

**Surface Transportation Board
Attn: Office of Proceedings
395 'E' Street, SW
Washington, DC 20423-0001**

310292

ENTERED
Office of Chief Counsel
November 13, 2025
Part of
Public Record

STB Finance Docket - FD - 36714 (Sub 1)

**MOTION BY SUNFLOWER STATE INDUSTRIAL RAILWAY
TO RE OPEN THE MARCH 27TH 2025 'DECISION'**

**Required fee:
\$350.00 (encl)**



Submitted by:

A handwritten signature in blue ink, appearing to read "Steve P. Gorsline", is written over a horizontal line.

**Steve P. Gorsline, General Manager
Sunflower State Industrial Railway Co.
Box 245 - Colony, Kansas 66015-0245**

Date: 24 Sept 2025

**FEE RECEIVED
November 13, 2025
SURFACE
TRANSPORTATION BOARD**

**FILED
November 13, 2025
SURFACE
TRANSPORTATION BOARD**

**Before the Surface Transportation Board
Washington, DC 20423-0001**

FD - 36714 (Sub 1)

**MOTION BY SUNFLOWER STATE INDUSTRIAL
RAILWAY TO RE OPEN THE MARCH 27TH 2025 DECISION**

[Sunflower State Industrial Ry to Operate as a PRIVATE Ry: Garnett, Kan].

Comes now Sunflower State Industrial Railway ("Sunflower") & thru its General Mgr, Steve Gorsline & places before the Surface Transportation Board ("STB" or "Board") a MOTION: to re-Open the Board's Mar 27, 2025 DECISION due to some omissions & information the STB didn't understand.

In short: this Motion will affirm Sunflower as a Private Railway - to operate without STB oversight & this Motion also Contests Kansas Dept of Wildlife & Parks ("KDWP") from being allowed to participate in the Rail Reactivation Process - as Nowhere in Section 8(d) of the Nat'l Trails Systems Act [16 USC §1247(d) is there any mention that KDWP is entitled to act as a party who'se allowed to impede rail reactivation. Trail Managers are railbanked right-of-way custodians NOT owners of the trails they attend to. [KDWP became a trail mgr here thru ICC Docket AB 335 (Sub #2X). KCT Ry-Aban. Exemption-in Franklin, Anderson & Allen Counties., Ks, 7 I.C.C. 2d 1035 (1991)]. Hopefully, thru this Motion the STB will act & properly facilitate a rail re-activation matter before it.

Respectfully,


**Steve P. Gorsline, Gen'l Mgr
Sunflower State Industrial Ry
Box 245 - Colony, KS 66015**

CERTIFICATE OF SERVICE

I certify I served copies of these documents on all parties of the record. 

**Before the Surface Transportation Board
Washington, DC 20423-0001**

FD - 36714 (Sub 1)

**BRIEF - IN SUPPORT OF MOTION BY SUNFLOWER STATE INDUSTRIAL
RAILWAY TO RE OPEN THE MARCH 27TH 2025 DECISION**

[Sunflower State Industrial Ry to Operate as a PRIVATE Ry - Garnett, Kan].

Sunflower reviewed STB's Denial Decision & decided to file this Brief & Motion: to ReOpen that Decision, so STB may find a more fair Decision.

STB admitted to 'being unclear what exactly Sunflower asks the Board to declare'. [See STB Doc: FD 36714 (sub 1) Mar 27, 2025 pg 4, mid].

A Board shouldn't be left in a state of being unclear: so Sunflower adds to the matter Clarity so STB attains a much better & more equitable decision.

Sunflower's already advised STB: that it plans to operate as a Private Rwy.

That was true last summer when the Petition was filed & it remains true today.

Per the eloquent Trk Classes & Jurisdictions issued in a Decision on 3/27/2025

Sunflower's Plans to operate an Industrial Trk clearly fits: 'Private Track' class.

STB detailed in their Mar. 27th, 2025 'DECISION' (id) on Track classes & said:

Private track = Private track is track typically built & maintained by a shipper (or for a shipper at the shipper's expense) & operated by the shipper (or its contractor) to serve that shipper, moving the shipper's own goods, so that there is no "holding out" to serve other shippers for compensation, B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord., FD 34013, slip op. at 2 (STB served Oct. 3, 2001). Such track is typically used exclusively by the track's owner for movement of its own goods, either by utilizing its own equipment or contracted service. [B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord., 6 S.T.B. 280, 281 (2002), aff'd, 51 Fed. App'x 321 (D.C. Cir. 2002); see Devens Recycling Center—Pet. for Declaratory Ord, FD 34952, slip op @ 2 (STB served Jan 10 2007)] (finding no jurisdiction over operations on private trk used exclusively to serve the owner of the track pursuant to a contractual arrangement with the owner). As long as railroad track is constructed and operated in a manner that does not constitute common carriage, the agency has held that rail track can be built & operated in private status not subject to the Board's jurisdiction. B. Willis, C.P.A., Inc, FD 34013, slip op. at 2.

