchange traffic with The Kansas City Southern Railway Company ("KCS") on KCS trackage in New Orleans on a trial basis. *New Orleans Public Belt Railroad -- Temporary Trackage Rights Exemption -- Illinois Central Railroad Company*, Docket No. FD 36067 (STB served October 14, 2016 and January 30, 2017). As initially extended, the temporary trackage rights were scheduled to expire on January 31, 2018. NOPB Corp. was assigned Public Belt's interest in the temporary trackage rights arrangement as part of the transaction authorized in Docket No. FD 36149. *See NOPB Corp. Acquisition* at 3, n.4 (Segment #9).

Pursuant to a written Second Amendment to the Temporary Trackage Rights Agreement dated January 31, 2018, the parties have agreed to a further extension of the temporary overhead trackage rights until January 31, 2020. Because the duration of NOPB Corp.'s extended trackage rights is greater than one year, the proposed extension does not qualify under the class exemption for temporary trackage rights provided in 49 C.F.R. § 1180.2(d)(8).

¹ IC is a wholly-owned, indirect subsidiary of Canadian National Railway Company. *Canadian Nat'l Ry. Co. -- Control -- Illinois Cent. Corp.*, 4 S.T.B. 122 (1999).

See Railroad Consolidation Procedures, 6 S.T.B. 910, 914-915 (2003).² Accordingly, NOPB Corp. is filing this notice pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) and is concurrently filing in Docket No. FD 36198 (Sub-No. 1) a petition to partially revoke that class exemption as necessary to allow the proposed extended temporary trackage rights to expire on January 31, 2020. This is consistent with the Board's handling of prior similar circumstances. *E.g., The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (Sub-No. 1) (STB served February 9, 2017).

NOPB Corp.'s proposed extended temporary overhead trackage rights on IC extend from IC Milepost 906.4 at East Bridge Junction in Shrewsbury to IC Milepost 900.8 at Orleans Junction in New Orleans and from IC Milepost 444.2 at Orleans Junction to IC Milepost 443.5 at Frellsen Junction in New Orleans, a total distance of approximately 6.3 miles.

The full name and address of the applicant carrier herein is as follows:

New Orleans Public Belt Railroad Corporation
4822 Tchoupitoulas Street
New Orleans, Louisiana 70115
(504) 896-7410

Any questions concerning this Notice should be sent to NOPB Corp.'s representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

² Public Belt's prior filings in Docket No. 36067 utilized the Section 1180.2(d)(8) class exemption because the initial temporary trackage rights arrangement was for a period of three months and was later extended by one year.

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

The transaction proposed in this notice extends existing temporary trackage rights previously authorized by the Board in Docket No. FD 36067. The exemption authority in this docket will become effective on June 20, 2018.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed extended temporary overhead trackage rights are for the sole purpose of allowing NOPB Corp. to interchange traffic with KCS on KCS trackage, which requires NOPB Corp. to operate over IC trackage for approximately 6.3 miles.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

NOPB Corp. owns and operates over rail property in the State of Louisiana. IC owns and operates over rail property in the States of Louisiana, Alabama, Illinois, Kentucky, Mississippi and Tennessee.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail lines over which NOPB Corp. proposes to acquire extended temporary overhead trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the Second Amendment to the Temporary Trackage Rights Agreement dated January 31, 2018 between the parties is attached hereto as Exhibit 2. Copies of the underlying Temporary Trackage Rights Agreement dated September 16, 2016 between Public Belt and IC and the First Amendment thereto dated December 28, 2016 were previously submitted to the Board in Docket No. FD 36067.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, NOPB Corp. agrees to the employee protective conditions established in *Norfolk and Western Ry. Co. -- Trackage Rights -- BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc. -- Lease and Operate*, 360 I.C.C. 653 (1980). NOPB Corp.'s discontinuance of service upon expiration of the temporary trackage rights on January 31, 2020 will be subject to the employee protective conditions established in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979). See *Railroad Consolidation Procedures*, 7 S.T.B. 587 (2004).

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

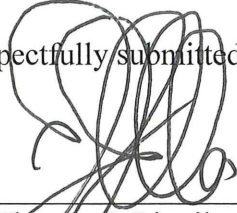
A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed extension of temporary trackage rights by NOPB Corp. is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), NOPB Corp.'s proposed temporary trackage rights extension also is exempt from historic preservation reporting requirements.

