

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35602

INDIANA SOUTHERN RAILROAD, LLC—TEMPORARY TRACKAGE RIGHTS—
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: March 22, 2012

On March 9, 2012, Indiana Southern Railroad, LLC (ISRR) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) to obtain overhead temporary trackage rights over Norfolk Southern Railway Company's line of railroad between Oakland City Junction, Ind. (milepost 0.8 EJ) and Enosville, Ind. (milepost 4.8 EJ), a distance of approximately 4 miles. ISRR explains that the temporary trackage rights will bridge loaded and empty coal trains between trackage at Log Creek Mine at Enosville, Ind., and ISRR's tracks at Oakland City Junction, Ind., for further movement over ISRR's line to the Indiana Power and Light Company generating station at Petersburg, Ind.

Concurrently with the filing of the notice of exemption, ISRR filed a request for waiver of the Board's regulation at 49 C.F.R. § 1180.4(g) to permit the notice of exemption to become effective no later than March 29, 2012.¹ As the basis for its request, ISRR states that the owner of Log Creek Mine, Triad Mining Company, has asked ISRR to start operating under the temporary trackage rights as soon as possible.

The request for waiver will be denied. In 2006, the minimum period under 49 C.F.R. § 1180.4(g)(1) between the filing of a verified notice of exemption and consummation of the transaction was increased from 7 days to the current 30 days.² The Board made this change to ensure that the public is given adequate notice of a proposed transaction before the exemption becomes effective and to permit the Board sufficient time to process notices of exemption and any related petitions for stay.³ On occasion, the Board has waived the 30-day rule when a specific need for expedited effectiveness is shown.⁴ However, a generalized assertion that the

¹ Under 49 C.F.R. § 1180.4(g), a verified notice of exemption must be filed at least 30 days before the transaction can be consummated, which in this case would permit consummation no earlier than April 8, 2012.

² Public Participation in Class Exemption Proceedings, EP 659 (STB served Oct. 19, 2006).

³ See id., slip op. at 1.

⁴ See CSX Transp.—Temp. Trackage Rights—Norfolk S. Ry., FD 35460 (STB served Jan. 18, 2011) (waiving the 30-day rule to permit CSXT to resume operations upon expiration of

shipper has requested service as soon as possible is no more than could be said in connection with the majority of notices of exemption filed with the Board and is insufficient to justify shortening the public notice period here. Moreover, the petition for waiver notes that the temporary trackage rights will be used “in lieu of current service being used by Log Creek Mine,” which suggests that service currently is being provided, albeit by different means.

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 denied.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

a detour arrangement with Norfolk Southern Railway, thus allowing CSXT to operate a unit train scheduled for a certain date, which CSXT could not operate over its own line because a bridge had been closed for safety reasons); see also CSX Transp.—Temp. Trackage Rights Exemption—Ala. Great S. R.R., FD 34762 (STB served Sept. 23, 2005) (waiving the former 7-day rule to permit restoration of service under an agreed-upon arrangement necessitated by rail line damage and congestion caused by Hurricane Katrina).