

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36607

HAMILTON NORTHWESTERN RAILROAD CO.
— ACQUISITION AND OPERATION EXEMPTION —
IN ALLEGAN COUNTY, MI

FD 36608

HAMILTON HARTFORD GROUP, LLC
— CONTINUANCE IN CONTROL EXEMPTION —
HAMILTON NORTHWESTERN RAILROAD CO.

PETITION FOR WAIVER TO EXPEDITE EFFECTIVE DATES

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**ATTORNEYS FOR HAMILTON
NORTHWESTERN RAILROAD CO. AND
HAMILTON HARTFORD GROUP, LLC**

Dated: April 29, 2022

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Hamilton Northwestern Railroad Co. (“HNW”) and Hamilton Hartford Group, LLC (“HHG”) hereby collectively petition the Board to partially waive the 30-day periods for effectiveness of the notices of exemption filed in the above-referenced proceedings (the “Notices”) as specified by 49 C.F.R. §§ 1150.32(b), 1150.42(b), and 1180.4(g)(1)(iii). Waiver is necessary to allow the Notices concurrently filed in these dockets by HNW and HHG, respectively, to become effective on May 6, 2022, thirty days after the filing of the underlying notices of exemption and sixteen days earlier than would otherwise be allowed under the referenced regulations. Expedited effective dates will allow an earlier commencement of common carrier service by HNW to Endeavor Ag and Energy, LLP (“Endeavor”), the one active customer on the Line (as defined below). Given the deteriorated condition of the Line and the mutual desire of HNW and Endeavor to expand Endeavor’s service options, expedition of the

effective dates of these exemptions is clearly consistent with the public interest. This Petition is supported by a Verified Statement from Jeff Troike, Endeavor President, attached as Exhibit A.

On April 6, 20, HNW filed a Notice of Operation Exemption in FD 36607 to operate track located between milepost 19.00 in Holland, Michigan and milepost 12.90 in Hamilton, Michigan, a distance of approximately 6.10 miles (the “Line”). The Line is currently owned by Endeavor as private track. CSX Transportation, Inc. (“CSXT”) provides service to Endeavor over the Line under the terms of an industry track agreement.¹ HNW intends to purchase the Line from Endeavor after the exemption in FD 36607 becomes effective, and to commence common carrier operations on the Line thereafter. Concurrent with HNW’s filing, HHG filed a notice of exemption under FD 36608 to continue in control of HNW once HNW becomes a common carrier.

Because the notices of exemption in FD’s 36607 and 36608 were filed on April 6, 2022, HNW and HHG anticipated that notices of their filings would be published in the *Federal Register* no later than April 22, 2022 (16 days after their filing), consistent with 49 C.F.R. §§ 1150.32(b) and 1180.4(g)(1)(iii). When no notices were published on that date, HNW and HHG speculated that the Board may believe that HNW should have included as within the scope of its class exemption filing authorization to acquire the Line, and should not have limited its exemption filing to authorization to commence common carrier operations over the Line (since, as part of the proposed transaction, HNW plans to purchase the Line). However, given the mutual desires of HNW and Endeavor to have HNW commence common carrier operations on the Line as soon as possible, HNW and HHG filed a letter of clarification in both dockets on

¹ The Line was abandoned by CSXT almost 20 years ago (*see CSX Transportation, Inc. – Abandonment Exemption – In Allegan County, MI, AB-55* (Sub-No. 619X) (STB served Nov. 29, 2002)) and, subsequent to consummation by CSXT, was sold as private track to a third party, eventually coming under Endeavor’s ownership.

April 22, 2022, that, among other things, supplemented HNW's notice of exemption to include authorization to acquire the Line.

HNW and HHG are aware that the filing of the letter supplementing their original Notices may have "restarted" the 30-day effective date clock for each proceeding.² Thus, the Notices, as supplemented, might otherwise be scheduled to become effective on May 22, 2022. That said, no useful purpose would be served by extending the effective date of these exemptions beyond the originally-anticipated May 6, 2002 date. Endeavor is the only active customer on the Line, and it is the current owner of it, so it is difficult to imagine any other entity having an interest in, or concerns about, the transaction. Endeavor, HNW and CSXT have been actively working toward a May 6 transition date for operations, and, as noted in Exhibit A, Endeavor is anticipating greater expertise in track maintenance (a critical factor that, when not properly addressed, has resulted in service stoppages to the Hamilton facility) and additional service flexibility with the introduction of HNW's common carrier operations on the Line.

In appropriate circumstances, and where good cause has been established, the Board has granted similar waiver requests as is sought here to facilitate a smooth and necessary transition protecting the interests of affected shippers.³

Partial waiver of the full 30-day effectiveness period in the limited circumstances

² See, e.g., *Metro-North Commuter Railroad Company – Adverse Discontinuance of Track Rights – Housatonic Railroad Company*, AB 1311 (STB served Mar. 25, 2022), 1, n.1

³ See, e.g., *Northeast Texas Connector, LLC — Operating Exemption — Northeast Texas Rural Rail Transportation District*, FD 36410 (STB served June 22, 2020); *Spokane, Spangle & Palouse Railway, L.L.C. — Lease and Operation Exemption — Washington State Department of Transportation*, FD 36325 (STB served Aug. 2, 2019); *Delmarva Central Railroad Company – Change in Operators Exemption – Cassatt Management, LLC d/b/a Bay Coast Railroad*, FD 36196 (STB served Jun. 8, 2018); *Washington State Department of Transportation – Acquisition Exemption – Palouse River and Coulee City Railroad, Inc.*, FD 35024, *et al.* (STB served May 30, 2007).

presented here would minimize the risk of rail service disruption on the Line, and is fully consistent with the Rail Transportation Policy of 49 U.S.C. § 10101.