As said, Sunflower plans to operate as a Pvt RR & so is exempt from STB

Authority & under STB's regs: a RR qualifies as Private Industrial track if:

Track is Stub ended.

Tracks do not invade another RR's territory.

Serves ONE (and only One) customer.

No other RR can access Sunflower's rail tracks.

Sunflower or EKAE are not Common Carriers. No plans to become C-C's

Sunflower can access Nat'l RR System @ Garnett, Ks: UPRR interchange.

Rail line = 3 miles long: 2.5 miles is for Sunflower's own rail useage (ie, dining car operations, caboose rides, & excursion services).

.50 miles of track is rail line to serve Sunflower's 1 customer.

Carload traffic will be 30 cars per week or at least 1,144 car loads per yr.

Sunflower's rail is #115 relayer (used). Switches are #115 relayer track.

Sunflower's responsible for building all its trk & owner of all Ry structures.

Note: Present 'rule of thumb' for 'profitability' by Amer Shortline & RR Assoc:

Short lines typically are 'profitable as long as the traffic carloads per yr are about the equivalent of 100 units per mile of trk route operated by the RR'. "The profit hurdle" where a branch line is owned/operated by a Class 1 railroad is significantly higher.

Shortlines as formed with a lower manpower cost structure & includes more flexible work rules effectively giving smaller lines approximately a 25% or greater cost advantage versus a Class 1 railroad operation over what economists call On-branch op'ns. It's the driver of shortline savings.

Sunflower will serve a 60 million gallon ethanol plant. Began in 2005. Its Yr

Plant capacity: in add'n to ETOH; it too produces 68,000 tons of DDGs, 110,000

tons of WDGs, 92,000 tons of CO2 & 12 Million Lbs of corn oil/yr. The plant was

built in 2005, 14yrs after ATSF tore out rail that ran just a few yards west of the

plant.' Rail Was built to shipping -but no rail svc or new rail was installed. Union

Pacific Ry looked at adding a siding & serving the plant. BUT when the costs for

the UP Ry to service the plant were known to the plant - the plant said: "no".

So 100% truck shipping. Nearest interstate's (I-35): 23 miles away. Garnett,

Ks has: 1 RR (Union Pacific RR), 6 freight (local) lines & 6 interstate carriers.

Sunflower provides NO other operating details here, as it's settled in Willis (as above) Sunflower, a Pvt RR is therefore Exempt from the STB's oversight.

Sunflower's aware, that STB generally (more so as a Rule) disapproves of shortline Petitions. (Sunflower's Own experience is proof). As Sunflower states above: it will operate as a Private Ry. Thus, all of the preceeding information in the matter becomes moot for the STB to study. Which takes us to 'An issue'

the STB chose to side step: The right of way is Railbanked. The STB did mention Ks. Department of Wildlife & Parks as Trail Manager - But KDWP doesn't own it. Think of it as husband & wife going out for an evening of dinner & bowling. They hire a Baby sitter for their 2 kids. Out the door this couple goes. They return say, 5 hrs later. Do they have to contest ownership of their kids or house? Of course not: how silly. And yet, here we have the Wildlife dept 'babysitting' a rail banked strip of land & suddenly they get standing to participate in rail reactivation talks. Beyond silly. Section 8(d) of the Nat'l Trails Systems Act Amendments, 16 USC §1247(d) [Railbanking Law] holds NO provision for Trail Managers to participate in rail reactivation cases before the Board. Doing so is an over reach of authority.

STB makes reference in the Decision (id.) where a 'Answer' was filed by Ks. Dept of Wildlife & Parks (KDWP). Sunflower adds: as an 'adversary opponent'. And as such STB has in fact allowed a NON RAIL entity entry into the matter. To bring some cases to the attention of the STB - wherein the Board DID Rule in favor of NON RAIL entites Over a rail entity: let's review 3 cases:

STB DECISION - Docket No. FD 35731
BALLARD TERMINAL RR CO, LLC —ACQUISITION & OPN EXEMPTION
—WOODINVILLE SUBDIVISION Doc No. AB 6 (Sub-No. 465X)
BNSF RY CO. —ABANDONMENT EXEMPTION— KING COUNTY, WASH.

