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SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36524

SAVAGE TOOEELE RAILROAD COMPANY
— ACQUISITION AND OPERATION EXEMPTION IN TOOEELE COUNTY, UTAH —
UNION PACIFIC RAILROAD COMPANY

DOCKET NO. FD 36525

SAVAGE COMPANIES
— CONTINUANCE IN CONTROL EXEMPTION —
SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY AND
SAVAGE TOOEELE RAILROADCOMPANY

VERIFIED SUPPLEMENT PER BOARD ORDER

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Date: October 19, 2021

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Savage Tooele Railroad Company (“**STR**”) and its parent Savage Companies (“**Savage**”) file this Verified Supplement in response to the Board’s Decision served September 30, 2021 (“September 30 Decision”).¹

The September 30 Decision postponed the effective dates of STR’s verified notice of exemption in Docket No. FD 36524 (the “Acquisition Notice”) and Savage’s verified notice of exemption in Docket No. FD 36525 (the “Control Notice”), both filed September 2, 2021. STR was directed to file a verified supplement by October 20, 2021 addressing the following two issues:

¹ Like the September 30 Decision, this submission is being filed in both the above-cited dockets, although as noted in the decision (fn. 1) these proceedings are not consolidated.

- Clarification as to whether STR's anticipated construction and acquisition would be of (a) mainline track, or (b) spur, industrial, team, switching, or side track [under 49 U.S.C. § 10906], or (c) some combination of the two.
- Clarification as to whether STR will provide common carrier service over all or a portion of the track.

The instant submission is STR's verified supplement addressing the above issues.

Background

STR's Acquisition Notice under 49 U.S.C. § 10901 and 49 C.F.R. § 1150.31 explained that STR would acquire an operating easement on Union Pacific Railroad Company's (UP's) Warner Spur in Tooele County, Utah, beginning at milepost 897.84 on UP's east-west mainline Shafter Subdivision and extending south-southeast from Warner Spur milepost 0.0 to approximately MP 6.9. STR would acquire from separate landowners the right of way between MP 5.8 and MP 6.3 to complete the spur to MP 6.9. STR also plans to construct approximately 5 miles of additional trackage beginning at the south end of the Warner Spur (MP 6.9), extending to and within the new Lakeview Business Park near Grantsville, Utah in order to serve customers in the park. STR explained that the transaction will result in new rail service and that STR would operate common carrier service on the line and interchange traffic with UP.²

The September 30 Decision (page 2) states that the Acquisition Notice and the Control Notice did not make it clear whether STR intends to construct a rail line and operate common carrier service or to construct and operate "spur, industrial, team, switching, or side tracks" (so-called "excepted track") under 49 U.S.C. § 10906, or some combination of the two. STR was directed to submit this verified supplement to provide the necessary clarification.

² Savage's Control Notice sought authority under 49 C.F.R. § 1180.2(d)(2) to control two Class III rail carriers, as once STR's acquisition and operation as a rail carrier was authorized, Savage would be the parent of both STR and an existing Class III rail carrier, Savage, Bingham & Garfield Railroad Company.

Discussion

STR and Savage appreciate the opportunity to clarify the character of the track that STR will be constructing and acquiring, and the service to be provided.

Character of Track: Entirely Mainline. Based on STB and court authorities, STR's entire 12 miles of track extending from the UP mainline at the north end, through and including the trackage south of the Warner Spur both approaching and within the Lakeview Business Park, qualifies as mainline track under 49 U.S.C. § 10901. No portion is "excepted track" (spur, industrial, etc. track) described in 49 U.S.C. § 10906.

