

SERVICE DATE – AUGUST 23, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36622 (Sub-No. 1)

EVANSVILLE WESTERN RAILWAY, INC.—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—ILLINOIS CENTRAL RAILROAD COMPANY

Digest:¹ This decision waives a regulatory provision requiring that extensions for temporary trackage rights be filed before the expiration of the previous grant and allows the rights in this docket to remain in effect until August 31, 2022.

Decided: August 23, 2022

On August 16, 2022, the Evansville Western Railway, Inc. (EVWR), filed a request under 49 C.F.R. § 1180.2(d)(8) for an additional extension of the temporary overhead trackage rights previously granted in this docket over an approximately 11.7-mile rail line owned by Illinois Central Railroad Company, between Sugar Camp, Ill., at milepost 61.9, and Dial, Ill., at milepost 73.6 (the Line).

EVWR was authorized to acquire these trackage rights over the Line by notice of exemption served in Docket No. FD 36622 on June 8, 2022, and published in the Federal Register on June 13, 2022 (87 Fed. Reg. 35,846). These trackage rights were extended in a decision served in this subdocket on July 15, 2022, and published in the Federal Register on July 20, 2022 (87 Fed. Reg. 43,369). The purpose of the trackage rights is to allow EVWR to load unit coal trains at the Pond Creek Mine near Dial until EVWR's service at the Sugar Camp Mine can be restored following the mine's closure due to a mine fire and the unrelated relocation of long wall mining equipment. The rights were scheduled to expire on the earlier of (i) August 15, 2022, or (ii) the re-opening of the Sugar Camp Mine "with sufficient production to fulfill the required requested loadings of unit trains of coal." Evansville W. Ry.—Temporary Trackage Rights Exemption—Ill. Cent. R.R., FD 36622 (Sub-No. 1), slip op. at 2 (STB served July 15, 2022). EVWR now seeks to further extend the temporary trackage rights until the earlier of (i) August 31, 2022, or (ii) the reopening of the Sugar Camp Mine "with sufficient production to fulfill the required requested loadings of unit trains of coal." (August 16 Pleading 4.)

Under 49 C.F.R. § 1180.2(d)(8), the parties may, prior to the expiration of the relevant period, file a request for a renewal of the temporary rights for an additional period of up to one year, including the reasons for the extension. Otherwise, no authorization from the Board is

¹ 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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

necessary for carriers to discontinue temporary trackage rights as of the specified expiration date. EVWR states that the Sugar Camp Mine is expected to remain inoperable for several more weeks and that an extension of the temporary trackage rights will allow it to continue service to its shippers by loading unit coal trains at the Pond Creek Mine until EVWR's service at the Sugar Camp Mine can be restored. EVWR filed a copy of an executed amendment to the temporary trackage rights agreement with its request for an extension.

EVWR did not request the extension before the rights expired on August 15. However, given the short period between expiration of the rights and the request for renewal, the emergency nature of the trackage rights given the fire at the Sugar Camp Mine, and the need to minimize any interruption of rail service, the Board finds good cause to waive the provisions of 49 C.F.R. § 1180.2(d)(8) to the extent that they would prohibit an extension of the temporary trackage rights here, and to permit EVWR to seek an extension after the brief expiration of the temporary trackage rights here.

Should EVWR require a further extension, EVWR should make every effort to account for the full period EVWR anticipates will be needed for the Sugar Camp Mine to reopen, so that still further requests will not be necessary. In addition, in light of the Board's regulations, and to ensure continued service without interruption, EVWR is reminded to submit any further extension request *before* expiration of the temporary trackage rights granted here to allow for the Board's timely consideration of the request.

In accordance with 49 C.F.R. § 1180.2(d)(8), EVWR's temporary trackage rights over the Line will be extended and will expire on or before August 31, 2022, as explained above. The employee protective conditions imposed in the June 8, 2022 notice remain in effect. Notice of the extension will be published in the Federal Register.

It is ordered:

1. EVWR's temporary overhead trackage rights are extended and will expire on the earlier of (i) August 31, 2022, or (ii) the reopening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal.
2. The provisions of 49 C.F.R. § 1180.2(d)(8) are waived to the extent that they would prohibit an extension of the temporary trackage rights here.
3. Notice will be published in the Federal Register.
4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.