

SERVICE DATE – SEPTEMBER 14, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36489

SAVANNAH INDUSTRIAL TRANSPORTATION, LLC—OPERATION EXEMPTION—IN
EFFINGHAM COUNTY, GA.

Digest:¹ The Board is directing Savannah Industrial Transportation, LLC (SIT), and OmniTRAX Holdings Combined, Inc., to clarify SIT's petition seeking an operation exemption by providing additional information regarding the history of the track on which it intends to operate.

Decided: September 13, 2021

On May 11, 2021, Savannah Industrial Transportation, LLC (SIT), a noncarrier, filed a petition (the Petition) under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to operate as a common carrier on railroad track (the Track) that it leases from noncarrier Savannah Industrial Logistics, LLC (SIL).² SIT is controlled by OmniTRAX Holdings Combined, Inc. (OmniTRAX), a company that controls other carrier and non-carrier subsidiaries. See Notice 2, May 11, 2021, OmniTRAX Holdings Combined, Inc.—Control Exemption—Savannah Indus. Transp., LLC, FD 36490.³ The Track, which has no mileposts, is located at or near Rincon, Effingham County, Ga., and extends from a connection with Norfolk Southern Railway Company (NSR) near NSR milepost 16.6, to a connection with CSX Transportation, Inc. (CSXT), near CSXT milepost S484.0, a distance of approximately 11,404 feet.

The Petition indicates that the Track was constructed in 2020 as part of a larger project involving an industrial park in Rincon, located approximately 11 miles northwest of the Port of Savannah, Ga., with access to both CSXT and NSR (the Facility). (Pet. 1-3.) According to the Petition, the Track was constructed without Board authority because, during the planning and construction of the Facility and the Track, SIT and SIL anticipated that SIT would function as a

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

² SIT states that it is an affiliate of SIL. (Pet. 1.)

³ OmniTRAX and HGS Railway Holdings, Inc. (HGS), also a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) seeking to control SIT jointly, if SIT is authorized to commence common carrier operations. Thus, if the Petition is granted, SIT will be controlled by both OmniTRAX and HGS.

private switching carrier within the Facility.⁴ (Pet. 3, 5-6.) The Petition indicates that SIT perceived, at that time, that acting as a private carrier would offer certain cost and administrative advantages over becoming a common carrier. (*Id.* at 3, 6.) In a verified statement that SIT submitted with the Petition, an OmniTRAX representative indicates that OmniTRAX “determined not to have SIT pursue authorization to construct and operate the Track within the Facility as a common carrier,” noting that the decision was “relatively straightforward” in this instance. (*Id.*, Ex. C., V.S. Peter Touesnard 2-3 (describing four factors OmniTRAX considered in determining that construction authorization was not warranted).)

SIT states that it had anticipated that CSXT or NSR, as appropriate, would be the origin or destination carrier on the waybill for shipments to or from the Facility. (Pet. 3, 6.) According to SIT, CSXT and NSR had proposed to pay SIT a per-car private carriage switching allowance for SIT’s placement and retrieval of cars within the Facility, which was acceptable to SIT. (*Id.*) SIT represents that after the Track was completed, it discovered that CSXT and NSR intended to transmit payment to SIT for its services only once or twice a year. (*Id.*) SIT states that this payment arrangement would not provide it with the cash flow necessary to sustain its operations. (*Id.* at 6.) According to SIT, as a common carrier, it would be able to register with the Association of American Railroad’s Interline Settlement System (ISS), an interchange database that “provides an automated, real time means to track cars exchanged between carriers,” which would allow for formal interchange with CSXT and NSR and eliminate the record-keeping and accounting issues that CSXT and NSR indicated were the impediment to paying SIT more frequently. (Pet. 3, 6.) SIT asserts that it is for these reasons it seeks Board authority to operate as a common carrier on the Track. (*Id.*)

However, the Board finds that the Petition raises issues requiring clarification before the Board can determine how to proceed.

Specifically, on January 19, 2018, several individuals representing OmniTRAX met with staff from the Board’s Office of Environmental Analysis (OEA) and the Office of Public Assistance, Governmental Affairs, and Compliance to discuss a project referred to as the Savannah Gateway Industrial Hub (the Hub). At that meeting, OmniTRAX provided OEA with conceptual plans for the Hub, which appeared to be planned for a location at or near Rincon. Such preliminary meetings with OEA often take place when authority to construct a line of railroad under 49 U.S.C. § 10901 is required.

Subsequently, on July 3, 2018, Savannah Industrial Railway, LLC (SIR), a subsidiary of OmniTRAX, filed with OEA a request to waive the six-month prefilng notice requirements of

⁴ The construction and operation of new railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. § 10901 or through an exemption under § 10502 from the formal application procedures of § 10901. Under 49 U.S.C. § 10906, however, the construction of spur, industrial, team, switching, or side tracks does not require Board authority.

49 C.F.R. § 1105.10(a)(1) (the Waiver Request)⁵ for the rail line it proposed to build in the Hub.⁶ In the Waiver Request, SIR stated that it “intends to file an application under 49 U.S.C. § 10901, to construct a rail line in the Savannah Gateway Industrial Hub which is a 2,700 acre rail served master-planned development located near the Port of Savannah.” The Waiver Request described the proposed rail line as connecting with CSXT’s line “approximately 285 feet south of CSX milepost S483” and NSR’s line “at milepost SA 16.5, of the NS Coastal Division, S&A Sub-Division.” OEA issued a letter granting the Waiver Request on July 8, 2018,⁷ but the Board has no record of a request for authority to construct a rail line at the Hub.