Respectfully submitted,

By:


Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR NEW ORLEANS PUBLIC
BELT RAIL ROAD CORPORATION**

Dated: May 21, 2018



**SECOND AMENDMENT TO THE
TEMPORARY TRACKAGE RIGHTS AGREEMENT**

THIS SECOND AMENDMENT ("Amendment") to the Temporary Trackage Rights Agreement is made by and between **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "**CN**" or "**OWNER**") and **NEW ORLEANS PUBLIC BELT RAILROAD**, (hereinafter referred to as "**NOPB**" or "**USER**"). NOPB and CN are hereafter sometimes individually referred to as a "Party" and jointly as the "Parties."

RECITALS

- A. The Parties entered into a Temporary Trackage Rights Agreement, as amended, dated September 16, 2016 ("**Agreement**") which provided for NOPB, among other things, to operate on CN's trackage between East Bridge Jct. and Frellsen Jct. in New Orleans, LA
- B. The Parties hereto now desire to amend the term of the Agreement as provided for in Section 3.8 of the Agreement subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Amendment, and the covenants, obligations, and agreements hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, NOPB and CN covenant and agree to amend and modify the Agreement as follows:

- 1. Section 3.8 of the Agreement is hereby deleted in its entirety and replaced with the following:

"3.8 The temporary trackage rights granted herein to NOPB and this Agreement shall terminate on January 31, 2020."
- 2. To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this Amendment, the provision or provisions of this Amendment shall take precedence and control. Capitalized terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Agreement. Except as modified by this Amendment, the remaining terms, covenants, provisions, and conditions of the Agreement shall remain in full force and effect.

*****Signature Page to follow*****

31ST IN WITNESS WHEREOF, the Parties have entered into this Amendment on this
day of January, 2018.

NEW ORLEANS PUBLIC BELT
RAILROAD:

By: 

Name: DOUGLAS CAMPBELL

It's: CEO

ILLINOIS CENTRAL RAILROAD
COMPANY:

By: 

Michael Matteucci

Director Contracts and Administration

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36198

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
ILLINOIS CENTRAL RAILROAD COMPANY

Pursuant to a written amendment agreement dated January 31, 2018, Illinois Central Railroad Company ("IC") has agreed to extend temporary overhead trackage rights held by New Orleans Public Belt Railroad Corporation ("NOPB Corp.") over IC's lines of railroad from IC Milepost 906.4 at East Bridge Junction in Shrewsbury, Louisiana to IC Milepost 900.8 at Orleans Junction in New Orleans, Louisiana and from IC Milepost 444.2 at Orleans Junction to IC Milepost 443.5 at Frellsen Junction in New Orleans, a total distance of approximately 6.3 miles. NOPB Corp. may utilize the temporary trackage rights for the sole purpose of interchanging traffic with The Kansas City Southern Railway Company ("KCS") on KCS trackage.¹

The proposed extended trackage rights will be effective on June 20, 2018, and will expire by agreement of the parties on January 31, 2020. NOPB Corp. has concurrently filed a petition in Docket No. FD 36198 (Sub-No. 1) to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) to allow the proposed trackage rights to expire on January 31, 2020. The Board will address NOPB Corp.'s petition in a separate decision.

¹ Prior agreements between IC and NOPB Corp.'s predecessor relating to these temporary trackage rights were authorized in *New Orleans Public Belt Railroad -- Temporary Trackage Rights Exemption -- Illinois Central Railroad Company*, Docket No. FD 36067 (STB served October 14, 2016 and January 30, 2017).

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway -- Trackage Rights -- Burlington Northern, Inc.* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway -- Lease & Operate -- California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 C.F.R. § 1180.2(d)(7).² If it 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. Stay petitions must be filed by June 13, 2018 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36198, 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 Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

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

Decided: June __, 2018

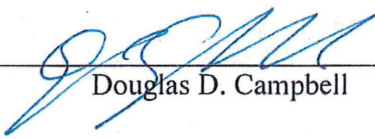
By the Board, Rachel D. Campbell, Office of Proceedings.

² NOPB Corp. states that its verified notice of exemption was not filed under the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8) because the proposed trackage rights extension is longer than one year in duration. *See Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003).

VERIFICATION

State of Louisiana)
) ss:
Parish of Orleans)

Douglas D. Campbell, being duly sworn, deposes and says that he is General Manager of New Orleans Public Belt Railroad Corporation, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Douglas D. Campbell

SUBSCRIBED AND SWORN TO
before me this 17th day
of May, 2018.



Notary Public

My Commission expires: For Life

ERICA N. BECK
BAR ROLL #30000, Parish of Orleans
My commission expires at my death.