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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington DC 20423

ENTERED
Office of Proceedings
April 5, 2022
Part of
Public Record

Re: *Savage Tooele Railroad Company – Acquisition and Operation Exemption in Tooele County, Utah – Union Pacific Railroad Company, Docket No. FD 36524*

Savage Companies – Continuance in Control Exemption – Savage, Bingham & Garfield Railroad Company and Savage Tooele Railroad Company, Docket No. FD 36525

Dear Ms. Brown:

On behalf of Savage Tooele Railroad Company (STR) and Savage Companies (Savage), we urge the Board to act on the pending exemptions in the above-referenced dockets, to allow STR to start work on its proposed shortline rail service in Tooele County, Utah, a growing area near Salt Lake City. STR is ready and eager to move forward once the STB issues its approval. STR's key business partner and potential customers are growing anxious from the delay and some are reconsidering their commitment to operate in Tooele County. Elected and administrative officials in Utah have confirmed their strong support for this new rail service. STR asks the Board to act on the exemptions as soon as possible.

STR submitted its Notice of Exemption under 49 C.F.R § 1150.31 on September 2, 2021 (STB Docket No. FD 36524) (the Acquisition Notice), to acquire a dormant rail spur in Tooele County, Utah from Union Pacific Railroad Company (UP) and other owners, and rehabilitate and reconstruct the line in order to operate as a Class III rail carrier over approximately 12 miles of track extending from UP's main line Shafter Subdivision south to, and within, the new Lakeview Business Park near Grantsville, Utah. Also on September 2, 2021, STR's parent company Savage filed a Notice of Exemption under 49 C.F.R. § 1180.2(d)(2) (STB Docket No. FD 36525) (the Control Notice) to allow Savage to control two non-connecting Class III rail carriers – that is, STR plus Savage Bingham & Garfield Railroad Company (SBG), a Class III railroad that Savage has controlled since 2007. By filing its Notices under the applicable class exemptions, STR hoped the exemptions would go into effect within 30 days and it could acquire the line and begin rail service as soon as practicable thereafter.

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On September 30, 2021, the Board served a decision holding both Notices of Exemption in abeyance pending further order of the Board (the September 30 Decision). On October 19, 2021, as directed in the September 30 Decision, STR filed its Verified Supplement clarifying that the rail service would involve mainline track under 49 U.S.C. § 10901 and none of it would be “excepted track” (spur, industrial, etc.) under 49 U.S.C. § 10906; and that STR planned to operate common carrier service over the entire line. In addition, in order to correct a mistake it uncovered in its original submission, on November 12, 2021 STR filed a verified Correction to the Acquisition Notice stating that STR’s proposed operation area in Tooele County, Utah was a *non*-attainment area under the Clean Air Act. Accordingly, STR committed to operate fewer than three trains per day, below the level requiring environmental reporting under Board regulations.¹

The Notices of Exemption have remained in abeyance without Board action since that time. STR is eager to move forward with its rail service, which will be limited in scope (12 miles, two trains per day) and take place largely over an existing UP right of way. Utah Governor Spencer Cox, Utah Members of Congress John Curtis and Chris Stewart, and Utah Department of Transportation (UDOT) Executive Director Carlos Braceras have filed statements supporting STR’s rail service. This is substantial support from public officials for a line of this limited scope, showing its importance.

In addition, the main developer of Lakeview Business Park, The Romney Group, has filed two support statements with the Board urging approval of the rail service. An important statewide business association, World Trade Center Utah, has filed a support statement. And two potential business park customers, Victory Unlimited Construction and Lineage Logistics, have asked the Board to approve the rail service quickly: Victory Unlimited states that STR’s “rail service is a necessity” and that “[t]ime is of the essence” for its project, and Lineage Logistics reports that “rail is critical” to move forward with its distribution facility.²

STR acknowledges that some local residents and environmental groups have asked for an environmental review of STR’s proposed rail operation. While the Board’s regulations do not require an environmental review or reporting here, STR of course will cooperate with any environmental actions by the Board and provide any information requested. STR’s rail service would be an environmental boon to Tooele County. It would replace a substantial portion of what would otherwise have to be 100% motor carrier transportation to and from Lakeview Business Park with cleaner, more efficient rail service, operating on STR’s privately owned rail line rather than

¹ See 49 C.F.R. § 1105.7(e)(5)(ii)(A), (C), cited in STR’s Nov. 12, 2021 Correction, doc. no. 303209 in the Acquisition Notice docket, FD 36524.

² Victory Unlimited Construction and Lineage Logistics Support Statements, doc. nos. 303561 (Jan. 20, 2022) and 304075 (Mar. 8, 2022) in the Acquisition Notice docket, FD 36524 (Jan. 12, 2022).

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burdening the public highways. Moreover, in an email to the Board, an official of the U.S. Environmental Protection Agency, while drawing the Board's attention to wetlands in the area of STR's proposed rail line, nevertheless pointed out that "rail spurs of this [small] scale rarely raise significant concerns for EPA."³

Procedurally, these dockets are ripe for decision. With regard to the 10901/10906 question raised in the Board's September 30 Decision, while STR believes Board precedent would treat STR's entire 12 miles as main-line track under 49 U.S.C. § 10901 (exempted from regulation in this case) rather than excepted track under 49 U.S.C. § 10906, nevertheless STR pointed out that some of the relevant factors could support treating at least some of the line as excepted track.⁴ STR certainly would not oppose either legal characterization, section 10901 or 10906, of some or all of its line.

Furthermore, while STR's acquisition and operation transaction is entirely suitable for approval under the class exemption of 49 C.F.R § 1150.31, the Board could also exempt this transaction from regulation under the general standards of 49 U.S.C. § 10502(a) based on the record as it stands, and STR urges the Board to approve the acquisition and operation exemption on that basis if deemed appropriate:

- Under section 10502(a)(1), regulation of STR's proposed rail service in Tooele County is not necessary to implement any provision of the Rail Transportation Policy (49 U.S.C. § 10101), and many provisions affirmatively support STR.⁵
- Under section 10502(a)(2)(A), this transaction (12 miles of track, fewer than three trains per day) is clearly of limited scope.
- Under the alternative test of section 10502(a)(2)(B), regulation is not needed to protect shippers from abuse of market power. There are no existing shippers at this time; STR's rail service will add transportation options for future shippers; and the anticipated rail customers that have commented in this proceeding support the transaction.

³ Email from Philip Strobel, Chief, NEPA Branch, U.S. Environmental Protection Agency-Region 8 (Denver) (Jan. 4, 2022), placed in the record as Environmental Comment no. EI-31734 in the Acquisition Notice docket, FD 36524.

⁴ See STR's Verified Supplement per Board Order at 4 n.3 (Oct. 19, 2021), doc. no. 303103 in the Acquisition Notice docket, FD 36524.

⁵ See 49 U.S.C. §§ 10101(2) (minimize regulatory control, allow fair and expeditious regulation of rail where needed); 10101(4) (develop a sound rail transportation system); 10101(7) (reduce regulatory barriers to entry to the rail industry); 10101(14) (promote energy conservation).



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* * *

STR and Savage respectfully ask the Board to act on the pending exemptions in Docket Nos. FD 36524 and FD 36525.

Sincerely,

A handwritten signature in black ink, reading 'Richard F. Riley, Jr.' with a stylized flourish at the end.

Richard F. Riley, Jr.
Attorney for Savage Tooele Railroad
Company and Savage Companies

cc: All Parties of Record