



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

June 9, 2020

Justin J. Marks, Esq.
Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004

Re: Docket No. FD 36328, Ken Tenn Regional Rail Partners, Inc.– Construction and Operation Exemption–In Obion County, Tenn. and Fulton County, Ky.; Waiver request approval of the environmental impact statement process

Dear Mr. Marks:

Pursuant to 49 C.F.R. § 1105.6(d), the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) is granting your May 29, 2020 request for a waiver from the requirements of 49 C.F.R. § 1105.6(a), which generally requires the preparation of an Environmental Impact Statement (EIS) for a rail construction and operation proposal.¹ OEA is granting the requested waiver based on available information gathered to date, including materials submitted by the prospective petitioner, Ken Tenn Regional Rail Partners (KTRRP); OEA's consultation with federal, state, and local agencies; and an independent review of detailed mapping data gathered by OEA's third party contractor, CSR Engineering Inc. (CSR), in lieu of conducting a site visit to the project area due to travel restrictions resulting from the COVID-19 pandemic. Based on the information collected to date, OEA believes that preparation of an environmental assessment (EA) is the appropriate level of environmental documentation for this proceeding, for the reasons set forth below.

KTRRP, a non-profit corporation created by the Fulton County Industrial Development Authority of Kentucky and the Industrial Development Board of the City of Union City, Tennessee, is seeking to construct and operate an approximately 11.4-mile segment of rail line in Obion County, Tennessee and Fulton County, Kentucky (Proposed Line). Approximately 1.32 miles of the Proposed Line would be constructed over existing but abandoned right-of-way. KTRRP anticipates that rail traffic would average one roundtrip train per day (consisting of approximately 22-24 rail cars) seven days a week (a total of two train movements per day—one

¹ The Board normally requires an EIS for rail line construction projects, 49 C.F.R. § 1105.6(a), but may reclassify the proposal to one requiring an EA, pursuant to 49 C.F.R. § 1105.6(d), if the proposal is not likely to have a significant impact on the environment.

empty and one full). Potential commodities include agricultural, industrial and energy products, as well as raw materials, finished manufactured goods and special cargo.

The Proposed Line would connect the Canadian National Railway (CN) via the Union City Terminal Railroad near Union City, TN to the Hickman-Fulton County Riverport (Port). According to KTRRP, the long-term plan for the region is to connect the existing rail line operated by the Tennken Railroad between Tiptonville, TN and Hickman, KY with the Union City Terminal Railroad between Union City, TN and Rives, TN in order to create a loop that would access CN at two interchange points as well as the Port and Cates Landing in upper Lake County, TN.

On February 28, 2020, OEA began consultation with 28 tribes and federal, state and local agencies. OEA sent each entity a letter with a map of KTRRP's Proposed Line that described the project area and requested information on environmental resources that could be affected by the proposal, as well as the approvals and permits that might be required. OEA received six responses specific to prime agricultural farmland; waters of the United States including wetlands; rare, threatened and endangered species; and cultural resources.

On March 19, 2020, OEA invited the Federal Railroad Administration (FRA) to be a cooperating agency in the National Environmental Policy Act (NEPA) process should KTRRP seek future funding opportunities with the Department of Transportation. On March 25, 2020, FRA accepted OEA's invitation to participate as a cooperating agency in the development of the environmental document.

In late April 2020, OEA had planned to conduct a site visit to the area surrounding the Proposed Line but was unable to do so as a result of COVID-19 travel restrictions. Instead, OEA asked CSR to gather all available NEPA-related resource data within a one-mile corridor (project area), as measured 0.5 miles from the centerline of the Proposed Line in order to identify potential environmental impacts. On May 8, 2020, CSR presented this information to OEA and KTRRP. According to the collected information, the Proposed Line would cross agricultural land, a number of public and private roadways, North Reelfoot Creek and its associated floodway (an impaired waterbody per Section 303(d) of the Clean Water Act), and continue near the Hickman Country Golf Course and the Wingfoot Golf Course, and the city limits of Hickman, Union City and Woodland Mills.

1. Biological – The U.S. Fish and Wildlife Services' (USFWS) Tennessee and Kentucky field offices jointly commented that they would need to review a species list to determine if construction and operation of the Proposed Line would affect federally threatened and endangered species and designated critical habitats, pursuant to Section 7 of the Endangered Species Act. A search of USFWS' Information for Planning and Consultation database (IPaC) indicated that there are no wildlife sanctuaries or refuges, or federal or state parks or forests in the project area. However, IPaC identified six threatened and endangered species within the project area (three species of bat, one species of bird, one species of fish, and one species of mussel). The species are: the gray bat (*Myotis grisescens*); the Indiana bat (*Myotis sodalis*); the northern long-eared bat

(*Myotis septentrionalis*); the least tern (*Sterna antillarum*); the relict darter (*Etheostoma chienense*); and the fat pocketbook (*Potamilus capax*), all of which are endangered except the northern long-eared bat which is threatened. There are no designated critical habitats as most of the project area is in agricultural production. Practices such as plowing, application of fertilizers and pesticides, and the use of drainage ditches appear to be commonplace. North Reelfoot Creek, the only tributary stream in the area, lacks the dense canopy coverage needed for pollutant buffering and is listed as 303(d) impaired because this waterbody has exceeded state water quality standards. Based on the information available at present, OEA believes that construction and operation of the Proposed Line would not significantly affect the six species. OEA will continue to consult with both USFWS field offices during development of the Draft EA to determine the need for more information and any required mitigation.

