

247913

247915

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36314

ENTERED
Office of Proceedings
June 7, 2019
Part of
Public Record

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

DOCKET NO. FD 36315

**NORFOLK SOUTHERN RAILWAY COMPANY
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**JOINT PETITION FOR WAIVER AND FOR
IMMEDIATE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

**William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Ave N.W.
Suite 300
Washington D.C. 30007
202-663-7823
wmullins@bakerandmiller.com**

**Garrett D. Urban
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
757-629-2761
garrett.urban@nscorp.com**

***Counsel for The Kansas City Southern Railway
Company***

***Counsel for Norfolk Southern Railway
Company***

Dated: June 7, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36314

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
– TEMPORARY TRackage RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

DOCKET NO. FD 36315

**NORFOLK SOUTHERN RAILWAY COMPANY
– TEMPORARY TRackage RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**JOINT PETITION FOR WAIVER AND FOR
IMMEDIATE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

Norfolk Southern Railway Company (“NSR”) and The Kansas City Southern Railway Company (“KCS”) hereby jointly petition the Surface Transportation Board (“Board”) to waive the 30-day effectiveness period specified by 49 C.F.R. § 1180.4(g) to permit the temporary trackage rights notice of exemption concurrently filed by NSR and KCS in these dockets under 49 C.F.R. § 1180.2(d)(8) to become effective immediately. Waiver will accommodate the parties’ emergency need to operate over portions of each other’s lines in order to create an accessible route between Kansas City and St. Louis, Missouri areas during periods of severe flooding. Expedited consideration of this petition is requested.

As explained in NSR’s and KCS’s notice of exemption, both carriers are dealing with significant flooding and weather-related impacts in the state of Missouri that have shut down

portions of their respective routes between St. Louis and Kansas City. As a consequence, neither carrier has continuous direct access between the Kansas City and St. Louis areas solely via its own routing, causing significant impacts for the service that can be provided to each company's customers.

The carriers are currently conducting emergency detour operations over portions of each other's lines to maintain some operations. However, detours require each carrier to supply an experienced train crew member as a pilot to supplement the normal crew of the detouring train. Meanwhile, crew bases are already taxed by crew members who have to lay off work to protect their own homes against flooding. These effects make detours much less efficient than trackage rights movements.

The carriers anticipate the need for emergency trackage rights operations will continue for several weeks or months. Temporary trackage rights are required to minimize, as much as possible, the impacts to customers while working through these weather-created disruptions.

Under 49 C.F.R. § 1180.4(g), NSR's and KCS's temporary trackage rights exemption would ordinarily not become effective until 30 days after the filing of the accompanying notice. Waiver of that period in the limited, exigent circumstances present here would help improve service during the recovery period and reduce the impacts to NSR's and KCS's customers. Allowing that exemption to become effective immediately is reasonable in this situation to accommodate the parties' emergency arrangements to meet customer transportation needs.

The Board has previously granted waivers to allow immediate effectiveness of temporary trackage rights in analogous emergency circumstances. See Terminal Ry. State Docks – Temp. Trackage Rights Exemption – Norfolk S. Ry. Co., FD 36190 (STB served May 11, 2018) (permitting exemption to become effective immediately in response to bridge structural failure);

Ark. Midland R.R. – Trackage Rights Exemption – Caddo Valley R.R., FD 35530 (STB served June 14, 2011); CSX Transp. – Temp. Trackage Rights – Norfolk S. Ry Co., FD 35460 (STB served Jan. 18, 2011).

Accordingly, NSR and KCS respectfully request that the Board waive the 30-day effectiveness period specified by 49 C.F.R. § 1180.4(g) to permit the temporary trackage rights notice of exemption concurrently filed by NSR and KCS in these dockets under 49 C.F.R. § 1180.2(d)(8) to become effective immediately.

Respectfully submitted,



William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Ave N.W.
Suite 300
Washington D.C. 30007
202-663-7823
wmullins@bakerandmiller.com

*Counsel for The Kansas City Southern
Railway Company*



Garrett D. Urban
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
757-629-2761
garrett.urban@nscorp.com

*Counsel for Norfolk Southern Railway
Company*

Dated: June 7, 2019