

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35460

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

Decided: January 18, 2011

On January 14, 2011, CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) to obtain temporary overhead trackage rights over certain lines of the Norfolk Southern Railway Company (NSR) in West Virginia. Specifically, NSR has granted CSXT trackage rights generally between CSXT's connection to NSR's tracks at Deepwater, W. Va., milepost V434.1 located on the Vaco Branch via Alloy, W. Va., east to the connection with the Vaughn Railroad Company at milepost WV227.6, including all necessary tracks designed for the purposes of movement by NSR's operating officer, including head and tail room as necessary. The lines in question total 12.3 miles of track. Because Board regulations at 49 C.F.R. § 1180.4(g) require that a notice of exemption be filed at least 30 days before the covered transaction can be consummated, the earliest date CSXT could consummate the transaction by application of the rule would be by February 13, 2011.

Concurrently with the filing of the notice of exemption, CSXT submitted a request that we waive the requirement at 49 C.F.R. § 1180.4(g) and permit the notice of exemption to become effective no later than January 16, 2011. CSXT explains that the temporary trackage rights will permit it to resume overhead rail service to the Fola Coal Mine at Bickmore, W. Va., and to carry a unit train of coal scheduled to leave the mine on January 16, 2011.¹ By filing on January 18, 2011, CSXT amended its petition for waiver to request that the notice of exemption be made effective by 3:00 PM on January 18, 2011, to permit the movement of a coal train at that time on that date.

We will grant the waiver from 49 C.F.R. § 1180.4(g) and allow the exemption to become effective immediately. We will publish notice of the grant in the Federal Register. The waiver

¹ CSXT used to use its own line to serve this mine, but it cannot do so now, because a necessary bridge has been closed due to safety concerns since September 2010. After the closure, CSXT had been providing service to the mine over NSR lines pursuant to a detour agreement. That agreement has now expired. NSR is willing to continue to allow CSXT to use its lines to reach the mine, but NSR now wishes that such service be provided through temporary trackage rights. CSXT expects the bridge to be in service again by July 1, 2011.

will allow the shipper to promptly receive its CSXT service. For the same reason, we will impose all the labor protective conditions required by Norfolk and Western Railway – Trackage Rights – Burlington Northern, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway – Lease and Operate - California Western Railroad, 360 I.C.C. 653 (1980), except the requirement that the affected employees be given 20 days notice before consummation. Even without this advanced notice, any employees harmed by this transaction will continue to have the protection of the labor conditions from the time the transaction is consummated.² 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 and Ammon, in Bingham and Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Accordingly, the exemption is effective immediately.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for waiver is granted.
2. The temporary trackage rights exemption covered by the verified notice of exemption filed in this proceeding will be effective on the service date of this decision.
3. The exemption is subject to the labor protective conditions required by Norfolk and Western Railway – Trackage Rights – Burlington Northern, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway – Lease and Operate - California Western Railroad, 360 I.C.C. 653 (1980) except as discussed above. Any employees who are adversely affected by the discontinuance of these temporary trackage rights that are the subject of this exemption are entitled to protection under the conditions imposed in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

² See Portland & W. R.R.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry., FD 34304 (STB served Dec. 26, 2002).