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SERVICE DATE – MAY 28, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36489

SAVANNAH INDUSTRIAL TRANSPORTATION, LLC—OPERATION EXEMPTION—IN
EFFINGHAM COUNTY, GA.

Docket No. FD 36723

SAVANNAH INDUSTRIAL LOGISTICS, LLC—CONSTRUCTION EXEMPTION—IN
EFFINGHAM COUNTY, GA.

Docket No. FD 36723 (Sub-No. 1)¹

SAVANNAH INDUSTRIAL TRANSPORTATION, LLC—LEASE AND OPERATION
EXEMPTION—LINE OF SAVANNAH INDUSTRIAL LOGISTICS, LLC IN EFFINGHAM
COUNTY, GA.

Digest:² The Board reiterates that its August 1, 2023, decision in Docket No. FD 36489 allows Savannah Industrial Transportation, LLC, to provide rail service only to the one shipper that was already located on the line and receiving rail service as of August 1, 2023. The Board also declines to grant additional permissions.

Decided: May 28, 2024

On May 11, 2021, Savannah Industrial Transportation, LLC (SIT), a noncarrier, filed a petition for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to operate as a common carrier over track (the Line) leased from its affiliate, Savannah Industrial Logistics, LLC (SIL), also a noncarrier. The Line, which has no mileposts, is located at or near Rincon, Effingham County, Ga., and extends from a connection with Norfolk Southern Railway Company (NSR) near NSR milepost 16.6 to a connection with CSX Transportation, Inc. (CSXT), near CSXT milepost S484.0, a distance of approximately 11,404 feet. (Pet. 2, May 11, 2021, FD 36489.) SIL had constructed the Line in 2018-19, without Board authorization or

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

environmental and historic review by the Board. (*Id.* at 2, 8.) On August 1, 2023, the Board served a decision finding that SIT and its parent company, OmniTRAX Holdings Combined, Inc., intended to operate the Line as a common carrier rail line for which Board authority should have been obtained under 49 U.S.C. § 10901 before construction commenced. Savannah Indus. Transp., LLC—Operation Exemption—in Effingham Cnty., Ga. (August 2023 Decision), FD 36489, slip op. at 4 (STB served Aug. 1, 2023). The Board therefore held SIT’s petition in abeyance, ordered SIL to file for construction authority after the fact, and ordered SIT to file for acquisition authority after the fact. *Id.* at 7-8. The Board also granted SIT a limited exemption to continue providing service to any shippers located on the track as of August 1, 2023, during the pendency of the construction and acquisition proceedings. *Id.* at 6, 7. On August 30, 2023, SIT informed the Board that as of that date it was providing rail service to only one shipper on the Line, Quantix SCS, Inc. f/k/a A&R Logistics, Inc (Quantix). (SIT Suppl. 1, Aug. 30, 2023, FD 36489.) On September 28, 2023, SIL petitioned the Board for a construction exemption in Docket No. FD 36723, and SIT petitioned the Board for a lease and operation exemption in Docket No. FD 36723 (Sub-No. 1). These petitions are currently pending before the Board.

On February 9, 2024, in Docket Nos. FD 36489, FD 36723, and FD 36723 (Sub-No. 1), SIT and SIL (collectively, Petitioners) jointly filed a petition for clarification or other relief seeking to begin serving certain other prospective shippers (the Petition). For the reasons discussed below, the Petition will be denied.

DISCUSSION AND CONCLUSIONS

Petitioners explain that the Line traverses the Savannah Gateway Industrial Hub (the Hub), a phased, multi-modal logistics park being developed near the Port of Savannah, Ga., as part of a regional commerce initiative among SIL, SIT, and Effingham County, Ga. (Pet. 1 n.2.)³ Petitioners state that SIT is in advanced negotiations with several prospective customers that plan to locate facilities within the Hub. (Pet. 1.) According to Petitioners, these prospective customers intend to use SIT’s railroad transportation services, and some customers seek to begin rail service-dependent operations by the end of 2024. (*Id.* at 4, 5.) Petitioners observe that it may take some time to complete the necessary environmental and historic review for the construction and acquisition proceedings. (*Id.* at 5-6.) Petitioners therefore ask the Board to extend SIT’s limited exemption authority to permit it to provide common carrier service to several new customers that plan to locate within the Hub or, alternately, to clarify that SIT may provide these customers with private switching while the construction and acquisition proceedings are pending. (*Id.* at 7.) Petitioners also ask the Board for permission to serve other businesses that may locate within the Hub while the construction and acquisition proceedings are pending, or to prescribe an “expeditious process” through which the Board could assess and act on any such additional service requests. (*Id.*)

In support of their request, Petitioners argue that allowing SIT to serve new customers while the construction and acquisition proceedings are pending would advance the interests of shippers that have been attracted to the Hub, protect economic development efforts in Effingham

³ The filings cited in this decision were filed in Docket Nos. FD 36489, FD 36723, and FD 36723 (Sub-No. 1) unless otherwise noted.

