



## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36776 (Sub-No. 1)]

### **CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company**

By petition filed on September 26, 2024, CSX Transportation, Inc. (CSXT), requests that the Board permit the trackage rights granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36776 to expire under the terms agreed to by CSXT and the grantor of the rights, Norfolk Southern Railway Company (NSR).

As explained in CSXT’s verified notice of exemption in Docket No. FD 36776, NSR has agreed to grant CSXT overhead trackage rights over a portion of NSR’s Bay Route and portions of its Harrisburg Route.<sup>1</sup> The purpose of the new trackage rights is to provide temporary alternate routes for CSXT trains while CSXT’s Howard Street Tunnel in Baltimore, Md. (HST), is closed for a project that includes clearing the HST for double-stack rail passage. CSXT Verified Notice of Exemption 4, 6, CSX Transp., Inc.—Trackage Rts. Exemption—Norfolk S. Ry., FD 36776. CSXT states that, at certain times during the project, it will close the HST, and, during such closures, CSXT intends to reroute its current traffic over other CSXT lines and lines of NSR to continue to provide service to its customers whose traffic normally moves through the HST. Id. at 4. CSXT further states that it will reroute the traffic using a combination of existing trackage rights and the new trackage rights that are the subject of CSXT’s verified notice.

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<sup>1</sup> Specifically, the overhead trackage rights consist of (1) the Bay Route, between CP Bay, at or near milepost 91.9, and the connection between NSR and CSXT, at or near milepost IP 0.41, a distance of approximately 2.8 miles, in Baltimore City, Md.; and (2) the Harrisburg Route, (a) between Lurgan, Pa. (at or near milepost LG 40.1/HW 40.1), and Norristown, Pa., at CP Norris, Pa. (at or near milepost HP 18.0), a distance of approximately 148.3 miles; and (b) between CP Falls (at or near milepost HP 5.4) and a connection with CSXT’s Philadelphia Subdivision at CP Laurel Hill (at or near milepost QA 2.9), a distance of approximately 0.5 mile. CSXT Verified Notice of Exemption 3, CSX Transp., Inc.—Trackage Rts. Exemption—Norfolk S. Ry., FD 36776.

Id.<sup>2</sup> According to the verified notice, CSXT and NSR have agreed that the new overhead trackage rights will terminate when the project is complete, the HST is reopened, and CSXT has begun to move rail traffic through the HST. CSXT Verified Notice of Exemption 4, CSX Transp., Inc.—Trackage Rts. Exemption—Norfolk S. Ry., FD 36776.

In its petition, CSXT asks the Board to partially revoke the exemption as necessary to permit the trackage rights to expire as agreed to by the parties. (CSXT Pet. 2, 4-5.) CSXT argues that granting this petition would promote the rail transportation policy at 49 U.S.C. 10101, would be consistent with the limited scope of the transaction, and would not have an adverse effect on shippers. (CSXT Pet. 4.) In addition, CSXT asserts that the Board has granted similar petitions for partial revocation to permit temporary trackage rights to expire. (Id.)

#### DISCUSSION AND CONCLUSIONS

Although CSXT and NSR have expressly agreed on the duration of the proposed trackage rights, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has taken action to allow such rights to expire after a limited time rather than lasting in perpetuity, based on the parties' agreement. See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R., FD 36377 (Sub-No. 9) (STB served Oct. 8, 2024) (allowing trackage rights under 49 CFR 1180.2(d)(7) to expire).

Permitting the trackage rights to expire as agreed to by the parties would eliminate the need for CSXT to separately seek discontinuance authority at a later date, thereby minimizing the need for federal regulatory control (49 U.S.C. 10101(2)), reducing regulatory barriers to entry into and exit from the rail industry (49 U.S.C. 10101(7)), and allowing for the expeditious handling and resolution of this transaction

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<sup>2</sup> Similarly, to accommodate NSR's detoured traffic, CSXT is granting NSR overhead trackage rights over certain CSXT routes. See Norfolk S. Ry.—Trackage Rts. Exemption—CSX Transp., Inc., FD 36790 (STB served Oct. 16, 2024).

(49 U.S.C. 10101(15)). Moreover, doing so would not result in an abuse of market power, as the termination will be permitted to occur only upon resumption of CSXT's service through the HST.<sup>3</sup> Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36776 to expire upon completion of the HST project, reopening of the HST, and resumption of CSXT's movement of rail traffic through the HST. CSXT will be directed to notify the Board within five days of the resumption of its service through the HST following completion of the project.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. CSXT's petition to permit expiration of the trackage rights in Docket No. FD 36776 per the agreement of the parties is granted.
2. As discussed above, the trackage rights in Docket No. FD 36776 are permitted to expire, subject to the employee protective conditions set forth in Oregon Short Line, upon completion of the HST project, reopening of the HST, and resumption of CSXT's movement of rail traffic through the HST.
3. Within five days of CSXT's resumption of service through the HST following completion of the project, CSXT shall file with the Board a notice to that effect.

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<sup>3</sup> Because the proposed transaction would not result in an abuse of market power, the Board need not determine whether it is limited in scope. See 49 U.S.C. 10502(a).

4. Notice of this decision will be published in the Federal Register.

5. This decision is effective on May 30, 2025. Petitions for stay must be filed by May 12, 2025. Petitions for reconsideration must be filed by May 20, 2025.

Decided: April 29, 2025.

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

**Regena Smith-Bernard,**

*Clearance Clerk.*

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