

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
January 10, 2024
Part of
Public Record

DOCKET NO. FD 36741

**UNION PACIFIC RAILROAD LLC—OPERATION
EXEMPTION—IN TOOELE COUNTY, UTAH**

**REPLY TO BNSF RAILWAY COMPANY’S MOTION TO INSTITUTE A
PROCEEDING AND SET A PROCEDURAL SCHEDULE**

Pursuant to the Decision served in this Docket on December 22, 2023, the Savage Tooele Railroad Company (“STR”) hereby replies to the Motion to Institute a Proceeding and Set a Procedural Schedule (“Motion”) filed by BNSF Railway Company (“BNSF”) in response to the Notice of Exemption filed by Union Pacific Railroad Company (“UP”) seeking exemption authority to reinstate common carrier service over approximately one mile of abandoned right-of-way owned by UP in Tooele County, Utah. For the reasons set forth in this Reply, the Surface Transportation Board (“Board” or “STB”) should allow the exemption authority sought by UP to go into effect.

I. Identity and Interest of Savage Tooele Railroad Company

STR is the petitioner in Docket No. FD 36616, *Savage Tooele Railroad Company – Construction and Operation Exemption – Line of Railroad in Tooele County, Utah*, where STR seeks an exemption from the full requirements of 49 U.S.C. § 10901 and the Board’s regulations at 49 C.F.R. Part 1150 subparts A and B for authority to construct and operate approximately 11 miles of new railroad line in Tooele County, Utah to provide service to rail shippers locating in a 1700-

acre business park being developed near Grantsville, Utah called the Lakeview Business Park (the “Park”). Upon Board approval of its Petition for Exemption, STR will become a Class III short line and assume the responsibilities of providing common carrier service over the new line. The specific project for which STR has sought approval entails (a) the reinstitution of common carrier freight service over an approximately six-mile segment of a former 15.8-mile branch line owned by UP that was fully abandoned by UP’s predecessor Western Pacific Railroad Company in 1983 but remains largely intact, and (b) the construction of approximately five miles of new railroad line to extend the reinstated former UP railroad line segment into the Park.

STR began its quest for STB approval of the project in September 2021 by filing a Notice of Exemption in Docket No. FD 36524, *Savage Tooele Railroad Company – Acquisition and Operation Exemption in Tooele County, Utah – Union Pacific Railroad Company*. This notice was later withdrawn for reasons discussed in the Petition for Exemption.¹ Since re-starting the approval process with its Petition for Exemption on June 8, 2022, STR has diligently pursued track construction design efforts and interacted with the developers of the Park in anticipation of Board approval of the project. STR has also actively engaged with the Board’s Office of Environmental Analysis (“OEA”) during its review of the environmental impacts of the project pursuant to the National Environmental Policy Act. OEA issued a draft Environmental Assessment for the project on September 29, 2023 with a 30-day comment period that ended on October 30, 2023. OEA recently advised STR that the final Environmental Assessment should be issued this month, which would place the project on a path for final STB approval and the start of construction relatively early in 2024.

¹ Petition for Exemption at 2, footnote 1.

II. The BNSF Access Issue

In its Petition for Exemption, STR stated it anticipated that in addition to interchanging with UP to provide common carrier service to the Park’s tenants, STR would also interchange railcars with BNSF, provided, however, that UP either (1) conveyed to STR all of UP’s abandoned track and right-of-way from milepost (“MP”) 0.0 near Burmeister, Utah (where the former line connected to UP’s Shafter Subdivision) to MP 6.94 or (2) UP retained ownership of the abandoned track between MP 0.0 and MP 1.04, “in which event STR contemplate[d] this track would become part of the non-jurisdictional ancillary tracks used by UP and BNSF to interchange cars with STR.”² STR understood such access from BNSF could potentially be available under either of these scenarios given the terms of section 8(k) of the Restated and Amended Agreement (“RASA”) described in the Petition for Exemption and in BNSF’s Motion.³ However, STR informed the Board in its Petition for Exemption that the terms upon which STR would acquire and/or utilize the abandoned rail line segment from MP 0.0 to MP 6.94 were still being negotiated by STR and UP in June of 2022.

STR subsequently informed the Board on September 20, 2022 in response to a request for information from the Director of the Office of Proceedings that neither of the scenarios described in its Petition for Exemption for MP 0.0 to MP 1.04 had come to pass during the parties’ negotiations, and that instead UP had “decided to retain ownership of its abandoned right-of-way between milepost 0.0 and milepost 1.04, and to petition the Board to reinstate common carrier operating authority over this segment.”⁴ STR understood that under this arrangement BNSF would be precluded from also interchanging traffic with STR. STR and UP subsequently completed their

² Petition at 4-5.

³ *Id.* at 3, note 5.

⁴ STR Verified Supplement, filed September 20, 2023 at 1.

negotiations on their purchase and sale agreement (“PSA”) for UP’s track and right-of-way and it was executed on September 11, 2023. Accordingly, STR entered into the PSA knowing that UP would have the exclusive right to operate over its track from milepost 0.0 to 1.04 and to connect between that track and the track UP was conveying to STR.

III. The Board Should Permit the Requested Exemption to Go Into Effect Pending Resolution of the BNSF Access Issue

STR asserts no opinion on the merits of the substantive issues in BNSF’s Motion in this Reply. However, STR objects to the general relief BNSF has sought, *i.e.*, commencement of a lengthy administrative proceeding in this Docket, because it would necessarily result in significant additional delay of a rail construction project that is clearly in the public interest, meets the requirements of 49 U.S.C. §10502(a), and is on the verge of obtaining final Board authority after a regulatory approval process that began over three years ago. As STR previously informed the Board in Docket No. FD 36616, the absence of final regulatory approval from the Board has directly resulted in at least one major potential tenant of the Park locating elsewhere.⁵

STR therefore respectfully requests that the Board permit UP’s exemption authority to go into effect so UP can continue to work with STR to complete the re-establishment of common carrier service over the rail line and meet the needs of rail shippers locating in the Park. This treatment of BNSF’s Motion by the Board would be entirely consistent with the path the Board took in Docket No. FD 35776, *Union Pacific Railway Company – Operation Exemption – In Bexar and Wilson Counties, Tex* (Served December 24, 2013), which involved a similar procedural issue.

⁵ STR’s Supplement to Petition for Exemption, filed January 17, 2023 at 4.

IV. Conclusion

For the foregoing reasons, STR respectfully requests that the Board decline to commence the proceeding requested by BNSF in this Docket, and that the Board permit the exemption authority sought by UP to go into effect.

Respectfully submitted, .



Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K. Street, NW
Suite 300
Washington, D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

Attorney for Savage Tooele Railroad Company.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January 2024, I served a copy of the foregoing by electronic mail upon all parties of record on the official service list for Docket No. FD 36741.

/ss/ Thomas W. Wilcox