BACKGROUND:

In 2008 BNSF sought & received exemption under 49 USC § 10502 from the provisions of 49 USC § 10903 allowing it to abandon Woodinville Subdivision, including the 11.2-mile segment of RR line at issue here. See BNSF Ry.—Aban. Exemption—in King Cnty, Wash. (BNSF Woodinville Abandonment), AB 6 (Sub-No. 465X) [STB served Nov. 28, 2008]. In that proceeding, BNSF requested exemption from the offer of financial assistance (OFA) provisions of 49 USC § 10904, but the Board found that BNSF had not justified such an exemption & therefore denied its request. Nevertheless, no OFA was submitted. During the abandonment proceeding, King Cnty filed a request for Notice of Interim Trail Use (NITU) for interim trail use/rail banking on the Woodinville Subdivision per the Trails Act. BNSF Woodinville Abandonment at 4-5. Subsequently, BNSF Ry entered into an interim trail use arrangement with King County & became the trail sponsor. Under the Trails Act, trail sponsors agree to assume managerial, tax & legal responsibility for the right-of-way & develop a trail, BUT it does so subject to possible future reactivation of the right-of-way for RR service by the abandoning railroad or by any other approved rail svc provider.

In Sunflower - the Board declined to reach this step, citing some Vis-a-Vis the Board felt the Kansas Dept. of Wildlife & Parks agency had in its back pocket.

Trails Act Preserves established RR ROWs - for future reactivation of rail svc by prohibiting abandonment where trail sponsors offer to assume managerial, tax & legal liability for the ROW for use in the interim as a trail. See 16 U.S.C. 1247(d); Citizens Against Rails-To-Trails v. STB, 267 F.3d 1144, 1149-50 (DC Cir. 2001). The statute expressly provides that - because such 'interim use' is subject to restoration/reconstruction for RR purposes 'such interim use shall Not be treated for [any] purposes . . . as an abandonment . . . 16 USC 1247(d). Instead, the right-of-way's 'railbanked,' which means that the abandoning RR, is relieved of the current obligation to provide rail service over the line but the RR - Or any other approved rail provider - may reassert control to restore svc on the RR in the future. See Birt v. STB, 90 F.3d 580, 583 (DC Cir. 1996).

Per the reasoning in Birt, Sunflower states that the rail banked right of way is WHERE the right to reactivation lies - because the line is NOT abandoned and the Board in the Mar 27th 2025 Decision is unclear where it asks: HOW shall Sunflower as a Private RR obtain ROW rights from vis-a-vis KDWP? Not too difficult to reach a conclusion: KDWP is NOT a RR so it cannot possibly be able to restore rail service. 16 U.S.C. 1247(d) makes no distinction on Rail Banked ROWs being ONLY for STB regulated OR non STB regulated lines. Who knows?

The Board took a pass - which is what led Sunflower to file a suit in USDC-Ks. [US District Court for Kansas / Case No. 25-4056-JAR-RES Sunflower State Indust Ry, v. Surface Transportation Board, Defendant].

Also see Georgia Grt So Div—Abandon. & Discontinuanbced of Svc, 6 STB 902, 906 (2003) Georgia Grt Southern. In short, a railbanked line isn't abandoned but remains part of the national rail system, albeit temporarily unused for RR operations. Interim trail useage arrangement is subject to being cut off at any time by reinstitution of rail service. If & when a RR wishes to restore rail svc on all or part of the property, it has the right to do so & the trail sponsor must step aside. [Georgia Great Southern; 16 U.S.C. 1247(d)].

**GNP RLY, INC.—ACQUISTION & OPN EXEMPTION—REDMOND SPUR AND WOODINVILLE SUBDIVISION STB Docket No. AB 6 (Sub No. 463X)
BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN KING COUNTY, WASH. STB Docket No. AB 6 (Sub No. 465X)
BNSF RAILWAY CO—ABANDONMENT EXEMPTION— KING COUNTY, WASH.**

BACKGROUND:

On Aug 24, 2010, GNP Rly, Inc. (GNP), a Class III rail carrier, filed a petition



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DEPARTMENT OF WILDLIFE AND PARKS
JOAN FINNEY, Governor
JACK LACEY, Secretary
JOHN S. C. HERRON, Assistant Secretary

June 16, 1992

Mr. Steve Gorsline

7-11-92

06-16-92 10:17 AM

Dear Mr. Gorsline:

I am replying on behalf of the Kansas Department of Wildlife and Parks (KDWP) to your various letters regarding the rail-banking of the Ottawa-Iola railway .

1. Regarding the cost of purchase which you raised in your letter sent on or about June 6, 1992: The property was donated by KCT Railways to the Kansas Department of Wildlife and Parks.
2. Regarding your intent to place this line back into service as a working railway line: This is a matter between you and the Interstate Commerce Commission. Only they have authority to order that this line be returned to active service.