

SERVICE DATE – JUNE 8, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36622

EVANSVILLE WESTERN RAILWAY, INC.—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—ILLINOIS CENTRAL RAILROAD COMPANY

Digest:¹ This decision waives the requirement that a notice of exemption be filed 30 days prior to consummating a transaction and allows the temporary trackage rights exemption in this docket to take effect immediately.

Decided: June 8, 2022

On May 27, 2022, Evansville Western Railway, Inc. (EVWR), filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary trackage rights, for overhead operations, over approximately 11.7 miles of rail line owned by Illinois Central Railroad Company (CN) between Sugar Camp, Ill., at milepost 61.9, and Dial, Ill., at milepost 73.6, pursuant to the terms of a written temporary trackage rights agreement dated May 23, 2022 (Agreement).² Simultaneously with its verified notice, EVWR filed a petition to waive the 30-day period before the exemption takes effect under 49 C.F.R. § 1180.4(g)(1) and allow the exemption to take effect immediately.

EVWR explains that the Sugar Camp Mine, a coal mine served by EVWR, has closed temporarily due to a mine fire and the unrelated, but necessary, relocation of long wall mining equipment.³ (Pet. 2.) According to EVWR, the mine closure has removed millions of tons of coal from the market and EVWR has entered into the Agreement to allow it to load unit coal trains at Pond Creek Mine near Dial until the Sugar Camp Mine reopens, thereby minimizing, as much as possible, the impacts to customers while working through these disruptions. (*Id.*)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² A redacted copy of the Agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 C.F.R. § 1104.14. That motion is addressed in a separate decision.

³ EVWR states that the Sugar Camp Mine consists of two separate mines, M Class and Viking. According to EVWR, M Class was forced to shut down due to a fire at the mine and Viking had to close to accommodate the relocation of long wall mining equipment to another location at the mine.

EVWR states that it anticipates the need for temporary trackage rights operations to continue for several weeks. EVWR states that the temporary trackage rights will expire no later than July 15, 2022.

Under 49 C.F.R. § 1180.4(g), a verified notice of exemption must be filed at least 30 days before the covered transaction can be consummated. Thus, under the regulations, the earliest date EVWR would be permitted to consummate the transaction would be June 26, 2022. However, as noted above, EVWR has filed a petition to waive the 30-day period and allow the exemption to take effect immediately. EVWR states that this waiver would allow it to improve service and minimize the impact of the mine closure on its customers. (*Id.* at 1-2.)

The Board recognizes the immediate need for trackage rights to protect against impacts to customers while the mine is closed. For good cause shown, the Board will grant the petition, waive the 30-day period under 49 C.F.R. § 1180.4(g), and allow the exemption to become effective immediately. See Ala. & Gulf Coast Ry.—Temp. Trackage Rights Exemption—Kan. City S. Ry., FD 36418 (STB served July 2, 2020); Norfolk S. Ry.—Temp. Trackage Rights Exemption—Kan. City S. Ry., FD 36359 (STB served Oct. 11, 2019). As a condition to this exemption, EVWR acknowledges that any employees affected by the acquisition of the temporary 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), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). Notice of the exemption will be published in the Federal Register.

According to EVWR, this action is excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting under 49 C.F.R. § 1105.8(b)(3).

It is ordered:

1. The petition for waiver is granted.
2. The exemption for temporary trackage rights will be effective on the service date of this decision.
3. As a condition to this exemption, any employees affected by the acquisition of the temporary 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), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.