

SERVICE DATE – JULY 2, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36418

ALABAMA & GULF COAST RAILWAY LLC—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Digest:¹ This decision waives the requirement that a notice of exemption be filed 30 days prior to consummating a transaction and allows the temporary trackage rights exemption in this docket to take effect immediately.

Decided: July 2, 2020

On July 1, 2020, Alabama & Gulf Coast Railway LLC (AGR) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary trackage rights, for overhead operations, over a 100-mile rail line (the Line) of The Kansas City Southern Railway Company (KCS) between KCS milepost 15.1 in Columbus, Miss., and KCS milepost 135.2 in Meridian, Miss., including yard trackage at KCS Meridian Yard at KCS milepost 135 as necessary to connect with the Meridian & Bigbee Railroad, L.L.C., pursuant to the terms of a written temporary trackage rights agreement dated July 1, 2020 (Agreement).² Simultaneously with its verified notice, AGR filed a petition to waive the 30-day effectiveness requirement under 49 C.F.R. § 1180.4(g)(1) and allow the exemption to take effect immediately.

AGR explains that on June 24, 2020, an AGR train derailed and damaged a bridge two miles north of Aliceville, Ala., rendering the bridge inoperable. (Verified Notice 2.) As a result, AGR has been forced to suspend service between Pickensville, Ala., and Boligee, Ala. (*Id.*) Because AGR anticipates that the bridge will remain inoperable for several weeks, it has entered into the Agreement³ with KCS, allowing AGR's crews to handle its own trains over the Line while the repairs are being made. (Pet. 2.)

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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² 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.

³ AGR states that it will cease use of KCS's line upon completion of the repairs and the temporary trackage rights will expire no later than August 31, 2020. (Verified Notice 1-2.)

Under 49 C.F.R. § 1180.4(g), a verified notice of exemption must be filed at least 30 days before the covered transaction can be consummated. Thus, under the regulations, the earliest date AGR may consummate the transaction would be July 31, 2020. However, as noted above, AGR has filed a petition to waive the 30-day requirement and allow the exemption to take effect immediately. AGR notes that, while it has arranged detours for its traffic through a series of haulage agreements with cooperating carriers, the arrangements are inefficient, tax the crews of the cooperating carriers, and are causing significant impacts on AGR's service to its customers. (Pet. 1-2.) AGR states that the temporary trackage rights are needed to minimize as much as possible the impacts of the situation on AGR's customers. (Id. at 2.)

For good cause shown, the Board will grant the petition, waive the 30-day requirement under 49 C.F.R. § 1180.4(g), and allow the exemption to become effective immediately. See Norfolk S. Ry.—Temp. Trackage Rights Exemption—Kan. City S. Ry., FD 36359 (STB served Oct. 11, 2019); Kan. City S. Ry.—Temp. Trackage Rights Exemption—Norfolk S. Ry., FD 36314 et al. (STB served June 13, 2019); CSX Transp., Inc.—Temp. Trackage Rights Exemption—Ala. Great S. R.R., FD 35674 (STB served Sept. 7, 2012). As a condition to this exemption, 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). Notice of the exemption will be published in the Federal Register.

According to AGR, 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).

It is ordered:

1. The petition for waiver is granted.
2. The exemption for temporary trackage rights will be effective on the service date of this decision.
3. As a condition to this exemption, 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).
4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.