

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36359

NORFOLK SOUTHERN RAILWAY COMPANY—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—THE KANSAS CITY SOUTHERN RAILWAY 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: October 11, 2019

On October 9, 2019, Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary overhead trackage rights over an approximately 156.3-mile rail line of The Kansas City Southern Railway Company (KCS) between Mexico, Mo. (KCS milepost 325.7), and Rock Creek Junction in Kansas City, Mo. (KCS milepost 482.0), pursuant to the terms of a written Temporary Trackage Rights Agreement dated October 8, 2019 (Agreement).² Simultaneously with its verified notice, NSR filed a petition to waive the 30-day requirement under 49 C.F.R. § 1180.4(g) and allow the exemption to take effect immediately.

NSR explains that it has been forced to suspend train service over the Grand River Bridge in Brunswick, Mo., following a debris strike and washout of NSR's railroad bridge on October 1, 2019, due to heavy rains and rising river waters. (Pet. 2.) NSR states that the purpose of the temporary trackage rights³ is to accommodate its emergency need to operate over a portion of KCS's line in order to create an accessible route between Moberly, Mo., and Kansas City, and minimize, as much as possible, the impacts to customers while working through these weather-created disruptions. (Pet. 3; Verified Notice 2, 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 Policy Statement on Plain Language Digests 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 NSR states that the temporary trackage rights will expire no later than September 30, 2020. (Verified Notice 2.)

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 NSR may consummate the transaction would be November 8, 2019. However, as noted above, NSR has filed a petition to waive the 30-day requirement and allow the exemption to take effect immediately. NSR notes that, although it is currently seeking emergency detour operations over portions of the lines of its interline partners, detours are less efficient than trackage rights due to the potential need to require KCS to supply an experienced train crew member as a pilot to supplement the normal crew of the detouring train. (Pet. 3.) NSR asserts that permitting the temporary trackage rights exemption to become effective immediately would help improve service during the restoration period and reduce the impacts to NSR's customers. (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 Kan. City S. Ry.—Temp. Trackage Rights Exemption—Norfolk S. Ry., FD 36314 et al. (STB served June 13, 2019); CSX Transp., Inc.—Temp. Trackage Rights Exemption—Ala. Great So. R.R., FD 35674 (STB served Sept. 7, 2012); CSX Transp., Inc.—Temp. Trackage Rights—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.

According to NSR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) 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 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 Begeman, Fuchs, and Oberman.