In determining whether track is mainline track under 49 U.S.C. § 10901 or excepted track under 49 U.S.C. § 10906, the Board and courts consider the track's intended use, physical characteristics, relationship to the rail system, and history. *See Tri-City R.R. – Pet. for Declaratory Ord.*, FD 36037, slip op. at 4 (STB served June 1, 2017). Factors contributing to this factual determination include:

- The length of the track;
- Whether it serves more than one shipper;
- Whether it is stub-ended;
- Whether it was built to penetrate new markets;
- Whether the shipper is located at the end of the track;
- Whether there is regularly scheduled service;
- Traffic volume;
- Who owns and maintains the track;
- What the track is used for (*e.g.*, switching, loading, unloading); and
- Whether there are stations on the track.

See id.

Here, STR plans to provide rail transportation service to multiple customers in the new Lakeview Business Park, providing access via the Warner Spur to the national rail system. This is new rail service for multiple shippers, to be operated by a new carrier (STR) in a new location, extending over several miles, and will constitute STR's entire operation. Based on these facts,

STR's entire trackage both inside and outside the business park qualifies as mainline track under 49 U.S.C. § 10901. *See Texas Cent. Bus. Lines Corp. – Operation Exemption – Midtexas Int'l Center*, FD 33997, slip op. at 2 (STB served Sept. 20, 2002) ("Where, as here, the operations at issue would constitute the carrier's entire line of railroad, enabling it to serve shippers in territory it had not previously served, we have held that the larger purpose and effect of transactions such as the one before us is to create a new common carrier by rail. The track thus dedicated is therefore deemed, for the purpose of the transaction, to be a line of railroad, and not excepted side, spur, industrial, team, or switching track"); *Effingham R.R. – Pet. for Declaratory Ord. – Construction at Effingham, IL*, 2 S.T.B. 606 (1997) ("[Petitioner] clearly intends to be a rail carrier and part of the national rail system, rather than merely a switching agent for line-haul carriers. It has negotiated and signed interchange agreements with [line haul] carriers, and accordingly it must assume the obligations of a common carrier in serving shippers in the new industrial park. Accordingly..., we conclude that the proposed operation and construction of a line of railroad within the new industrial park ... is subject to our authority"), *aff'd sub nom. United Transp. Union v. STB*, 183 F.3d 606 (7th Cir. 1999).³

STR Will Provide Common Carrier Service Over the Entire 12-mile Trackage. STR will provide rail common carrier service to multiple customers in the Lakeview Business Park, and will carry their traffic between the park and UP's main line several miles to the north. STR will operate rail common carrier service on its entire 12 miles of track, accessing customers directly on the south end of its line and interchanging with UP on the north end.

³ STR notes that the some of the factors listed in the *Tri-City* case could support treating STR's trackage within the Lakeview Business Park as switching or spur track under 49 U.S.C. § 10906. In totality, however, STR believes its entire track including the portion within the industrial park is properly characterized as mainline track under Board precedents.

Conclusion

As directed by the Board in its September 30 Decision, STR and Savage hereby state as follows:

- The entire trackage to be acquired and constructed by STR, both inside and outside the Lakeview Business Park, will be mainline track under 49 U.S.C. § 10901. No portion is spur, industrial, etc. track described in 49 U.S.C. § 10906.
- STR will provide rail common carrier service over the entire track.

A notarized Verification signed by a knowledgeable officer of both STR and Savage, certifying as to all factual statements in this submission, is attached as Exhibit A.

Respectfully submitted,

SAVAGE TOOEELE RAILROAD COMPANY
SAVAGE COMPANIES



Date: October 19, 2021

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Exhibit A

VERIFICATION

VERIFICATION

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

Kirk W. Aubry, being duly sworn, deposes and says that he is the President & CEO of Savage Tooele Railroad Company and the President & CEO of Savage Companies; that he has read the foregoing Verified Supplement responding to the September 30, 2021 decision of the Surface Transportation Board; and that the facts set forth in such Verified Supplement are true and correct to the best of his knowledge and belief.



Kirk W. Aubry
President & CEO, Savage Tooele Railroad Company
President & CEO, Savage Companies

Subscribed and sworn to before me this 19th day of October, 2021.


Notary Public

