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FR-4915-01-P

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

The Kansas City Southern Railway Company (KCS) and Norfolk Southern Railway Company (NSR) (collectively, Applicants), Class I rail carriers, have 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).¹

¹ 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.

Applicants state that the purpose of the temporary trackage rights is to accommodate their emergency detour operations between Kansas City and St. Louis on account of severe flooding in Missouri and thus permit continued rail service for both carriers while the impacts of flooding continue and during recovery. They state that the temporary trackage rights will expire on August 31, 2019.

Applicants concurrently filed a petition for waiver of the 30-day period under 49 C.F.R. § 1180.4(g) to allow the proposed temporary trackage rights to become effective immediately. By decision served June 13, 2019, the Board granted Applicants' request. As a result, these exemptions are now effective and will expire on August 31, 2019.

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).

If the verified notice contains false or misleading information, the exemptions are void ab initio. Petitions to revoke the exemptions under 49 U.S.C. § 10502(d) may be

filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemptions.

All pleadings, referring to Docket Nos. FD 36314 and FD 36315, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representatives: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037 (for KCS) and Garrett D. Urban, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510 (for NSR).

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).

Board decisions and notices are available at www.stb.gov.

Decided: June 13, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.