

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36524

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

Decided: May 26, 2022

On September 2, 2021, Savage Tooele Railroad Company (STR), a noncarrier, filed a verified notice of exemption (Acquisition Notice) under 49 C.F.R. § 1150.31 to acquire and operate rail lines owned by Union Pacific Railroad Company (UP) and “to construct rail lines and operate rail service” on to-be-acquired property adjacent to the UP lines. (Acquis. Notice 1.) More specifically, STR stated that it would operate UP’s Warner Spur, 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 milepost 6.9. (*Id.* at 2.) Additionally, STR stated that it would construct and operate tracks near the north end of the Warner Spur, acquire from separate landowners the right-of-way between Warner Spur milepost 5.8 and milepost 6.3 to “construct new track to complete the spur,” and construct approximately 5 miles of track “outside and within the newly developed Lakeview Business Park at the south end of the Warner Spur.” (*Id.* at 2-3.) STR stated that these transactions would result in its operation of approximately 12 miles of rail line as a Class III rail carrier in Tooele County, Utah. (*Id.* at 1.)

Simultaneously, in Docket No. FD 36525, Savage Companies (Savage) filed a notice of exemption (Control Notice) under 49 C.F.R. § 1180.2(d)(2) to continue in control of STR upon STR’s becoming a Class III carrier. Control Notice 1-2, Savage Cos.—Continuance in Control Exemption—Savage, Bingham & Garfield R.R., FD 36525.

By decision served on September 30, 2021, both the Acquisition Notice and the Control Notice were held in abeyance and their effective dates postponed until further order of the Board. Savage Tooele R.R.—Acquis. & Operation Exemption in Tooele Cnty., Utah—Union Pac. R.R., FD 36524 et al. (STB served Sept. 30, 2021). The decision stated that the verified notices raised issues relating to whether the proposed transaction involved construction of mainline track or excepted track governed by 49 U.S.C. § 10906. *Id.* at 2. Accordingly, STR was ordered to clarify whether the anticipated construction and acquisition would be of (a) mainline track, (b) spur, industrial, team, switching, or side track, or (c) a combination of the two. *Id.* STR also was directed to clarify whether it would provide common carrier service over all or only part of the track. *Id.*

On October 19, 2021, STR filed a supplement stating that the “entire 12 miles of track” described in the Acquisition Notice would be mainline track. (Verified Suppl. 3-4.) STR

explained that it intends to provide new rail service to multiple customers in a new location (Lakeview Business Park), “providing access via the Warner Spur to the national rail system.” (*Id.* at 3.) Additionally, STR stated that it plans to provide common carrier service by carrying traffic between the Lakeview Business Park and UP’s main line. (*Id.* at 4.) STR later filed a correction to its Acquisition Notice on November 12, 2021, pertaining to environmental matters.

On April 5, 2022, STR filed a letter urging the Board to act on the pending notices of exemption.¹ However, on May 13, 2022, STR filed a notice of substitution of counsel and a motion to withdraw, with prejudice, the Acquisition Notice and all subsequent filings in that docket, particularly the October 19, 2021 supplement, the November 12, 2021 correction, and the April 5, 2022 letter. (Mot. to Withdraw 2-3.) STR states that it “has not changed its plans to re-establish service over the former UP right-of-way and track and to provide common carrier service over it and new track to be constructed in the industrial park,” but that withdrawal is appropriate pursuant to information it recently obtained. (*Id.* at 1.)

According to STR, its “ongoing due diligence activities” recently revealed that the rail line it planned to acquire from UP was formally abandoned in 1983 by a predecessor to UP, and thus “UP has no assets or rights subject to the Board’s jurisdiction for STR to acquire” under 49 C.F.R. § 1150.31. (*Id.* at 2 (citing W. Pac. R.R.—Aban. Exemption—in Tooele Cnty., Utah, FD 30208 (ICC served Aug. 9, 1983)).) Rather, STR states it will need to file a petition for exemption under 49 U.S.C. § 10901 to reinstate common carrier service over the abandoned line and to construct new track.² (Mot. to Withdraw 2.) STR states that it “is in the process of preparing the appropriate filing,” which would be filed in a new docket, Docket No. FD 36616. (*Id.*) STR states that it is not seeking to withdraw the Control Notice and that its motion “applies only to filings made by STR in Docket No. FD 36524.” (*Id.* at 3.)

In light of the explanation provided by STR for why it is seeking to withdraw the Acquisition Notice and the related filings in this docket, STR’s motion to withdraw will be granted. This decision does not apply to any documents filed in Docket No. FD 36525, which remains in abeyance. See Savage Tooele R.R.—Acquis. & Operation Exemption in Tooele Cnty., Utah—Union Pac. R.R., FD 36524 et al. (STB served Sept. 30, 2021).

¹ Letters in support of the proposed transaction were also filed by U.S. Representative John Curtis (Utah); U.S. Representative Chris Stewart (Utah); Utah Governor Spencer J. Cox; the Utah Department of Transportation; The Romney Group; Victory Unlimited Construction, LLC; World Trade Center Utah; and Lineage Logistics, LLC.

² STR asserts that much of the track on the abandoned line has not been removed. (Mot. to Withdraw 2.) However, STR states that UP sold approximately 0.54 miles of the right-of-way and track to adjacent landowners, and that the tracks on these parcels have been removed. (*Id.* at 2 n.1.) STR states that it will need to “re-acquire the right-of-way and reconstruct this segment of track in order to re-establish a continuous rail line to the industrial park.” (*Id.*)

It is ordered:

1. STR's May 13, 2022 motion to withdraw is granted and this proceeding is closed.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.