County, and help the Port of Savannah, Ga., to expand its services. (*Id.* at 7-8.) Petitioners also provide letters of support from prospective customer Conrad Yelvington Distributors (Yelvington), the Effingham County Industrial Development Authority (ECIDA) with Effingham County, and the Georgia Ports Authority with the Port of Savannah. (*Id.*, Ex. C.) Additionally, on April 12, 2024, Petitioners submitted a supplemental filing focused on the Yelvington project, in which Petitioners state that SIL anticipates commencing construction of additional track, Yelvington expects to complete the permitting process for its planned facility in mid-July 2024, and SIT hopes to begin providing rail service to Yelvington in mid-October 2024. (Suppl. 2, Apr. 12, 2024.)

The petition will be denied. First, the requested “clarification” is inconsistent with the plainly articulated scope and intent of the limited exemption granted in the August 2023 Decision. In that decision, the Board found that the intended use of the track was for common carrier rail service and that therefore after the fact Board authorization is required. The Board’s decision allowing a limited operation exemption in the meantime is quite specific, stating that “[t]he exemption will only apply to service provided to any shippers currently located on the Track at the time of service of this decision and only for the duration of the Board’s consideration of SIL’s request for construction authority after the fact and SIT’s request for acquisition and operating authority after the fact.” August 2023 Decision, FD 36489, slip op. at 6; (see also Pet. 6). The August 2023 Decision thus clearly prohibits SIT from providing rail transportation on the Line to anyone other than Quantix, the single shipper that was already located on the Line and receiving rail service from SIT as of August 1, 2023.

Second, the Board declines to expand the existing limited operation exemption or otherwise grant permission to serve additional customers. The record reflects that the potential customers referenced in the Petition have not yet located their facilities at the Hub. These potential customers are not facing a disruption in service, as was the Board’s concern in the August 2023 Decision, and they still may adjust their business plans in light of the required pending licensing proceedings involving the Line.⁴

In carrying out its rail regulatory responsibilities, the Board is to be guided by the rail transportation policy of the United States, 49 U.S.C. § 10101 (RTP). This policy includes, among other things, ensuring the development of a sound rail transportation system, reducing regulatory barriers to entry into the industry, and providing for the expeditious handling and resolution of proceedings, § 10101(4), (7), (15). Consistent with the RTP, the Board values the prospect for growth in rail traffic on the Line, recognizes the shipper support in this docket, and intends to expeditiously resolve this proceeding. The Board notes, however, that Petitioners’ delay in selecting an independent third-party contractor to work with the Office of Environmental Analysis (OEA) has slowed the environmental review process. In the August

⁴ Petitioners stress, as a mitigating factor, that negotiations began after the Line had been constructed and were already in progress when the Board served the August 2023 Decision. (Pet. 4, 8.) However, Petitioners were put on notice in September 2021, nearly two years before the August 2023 Decision, that the Board had questions about the failure to obtain construction authority for the Line. Savannah Indus. Transp., LLC—Operation Exemption—in Effingham Cnty., Ga., FD 36489, slip op. at 2-3 (STB served Sept. 14, 2021).

2023 Decision, the Board ordered Petitioners to consult with OEA concerning the necessary environmental and historic review prior to filing for construction and acquisition authority after the fact. Though Petitioners met with OEA on August 22, 2023, and filed their petitions for exemption on September 28, 2023, OEA did not receive the required qualifications for their selected third-party contractor until late January 2024, and OEA could not finalize the selection until February 2024, about six months after the Board's order. OEA was not able to move forward with its environmental analysis until the third-party contractor was in place. Petitioners are advised that their responsiveness during the environmental review process likely will affect how quickly the Board can consider Petitioners' requests for authority after the fact.

It is ordered:

1. The petition for clarification or other relief is denied.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.