

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35965 (Sub-No. 1)

**INDIANA SOUTHERN RAILROAD, LLC
– TEMPORARY TRackage RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**



**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION
TO PERMIT EXPIRATION OF TEMPORARY TRackage RIGHTS**

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Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121, Indiana Southern Railroad, LLC (“ISRR”), a Class III railroad, hereby seeks partial revocation of the Board's trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), being sought in in Docket No. FD 35965, as necessary to permit the trackage rights arrangement that is the subject of this proceeding to expire as expressly agreed by the parties. By agreement between Norfolk Southern Railway Company (“NS”) and ISRR, NS will grant ISRR limited overhead temporary trackage rights over and the ability to service one customer on that portion of NS’s rail line between milepost 0.8 EJ at Oakland City Junction, IN, and milepost 4.8 EJ at Enosville, IN, a distance of approximately 4.0 miles (the “Subject Trackage”). Pursuant to the trackage rights agreement, the trackage rights will expire on January 1, 2020.¹ Revoking the class exemption, in part, to limit the term of the trackage rights is consistent with the Rail Transportation Policy of 49 U.S.C. §10101 and will promote efficient and competitive rail service.

¹ Because the temporary trackage rights covered by the Verified Notice of Exemption are longer than a year in duration, this filing is not being made under the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8).

DISCUSSION

Concurrently with this Petition, ISRR is filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7) for limited overhead temporary trackage rights over, and the right to service one customer on, the Subject Trackage. Pursuant to the trackage rights agreement the trackage rights will expire on January 1, 2020.

While ISRR and NS expressly agree that these trackage rights are only temporary, trackage rights authorized under the Section 1180.2(d)(7) class exemption typically remain effective indefinitely, regardless of the duration provided for in the agreement. *See, e.g., BNSF Railway Company – Temporary Trackage Rights Exemption – Union Pacific Railroad Company*, Finance Docket No. 35676 (Sub-No. 1) (STB served Nov. 30, 2012). Accordingly, ISRR is filing this Petition to permit the trackage rights to expire as provided in the underlying Temporary Trackage Rights Agreement. The Board has routinely granted partial petitions to revoke in order to permit temporary trackage rights sought under Section 1180.2(d)(7) to expire as agreed by the parties. *See, e.g., Grainbelt Corp. – Trackage Rights Exemption – BNSF Ry. Co. and Stillwater Cent. R.R. Co.*, FD 35719 (Sub-No. 1) (STB served May 22, 2013) (granting a petition to permit, in part, local trackage rights to expire on February 1, 2023); *Norfolk S. Ry. – Temporary Trackage Rights Exemption – Grand Trunk W. R.R. and Wisconsin Cent. Ltd.*, FD 35715 (Sub-No. 1) (STB served Mar. 19, 2013).

Under 49 U.S.C. § 10502, the Board may exempt a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power. Under

Section 10502(d), the Board may revoke an exemption, in whole or in part, to the extent it specifies, when it finds that regulation is not necessary to carry out the transportation policy of 49 U.S.C. § 10101, and either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. Allowing the supplemental trackage rights in this proceeding to expire in accordance with the negotiated agreement would be fully consistent with the standards of Section 10502. Detailed scrutiny of a discontinuance application is not required to carry out the transportation policy of 49 U.S.C. §10101, and the transaction is clearly limited in scope and will not result in any abuse of market power.

Granting partial revocation of the class exemption in Docket No. FD 35965 will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance of the trackage rights when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. § 10101(2), (4), (5), (7) and (15). The same goals will also be served by implementing a single agreement for a set period of approximately four-and-a-half years in place of ISRR's past practice of seeking single-year agreements with NS and yearly exemptions by the Board for these trackage rights. The Board relied on similar reasoning in proposing the temporary trackage rights class exemption now found in 49 C.F.R. § 1180.2(d)(8). *See Railroad Consolidation Procedures – Exemption for Temporary Trackage Rights*, STB Ex Parte No. 282 (Sub-No. 20) (served February 10, 2003), at 3. Moreover, the grant of the requested relief will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

In addition, limiting the term of the trackage rights is consistent with the limited scope of the class exemption under 49 C.F.R. § 1180.2(d)(7) and will have no adverse impact on shippers. The temporary nature of the trackage rights is a key component of the agreement between ISRR

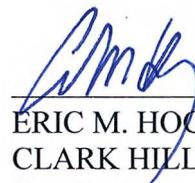
and NS, and the trackage rights would not have been granted without this feature. The relief requested is clearly limited in scope in that the underlying transaction only involves the addition of local service to one additional customer.

The applicable labor protective conditions for the discontinuance of the temporary trackage rights at the end of the term of the Temporary Trackage Rights Agreement pursuant to this Petition are those imposed in *Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Amman, in Bingham & Bonneville Counties, Idaho (Oregon Short Line)*, 360 I.C.C. 91 (1979).

CONCLUSION

Accordingly, ISRR respectfully requests that the Board partially revoke the trackage rights class exemption to the extent necessary to permit the trackage rights authorized in Docket No. FD 35965 to expire in accordance with the terms of the underlying trackage rights agreement.

Respectfully submitted,



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