Given the similarities between the Track and the rail line described by SIR in the Waiver Request, the Board seeks clarification from SIT and OmniTRAX⁸ regarding whether the Track is the same (or substantially similar) rail line for which SIR sought and received a waiver in 2018. If they are different, SIT and OmniTRAX are directed to provide the Board with information explaining the differences, along with any relevant documentation.

If the rail line described in the Waiver Request and the Track are the same (or substantially similar), OmniTRAX and SIT should submit any relevant documentation about the rail properties (including on uses and operations) and explain why they did not seek construction authority.

It is ordered:

1. Filings providing the requested additional information described above are due by September 28, 2021.
2. This decision will be served on SIT and OmniTRAX.
3. This decision is effective on its service date.

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

⁵ Letter from Karl Morrell to Victoria Rutson, Dir. of OEA (July 3, 2018) (attached as Appendix A).

⁶ Under the Board’s regulations, where an environmental impact statement “is required or contemplated,” the applicant must provide OEA with written notice of its proposal at least six months prior to filing its application. 49 C.F.R. § 1105.10(a)(1).

⁷ Letter from Victoria Rutson, Dir. of OEA, to Karl Morell (July 9, 2018) (attached as Appendix B).

⁸ The Board’s requests for information with respect to “OmniTRAX” should be understood as applicable to both OmniTRAX, Inc., and OmniTRAX Holdings Combined, Inc., if these are separate entities. (See Pet., Ex. C., V.S. Peter Touesnard 1-2 (describing SIT and SIL as subsidiaries of OmniTRAX, Inc.).)

Appendix A

EI-26335

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karim@karlmorell.com

July 3, 2018

Ms. Victoria Rutson, Esq.
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW, Room 1106
Washington, DC 20423

Re: Finance Docket No. 36192, Savannah Industrial Railway, LLC
-- Rail Construction and Operation -- In Effingham County,
GA

Dear Ms. Rutson:

Pursuant to 49 C.F.R. 1105.10(c)(2), Savannah Industrial Railway, LLC ("SIR") hereby requests that the Surface Transportation Board ("Board") waive the six-month prefiling notice requirements of 49 C.F.R. 1105.10(a)(1). SIR intends to file an application under 49 U.S.C. 10901, to construct a rail line in the Savannah Gateway Industrial Hub which is a 2,700 acre rail served master-planned development located near the Port of Savannah.

On January 19, 2018, certain senior members of OmniTRAX Holdings Combined, Inc. (the parent company of SIR): General Counsel, SVP Industrial Development Specialist, VP Industrial Development Specialist and Director of Engineering and Environmental Development, met with you, Kenneth Blodgett, and Katherine Bourdon. The OmniTRAX officials explained the planned construction project. You and Mr. Blodgett explained in detail the construction review process. SIR is of the view that the Board is generally aware of the nature and scope of the construction project and SIR understands the Board's review process.

SIR's rail system will diverge from the existing CSX Transportation Company ("CSX") rail system¹ as follows:

The proposed point of switch ("P.S.") for the turnout

¹ CSX's Florence Division, Columbia Sub-Division.

Ms. Victoria Rutson, Esq.
July 3, 2018
Page 2

diverging from CSX's main track will be located approximately 285 feet south of CSX milepost S483, or approximately milepost S483.05. SIR's proposed initial track lengths will be as follows:

Track No. 1: Station 2+33 to Station 73+16, 7,083 feet (1.34 miles).

Track No. 2: Station 0.00 to Station 30+19, 3,019 feet (0.57 miles).

Track No. 3: Station 0.00 to Station 27+48, 2,748 feet (0.52 miles).

Proposed Track No. 1 will be extended in a southwesterly direction to station 105+00 where it will cross Norfolk Southern Railway's ("NS") main track at milepost SA 16.5, of the NS Coastal Division, S&A Sub-Division.

Under these circumstances, SIR believes that waiver of the prefiling notice requirement would be appropriate.

Should you have any questions or require additional information, please contact me.

Sincerely,

Karl Morell

Appendix B

EO-3016



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

July 9, 2018

Mr. Karl Morell
Karl Morell & Associates
440 1st Street, NW
Suite 440
Washington, DC 20001

Re: Finance Docket No. 36192, Savannah Industrial Railway, LLC – Construction and
Operation Exemption – Effingham County, Georgia; Waiver of Six-Month
Prefiling Notice

Dear Mr. Morell:

Pursuant to 49 CFR 1105.10(c), we are granting your request of July 3, 2018, for waiver of the six-month prefiling notice generally required for construction projects under 49 CFR 1105.10 (a)(1).

The Surface Transportation Board's Office of Environmental Analysis (OEA) has met with Savannah Industrial Railway, LLC (SIR) representatives regarding the proposed environmental impacts associated with the construction and operation of a new rail line in Effingham County, Georgia. At a meeting on January 19, 2018, SIR's representatives provided OEA with an overview of the project and OEA discussed the Surface Transportation Board's (Board) environmental review process.

SIR proposes to construct approximately 12,850 feet of track (approximately 2.43 miles) in the Savannah Gateway Industrial Hub, a 2,700-acre rail served industrial park located near the Port of Savannah. Savannah Gateway Industrial Hub offers industrial zoned properties to manufacturers, processors, and distributors who seek direct rail and highway access to the Port of Savannah and major U.S. markets. The newly-constructed track would connect with an existing CSX Transportation, Inc. main line track and cross a Norfolk Southern Railway Company main line track.

The information provided by SIR and the fact that OEA has explained in detail the Board's environmental review process to SIR's representatives lead OEA to believe that it has

adequate information, and that SIR is sufficiently aware of the environmental review process, to grant this request.

If we can be of further assistance, please contact me or Kenneth Blodgett of my staff at (202) 245-0305.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Rutson", is written over the typed name.

Victoria Rutson

Director

Office of Environmental Analysis