

SERVICE DATE – APRIL 30, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36790 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY—TRACKAGE RIGHTS
EXEMPTION—CSX TRANSPORTATION, INC.

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by Norfolk Southern Railway Company to operate over certain lines of CSX Transportation, Inc., even though such rights typically continue indefinitely.

Decided: April 29, 2025

By petition filed on September 30, 2024, Norfolk Southern Railway Company (NSR) requests that the Board permit the trackage rights granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36790 to expire under the terms agreed to by NSR and the grantor of the rights, CSX Transportation, Inc. (CSXT).

As explained in NSR's verified notice of exemption in Docket No. FD 36790, CSXT has agreed to grant NSR trackage rights over an approximately 95-mile CSXT rail line between Falls, Pa., at or near CP River, CSXT milepost QA 2, and Baltimore, Md., including all necessary trackage within CSXT's Bayview Yard, and between the western end of CSXT's Bayview Yard (MP BAL 0.0 ±) and a connection at MP BAL 0.5 ± (the Lines). NSR Verified Notice of Exemption 3, Norfolk S. Ry.—Trackage Rts. Exemption—CSX Transp., Inc., FD 36790. NSR further stated that the new trackage rights arrangement is intended to permit NSR to reroute traffic over the Lines while CSXT's Howard Street Tunnel (HST) in Baltimore is closed for a project that includes clearing the HST for double-stack rail passage. Id.

In its petition, NSR asks the Board to partially revoke the exemption as necessary to permit the trackage rights to expire as agreed to by the parties. (NSR Pet. 2.) NSR argues that granting this petition would promote the rail transportation policy at 49 U.S.C. 10101, would be consistent with the limited scope of the transaction, and would not have an adverse effect on shippers. (NSR Pet. 3-4.) In addition, NSR asserts that the Board has granted similar petitions for partial revocation to permit temporary trackage rights to expire. (NSR Pet. 4.)

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).

DISCUSSION AND CONCLUSIONS

Although NSR and CSXT have expressly agreed on the duration of the proposed trackage rights, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has taken action to allow such rights to expire after a limited time rather than lasting in perpetuity, based on the parties' agreement. See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R., FD 36377 (Sub-No. 9) (STB served Oct. 8, 2024) (allowing trackage rights under 49 CFR 1180.2(d)(7) to expire).

Permitting the trackage rights to expire as agreed to by the parties would eliminate the need for NSR to separately seek discontinuance authority at a later date, thereby minimizing the need for federal regulatory control (49 U.S.C. 10101(2)), reducing regulatory barriers to entry into and exit from the rail industry (49 U.S.C. 10101(7)), and allowing for the expeditious handling and resolution of this transaction (49 U.S.C. 10101(15)). Moreover, doing so would not result in an abuse of market power, as the termination will be permitted to occur only upon resumption of NSR's service through the HST, effectively undoing the temporary rerouting of NSR's rail traffic as overhead on the Lines.² Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36790 to expire upon completion of the HST project, reopening of the HST, and resumption of NSR's movement of rail traffic through the HST. NSR will be directed to notify the Board within five days of the resumption of its service through the HST following completion of the project.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. NSR's petition to permit expiration of the trackage rights in Docket No. FD 36790 per the agreement of the parties is granted.
2. As discussed above, the trackage rights in Docket No. FD 36790 are permitted to expire, subject to the employee protective conditions set forth in Oregon Short Line, upon completion of the HST project, reopening of the HST, and resumption of NSR's movement of rail traffic through the HST.
3. Within five days of NSR's resumption of service through the HST following completion of the project, NSR shall file with the Board a notice to that effect.

² Because the proposed transaction would not result in an abuse of market power, the Board need not determine whether it is limited in scope. See 49 U.S.C. 10502(a).

4. Notice of this decision will be published in the Federal Register.
5. This decision is effective on May 30, 2025. Petitions for stay must be filed by May 12, 2025. Petitions for reconsideration must be filed by May 20, 2025.

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