2. Water Resources – The U.S. Army Corps of Engineers (Corps) commented that a Section 404 permit under the Clean Water Act permit may be required if the proposed activity results in the discharge or dredge or fill material into waters of the United States, including wetlands. Because construction of the Proposed Line has the potential to impact North Reelfoot Creek, OEA will continue to consult with the Corps during development of the Draft EA to determine the need for a 404 permit and any required mitigation.
3. Transportation – The Proposed Line would cross two major rural collector roads (KY Highway 125 and KY 166); one minor rural collector road (KY 1463); five rural/local roads; and nine private roads. According to 2018 data from the Kentucky Transportation Cabinet and the Tennessee Department of Transportation, KY 125 has an average traffic volume of 1497 vehicles per day and traffic on KY 166 averages 1524 vehicles per day. Traffic at the KY 125/166 merge averages 2516 vehicles per day. At KY 1463, traffic averages 601 vehicles per day within the Hickman City limits and 241 vehicles per day outside of Hickman. Traffic volumes on the rural/local roads averages between less than 50 to 601 vehicles per day. Based on the information available at present (the expected train frequency of one roundtrip per day), traffic delay caused by trains traveling on the Proposed Line would last less than five minutes and likely not be significant.
4. Safety – KTRRP would consider using a combination of active and passive warning and control devices at all public at-grade rail crossing intersections. This would include fully active warning systems consisting of signals, lights and gates at the KY166, KY125 and KY1463 crossings and a passive design for the five rural/local road crossings. The Draft EA will assess safety and include recommended mitigation, if necessary.
5. Air – Although the Proposed Line would add incremental emissions within the project area, those anticipated emissions are expected to have minimal impact on air quality in the regional area and thus would be within allowable concentration limits for emissions in both Kentucky and Tennessee. Fulton County and Obion County are in attainment with the U.S. Environmental Protection Agency's established National Ambient Air Quality Standards.

6. Energy – The Proposed Line would result in new rail traffic that would have a minimal net increase in energy use for train operations. KTRRP anticipates that there would be one roundtrip train per day seven days a week totaling an estimated 275 to 300 one-way or 550 to 600 roundtrips per year. The proposed action would have no adverse effect on recyclable commodities. No diversions of existing traffic from rail to motor carriage is expected to occur as the Proposed Line is intended to divert existing and future motor carriage to rail.
7. Noise and Vibration – OEA will further assess these two resource areas in the Draft EA. Preliminarily, given that there are no noise receptors in the immediate vicinity of the Proposed Line and that there would be just one roundtrip train per day, OEA anticipates that impacts from noise and vibration would not be significant.
8. Land Use – The U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS) Fulton County office commented that the Proposed Line has the potential to impact prime agricultural land that is protected under the Farmland Protection Policy Act (FPPA) and that this information must be documented for projects receiving federal funding. Using 11.4 miles within a 100-foot right-of-way, OEA estimates that roughly 139 acres may be converted out of FPPA land. Land use will be further analyzed in the Draft EA.
9. Cultural Resources – OEA received comments from the Tourism, Arts and Heritage Cabinet's Kentucky Heritage Council (State Historic Preservation Office or KY SHPO) and the Tennessee Historical Commission State Historic Preservation Office (TN SHPO). After conducting a review of the project area, the KY SHPO preliminarily concluded that construction and operation of the Proposed Line has the potential to affect unspecified historic and archaeological resources and requested additional study of the area. Comments from the TN SHPO echoed the same request. Accordingly, OEA will continue to consult with both SHPO offices to establish the undertaking, identify and evaluate historic properties, assess effects to historic properties, and resolve any adverse effects, consistent with the Section 106 process of the National Historic Preservation Act.

After the Draft EA is prepared, OEA will issue it for public review and comment. OEA will then prepare a Final EA which will respond to the comments received on the Draft EA and include any appropriate modifications to the environmental analysis. The Final EA will also set forth OEA's final recommended mitigation measures. The Board will consider both the Draft EA and Final EA, all public comments received, and any recommended mitigation measures before making its final decision in this proceeding. Should the process disclose unanticipated impacts that are significant and cannot be adequately mitigated, OEA will require the preparation of an EIS.

If you have any questions, please do not hesitate to contact me or Diana Wood, OEA Project Manager at 202-245-0302 or by email at diana.wood@stb.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Director
Office of Environmental Analysis