

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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January 17, 2023
Part of
Public Record

DOCKET NO. FD 36616

**SAVAGE TOOEELE RAILROAD COMPANY – CONSTRUCTION AND OPERATION
EXEMPTION – LINE OF RAILROAD IN TOOEELE COUNTY, UTAH**

SUPPLEMENT TO PETITION FOR EXEMPTION

On June 30, 2022 Savage Tooele Railroad Company (“STR”) filed a Petition for Exemption (“Petition”) in this proceeding seeking authority to construct and operate approximately 11 miles of railroad line in Tooele County, Utah. The Petition describes how the main purpose of the project is to provide common carrier rail service to the tenants of the Lakeview Industrial Park being developed in Grantsville, Utah. At pages 10-11 of the Petition STR has asked the Board to conditionally approve the Petition subject to the completion of the Office of Environmental Analysis’s (“OEA”) review of potential environmental impacts of the project pursuant to the National Environmental Policy Act (“NEPA”) and the Board’s regulations. STR hereby updates and supplements that request for conditional approval, and further asks that such conditional approval be granted on or before March 31, 2023, for the reasons set out hereinbelow.

STR has acknowledged in the Petition that the Board’s general policy since 2007 is to decide the transportation merits of a construction proposal based on a complete record that includes

environmental review, absent “unique or compelling circumstances.”¹ Subsequent to its announcement in *Alaska* the Board has conditionally approved rail construction projects for reasons comparable to STR’s. In Docket No. FD 36328, *Kenn Tenn Regional Rail Partners, Inc. – Construction and Operation Exemption – In Fulton County, KY and Obion County, Tennessee* (“*Kenn Tenn*”), the Board conditionally approved a project involving around 12.17 miles of new line subject to completion of an environmental assessment because “KTRRP has received support for the project from state and local entities and is seeking further investment assistance; the transportation merits of the project, which would support regional economic development, are apparent, as discussed in this decision; and there is no opposition to either the request for preliminary decision or the exemption itself.”²

More recently, the Board approved the merits of a project involving the construction of 85 miles of new track pending completion of an environmental impact statement because:

there is also strong support from state and local entities (in addition to the seven-county Coalition), and the transportation merits are convincing While the Board acknowledges opposition to the project, the economic circumstances, exacerbated by the current pandemic, are compelling, and, under the circumstances, issuing a preliminary decision on the transportation merits will help ensure the development and continuation of a sound rail transportation system, foster sound economic conditions in transportation, and reduce barriers to entry.³

STR submits that there are comparable, if not greater, unique or compelling circumstances in this case that warrant conditional approval for its project. In its Petition, which was preceded by a Verified Notice of Exemption filed for this same project in in September 2021 that was

¹ *Alaska R.R.—Constr. & Operation Exemption—Rail Line Between Eielson Air Force Base (North Pole) and Fort Greely (Delta Junction), Alaska*, FD 34658 (STB served Oct. 4, 2007) at 3.

² *Kenn Tenn*, (Decision served December 1, 2020) at 3-4.

³ Docket No. FD 36284, *Seven County Infrastructure Coalition – Rail Construction & Operation Exemption – in Utah, Carbon, Duchesne, and Uintah Counties, Utah* (served January 5, 2021) at 9, citing *Kenn Tenn*.

subsequently withdrawn,⁴ STR stated that “[c]onditional approval of the project will help facilitate the development of the overall project by providing relative assurances to parties considering locating within the Lakeview Business Park that rail service from STR can be expected. It would also assist in the efforts of STR to acquire the 0.54 mile segment of former right-of-way that UP conveyed to the adjacent landowners.”⁵ STR supplements the foregoing statement by adding that no party formally objected to the Petition, just as no party formally objected to the initial Verified Notice of Exemption. On the contrary, several individuals and parties have submitted filings in strong support of the project on its merits.⁶

