

SERVICE DATE – SEPTEMBER 28, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36726

PAN AM SOUTHERN LLC—TEMPORARY OVERHEAD TRACKAGE RIGHTS—
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
CORPORATION

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: September 26, 2023

On September 21, 2023, Pan Am Southern LLC (PAS) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) to acquire temporary overhead trackage rights over a line owned by the Boston and Maine Corporation (B&M) and leased and operated by Springfield Terminal Railway Company (ST). That line generally extends between PAS's existing connection to B&M/ST's tracks at Engineering Station 215+89 at CPF 312 outside Ayer, Mass., and Engineering Station 225+00 outside Ayer, for a total distance of approximately 1,000 feet (the Line). On September 22, 2023, PAS filed a petition to waive the requirement under 49 C.F.R. § 1180.4(g) that a verified notice be filed at least 30 days before the transaction is consummated and allow the exemption to take effect immediately, or no later than September 28, 2023.

According to PAS, its use of the Line would be limited to repositioning locomotives. (Pet. 3.) PAS states that Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (B&E) currently serves as the contract operator of PAS, (id. at 2 n.1), and that PAS/B&E serve a facility located on PAS's line, just west of its connection to the Line, (id. at 3). PAS explains that, due to a lack of space on PAS's line between the facility and CPF 312, PAS/B&E do not have sufficient headroom to reposition PAS/B&E locomotives serving the facility, resulting in inefficiency and congestion on PAS's network. (Id. at 3.)

Under 49 C.F.R. § 1180.4(g), the earliest date PAS may consummate the transaction is October 21, 2023. However, as noted above, PAS has filed a petition to waive the 30-day requirement and allow the exemption to take effect immediately, or no later than September 28, 2023. It cites an urgent need to reduce congestion on the PAS network and states that the limited

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).

overhead temporary trackage rights sought in this docket would provide PAS/B&E with the necessary head and tail room to reposition locomotives while PAS pursues a long-term solution to the issue, namely, installation of a “cross-over” on PAS’s line. (Pet. 3.) PAS states that procurement and installation of the cross-over will take approximately 75 days, and that, based on that schedule, the parties have agreed that the temporary overhead trackage rights will expire on December 5, 2023. (Id.)

For good cause shown, the Board will grant the petition, waive the 30-day requirement under 49 C.F.R. § 1180.4(g), and allow the exemption to become effective immediately. See CSX Transp., Inc.—Temp. Trackage Rts. Exemption—Ala. Great So. R.R., FD 35674 (STB served Sept. 7, 2012); CSX Transp., Inc.—Temp. Trackage Rts.—Norfolk S. Ry., FD 35460 (STB served Jan. 18, 2011). 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). Notice of the exemption will be published in the Federal Register.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c)(3) and 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 covered by the notice of exemption filed in this proceeding 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.