WHEREFORE, HNW and HHG respectfully request that the Board partially waive the provision of 49 C.F.R. §§ 1150.32(b), 1150.42(b), and 1180.4(g)(1)(iii) in these dockets to allow HNW's notice of exemption to acquire and operate the Line, and HHG's notice of exemption to continue in control of HNW once HNW becomes a common carrier, to become effective on May 6, 2022 or as soon thereafter as possible.

Respectfully submitted,

By: *R. A. Wimbish*

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EXHIBIT A



VERIFIED STATEMENT OF JEFF TROIKE

My name is Jeff Troike, I am President of Endeavor Ag and Energy, LLP ("Endeavor"). I understand that Hamilton Northwestern Railroad Co. ("HNW") and its parent company, Hamilton Hartford Group, LLC ("HHG") will share this letter with the Surface Transportation Board (the "Board") in support of a request to expedite the effective date of the exemptions sought in the FD's 36607 and 36608 dockets.

I have been President of Endeavor since 2020. Endeavor is a 100% farmer-owned business. We provide expert solutions and services in the areas of agronomy, energy, feed and grain marketing. We also operate a large propane gas supply business, supplying local farms, livestock producers, and family homes with safe, clean, affordable propane gas services.

Almost two years ago, Endeavor purchased four ag-related facilities in Michigan, including one in Hamilton. CSX Transportation, Inc. ("CSXT") has served the Hamilton facility for many years, and it does so now by operating over a 6.1-mile private track that Endeavor owns (the "Track"). I understand that CSXT legally abandoned the Track roughly 20 years ago, but, instead of removing it, CSXT sold the Track to previous owners of the Hamilton facility to preserve the facility's access to railroad service. The Track extends from our facility to a connection at its northern end to a CSXT-owned (and CSXT-operated) track. We understand that CSXT stages its service to our facility at CSXT's Waverly Yard in Holland, Michigan.

The Hamilton facility depends on rail service for the transport of certain commodities and to meet the needs of shippers with whom Endeavor does business. For example, Endeavor receives feed commodities by rail, that are critical to animal nutrition. Our Hamilton facility operating costs

would increase significantly if we were to lose railroad access, even temporarily, and were forced as a consequence to resort to truck service (a challenge, considering the long-haul motor carrier market).

Endeavor acquired the Track as an element of its Hamilton facility purchase. Track upkeep has at times been a challenge. On at least two occasions in the last year, CSXT has halted rail movements over the Track until certain track conditions were corrected. Earlier this year, CSXT experienced a derailment on the Track which also disrupted service. Endeavor excels in serving the energy needs of rural communities, the agronomy needs of farmers, and the nutritional needs of regional farm livestock, not in maintaining railroad tracks.

Endeavor has agreed to sell the Track to HNW, and we understand that HNW will start up common carrier operations (and will assume Track maintenance obligations) upon the closing of that transaction. Endeavor is pleased to have HNW's experienced railroaders assume such Track maintenance. We anticipate that HNW will be much better suited to recognize and correct track issues before they trigger a service suspension. We also anticipate that HNW will providing a very flexible schedule, with more frequent service that is more responsive to our ever-changing transportation needs than the 2 days CSXT currently offers. HNW's common carrier operations have not yet started (and won't until it obtains common carrier authority from this agency), but HNW has already offered several ideas to reduce our transportation costs by shifting more of our commodity flows from motor carriage to railroad service.

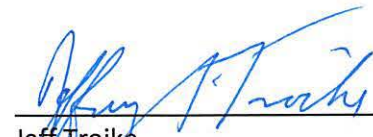
I understand that HNW and HHG will not obtain the authorizations that each needs from this agency for HNW to commence common carrier operations as swiftly as we had expected to occur. Because HNW and HHG have supplemented their filings, we've been told that this Board may postpone the effective date of the authorizations both will need to enable HNW to acquire the Tracks from Endeavor, and to assume responsibility for Track operation and upkeep going forward. Unfortunately,

that unanticipated delay harms Endeavor by postponing the benefits of the track upkeep services that HNW is prepared to furnish in our place, and the benefits of the first-mile/last-mile service that HNW is also prepared to supply in CSXT's place. Delay in agency action also risks another railroad service disruption in the interim that would harm Endeavor and its customers.

For those reasons, Endeavor urges the Board to act swiftly and favorably on the pending HNW and HHG notices of exemption, and we do so in support of HNW's and HHG's request for expeditious Board action.

Verification

I, Jeff Troike, verify under penalty of perjury that I am President of Endeavor Ag and Energy, LLP, that I have read the foregoing Verified Statement and know its contents, and that the same is true and correct to the best of my knowledge and belief.



Jeff Troike
President
Endeavor Ag and Energy, LLC

Executed April 28, 2022