More significantly, STR informs the Board that in February, 2022 the Park completed construction of its first building (which will be served by truck). Fifty percent (50%) of the building is already leased to tenants. The Park owners are continuing to try to attract new tenants. However, in the absence of Board approval of the merits of STR’s project, prospective new tenants

⁴ The Petition for Exemption explains how the Board’s consideration of this fairly typical small railroad construction project has been substantially delayed for several atypical reasons. These reasons include that the Verified Notice of Exemption filed in Docket No. FD 36524 was immediately ordered held in abeyance by the Acting Director of the Office of Proceedings on September 30, 2021 and STR was directed to and did submit additional information. However, no further action was taken on the Notice until STR’s motion to withdraw it was granted by the Acting Director on May 26, 2022. The withdrawal was necessitated because in early 2022 during the course of conducting due diligence on the right-of-way and track STR is to acquire from Union Pacific Railroad Company (“UP”) for the project, STR discovered that it and UP had erroneously concluded that the UP railroad line was still subject to the Board’s jurisdiction, when it had instead been formally abandoned by UP’s affiliate in 1983. The foregoing events resulted in an eight-month delay of the Board’s consideration of the merits of the project. Meanwhile, the efforts of the owners of the Lakeview Business Park to attract tenants continued.

⁵ Petition for Exemption at 10.

⁶ See Letter to the Board dated July 27, 2022 from the Honorable Chris Stewart, Congressman for the Utah 2nd Congressional District; Letter to the Board dated July 18, 2022 from the Honorable John Curtis, Congressman for the Utah 3rd Congressional District; Letter to the Board dated July 15, 2022 from Mr. Miles Hanson, President and CEO of World Trade Center Utah; and Letter to the Board dated July 15, 2022 from Mr. Carlos M. Bracerias, Executive Director of the Utah Department of Transportation.

that require rail service have been, and are, faced with decisions on whether to risk the investment of millions of dollars in railroad infrastructure associated with their proposed facilities. This uncertainty has already caused the Park (and STR) to lose a potential rail-served customer - Firestone Roofing Materials – which had to make a final decision concerning the site of a new rail-served facility by May 2022. This company would have shipped over 1,000 railcars per year of inbound raw products on the STR’s new line to support its roofing material production needs, but it elected to locate its facility elsewhere due to insufficient assurances at that time that the project would be approved by the Board.

STR and the Park developers are now faced with another situation where a potential rail-served customer requires assurances that the Board will approve the merits of the project before the tenant will commit to invest in railroad infrastructure at its new facility. Specifically, Lineage Logistics, LLC (“Lineage”) is one of the largest cold storage providers in the United States and rail plays a significant role in its supply chain. Lineage has purchased 40 acres within Lakeview Park for a new facility, and it has recently informed STR that it needs reasonable certainty in the first quarter of 2022 that its facilities will be rail served before the company will commit to make the approximately \$7 million investment in necessary rail infrastructure.⁷ Lineage has stated that without assurances that the merits of the project meet the Board’s approval in this timeframe, Lineage will be forced to construct the facility without the possibility of adding rail service since incorporating rail after-the-fact increases facility design costs to prohibitively high levels. STR is informed that additional rail-served tenants are currently negotiating with the Park’s developers,

⁷ See Letter from Robert Sangdahl, VP Real Estate, Lineage Logistics, LLC to Phillip Hoskins, dated January 12, 2023, attached as Exhibit 1.

but that they, too, will not consider it a viable option for their facilities until they are assured rail service will be available.

STR further states that it has started the process of applying for federal and state grant funding for the project. To date, this process has consisted of retaining a third-party to prepare a grant application for funding under the Consolidate Rail Infrastructure and Safety Improvements (“CRISI”) grant program administered by the Federal Railroad Administration (“FRA”).⁸ Granting conditional approval of the merits of the project pending completion of the environmental review process would assist these efforts.

