

Order-to-Trade Ratio Fees does not favor certain categories of market participants in a manner that would impose a burden on competition.

The Exchange also believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’. . . .” Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4 ¹⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeEDGX-2023-023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2023-023, and should be submitted on or before May 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36688]

Green Mountain Railroad Corporation—Trackage Rights Exemption—New England Central Railroad, Inc.

Green Mountain Railroad Corporation (GMRC) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for acquisition of overhead trackage rights over approximately 61.4 miles of rail line owned by New England Central Railroad, Inc. (NECR), between milepost 14.46 at White River Junction, Vt., and milepost 99.0 at Millers Falls, Mass. (the Line).¹

¹⁹ 17 CFR 200.30-3(a)(12).

¹ GMRC notes that, due to the Line's history, the mileposts are not indicative of the Line's total route miles and the stated distance is accurate although the mileposts could suggest otherwise.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

GMRC and NECR have entered into a written trackage rights agreement² that grants GMRC overhead trackage rights over the Line. Those rights allow GMRC to enter and exit the Line at certain intermediate points as well as its terminal points, as described in the verified notice. GMRC states that the trackage rights are among settlement terms that the Board imposed “as a condition of the Board’s approval” in *CSX Corp.—Control & Merger—Pan Am Systems, Inc.*, FD 36472 et al., (STB served Apr. 14, 2022).

The transaction may be consummated on or after April 27, 2023, the effective date of the exemption.

As a condition to this exemption, any employees affected by the acquisition of 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).

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 for stay must be filed no later than April 20, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36688, must be filed with the Surface Transportation Board via e-filing on the Board’s website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GMRC’s representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to GMRC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

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

Decided: April 7, 2023.

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

Kenyatta Clay,
Clearance Clerk.

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SURFACE TRANSPORTATION BOARD

[Docket No. AB 1329X]

Elkhart & Western Railroad Co. LLC—Discontinuance of Trackage Rights Exemption—in Marshall and Fulton Counties, Ind.

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). The Line traverses United States Postal Services Zip Codes 46501 and 46975.

According to E&W, until recently, it was the exclusive service provider on the Line, pursuant to a trackage rights agreement (Agreement) with FC. E&W states that the Agreement expired on March 15, 2023, and, on the same day, Patriot Rail Company, LLC, which indirectly controls E&W, embargoed the Line due to unsafe track conditions. E&W notes that FC has a common carrier obligation on the Line as well as a plan for a corporate affiliate, Rochester & Erie Railway, LLC (RERY), to operate the Line, *see* RERY, Notice of Exemption, *Rochester & Erie Ry.—Operation Exemption—Fulton Cnty., LLC*, FD 36671. Therefore, according to E&W, RERY will be affiliated with the Line as its operator, and shippers will have access to common carrier service, should FC and RERY determine that operations can be resumed safely.

E&W states that it does not believe that the Lines contain federally granted rights-of-way. E&W also states that any documentation in its possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding

pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 12, 2023.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.¹ Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by April 24, 2023, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 1329X and must be filed with the Surface Transportation Board either via e-filing on the Board’s website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on E&W’s representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208. Replies to the petition are due on or before May 3, 2023.

Persons seeking further information concerning discontinuance procedures may contact the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board’s Office of Environmental Analysis at (202) 245–0294. If you require accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

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

Decided: April 7, 2023.

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

Raina White,
Clearance Clerk.

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¹ The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

² A redacted version of the trackage rights agreement between GMRC and NECR was filed with the verified notice. An unredacted version of the agreement was submitted to the Board under seal concurrently with a motion for protective order, which is addressed in a separate decision.