

SERVICE DATE – LATE RELEASE JUNE 13, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36314

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—TEMPORARY TRACKAGE
RIGHTS EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY

Docket No. FD 36315¹

NORFOLK SOUTHERN RAILWAY COMPANY—TEMPORARY TRACKAGE RIGHTS
EXEMPTION— THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Digest:² 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 exemptions in these dockets to take effect immediately.

Decided: June 13, 2019

On June 7, 2019, the Kansas City Southern Railway Company (KCS) and Norfolk Southern Railway Company (NSR) (collectively, Applicants) filed a joint verified notice of exemptions under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary overhead trackage rights (1) by KCS over an approximately 105.2-mile rail line of NSR between St. Louis, Mo. (NSR milepost S5.0), and Mexico, Mo. (NSR milepost S110.2), and (2) by NSR over an approximately 156.3-mile rail line of 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 Temporary Trackage Rights Agreement dated June 7, 2019 (Agreement).³ Simultaneously with their verified notice, Applicants filed a petition to waive the 30-day requirement under 49 C.F.R. § 1180.4(g) and allow the exemptions to take effect immediately.

Applicants explain that both carriers are dealing with significant flooding and weather-related impacts in Missouri that have shut down portions of their respective routes between

¹ These proceedings have not been consolidated but are being addressed in the same decision for administrative convenience.

² 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).

³ 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.

St. Louis and Kansas City. (Pet. 2-3.) Applicants state that the purpose of the temporary trackage rights is to accommodate their emergency need to operate over portions of each other's lines in order to create an accessible route between Kansas City and St. Louis and minimize, as much as possible, the impacts to customers while working through these weather-created disruptions. (Id. at 3; Notice 5.)

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. As such, the earliest date Applicants may consummate the transaction is July 7, 2019. However, as noted above, Applicants have filed a petition to waive the 30-day requirement and allow the exemptions to take effect immediately. They note that, although they currently are conducting emergency detour operations over portions of each other's lines, those operations require each carrier to supply an experienced train crew member as a pilot to supplement the normal crew of the detouring train, while their crew bases are already taxed by the absence of crew members who must lay off work to protect their own homes from flooding. (Pet. 3.) The carriers assert that those effects make their current emergency detours much less efficient than trackage rights movements and that, therefore, permitting the temporary trackage rights exemptions to become effective immediately would help improve service during the recovery period and reduce the impacts to their 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 exemptions to become effective immediately. See 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 these exemptions, 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 exemptions will be published in the Federal Register.

According to Applicants, 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 exemptions for temporary trackage rights will be effective on the service date of this decision.

3. As a condition to these exemptions, 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.