Finally, while information developed during the environmental review process “is separate from the Board’s consideration of comments on the transportation merits and proceeds under a separate schedule,”⁹ STR notes that the OEA’s environmental review of the project is well underway. On December 5, 2022, following a two-day site visit in October 2022 by members of OEA staff and representatives of the Third Party Contractor retained for this project, STR submitted a letter to OEA requesting that an Environmental Assessment should be prepared for the project instead of an Environmental Impact Statement. By letter dated January 10, 2023, the Director of OEA granted STR’s request, finding that the potential environmental impacts of the

⁸ As explained by the FRA website, the CRISI program “was authorized in Section 11301 of the Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94 (2015); 49 U.S.C. § 22907. Funding under this program was made available by the Consolidated Appropriations Act, 2022, Div. L, Tit I, Public Law 117-103 (2022 Appropriation) and the advanced appropriation in the Infrastructure Investment and Jobs Act, Division J, Title II, Pub. L. 117-58 (2021).” <https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/consolidated-rail-infrastructure-and-safety-2>.

⁹ *Great Lakes Basin Transportation, Inc. – Rail Construction and Operation – In Rock County, Wisc., Winnebago, Ogle, Lee, LaSalle, Grundy, and Kankakee Counties, Ill., and Lake and Porter Counties, Ind.*, STB Docket No. FD 35952 (Served June 2, 2017) at 1, n.2.

project would not be significant and that any impacts could be addressed through appropriate mitigation measures. STR submits that this determination provides further grounds for the Board to conditionally approve the proposed project.

In conclusion, for all the reasons set forth in its Petition as supplemented herein, STR believes its proposed project clearly meets the requirements for an exemption from the requirements of 49 U.S.C. §10901 pursuant to the provisions of 49 U.S.C. §10502 and applicable precedent. STR also submits that the information provided in this Supplement demonstrates that there are unique and compelling circumstances present with this project that warrant the Board conditionally approving this Petition subject to completion of the OEA's environmental review process. STR respectfully requests that the Board consider the merits of the Petition and provide such conditional approval on or before March 31, 2023.

Respectfully submitted,



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Attorney for Savage Tooele Railroad Company

January 17, 2023

EXHIBIT 1



January 12, 2023

Phillip Hoskins
Sr. Director, Business Development
901 W Legacy Center Way
Midvale, UT 84047

VIA EMAIL: philliphoskins@savageservices.com

Dear Phillip,

This letter follows our recent conversations we have had about the timeline for Savage Tooele Railroad ("STRR") to obtain approval from the United States Surface Transportation Board ("STB") to construct and operate a railroad line that will connect to the main line of the Union Pacific Railroad Company around seven miles from the Lakeview Industrial Park (the "Park") in Grantsville, Utah. STRR's objective is to be approved as a Class III railroad providing common carrier rail service to businesses like Lineage Logistics, LLC ("Lineage") who have located within the Park boundaries. As you know, Lineage has invested heavily in the new park, having purchased 40 acres in it for a new cold storage and food distribution facility that we are designing and expect to commence construction soon. We have expressed our clear preference for this facility to be served by STRR, as it presents numerous efficiencies and allows Lineage to take advantage of transportation which is more cost-effective than a truck-only solution. Rail service is also less impactful on the surrounding communities and roads than commercial truck traffic.

However, Lineage cannot commit to make the approximately \$7 million investment in rail infrastructure for the new facility without reasonable assurances that the STB will grant STRR's petition for authority to construct and operate its new track. We accordingly urge you to try and obtain STB approval of STRR's petition as soon as possible. Absent assurances in the first quarter of this year that the rail line project will be constructed, Lineage will be forced to choose to construct its new facility without the possibility of adding rail service. This is because incorporating rail after-the-fact increases facility design costs to prohibitively high levels.

Please continue to keep us informed about the STB's consideration of the proposed project, and any developments concerning the project timeline.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Sangdahl", written over a horizontal line.

Robert Sangdahl, VP Real Estate
Lineage Logistics, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2023, I served a copy of the foregoing Supplement to Petition for Exemption by electronic mail upon all parties of record on the official service list for Docket No. FD 36616

/ss/ Thomas W. Wilcox
