

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36300

LEAVENWORTH, LAWRENCE AND GALVESTON RAILROAD D/B/A BALDWIN CITY
& SOUTHERN RAILROAD COMPANY—OPERATION EXEMPTION—MIDLAND
RAILWAY COMPANY

Decided: May 31, 2019

On May 3, 2019, Leavenworth, Lawrence and Galveston Railroad d/b/a Baldwin City & Southern Railroad Company (Leavenworth), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to permit it to enter into an agreement to operate a rail line (the Line) owned by its corporate parent, Midland Railway Company (Midland). The Line extends between milepost 14.95 at Baldwin, Kan., and milepost 26.04 at Ottawa, Kan., a total distance of 11.09 miles. Leavenworth states that Midland is a historic, nonprofit operator of a passenger excursion railroad. (Verified Notice 3.) According to Leavenworth, Midland purchased the Line in 1988 from Atchison, Topeka & Santa Fe Railroad (ATSF),¹ after ATSF obtained authority from the Interstate Commerce Commission (ICC), the Board's predecessor agency, to abandon it.² (Id.)

Leavenworth represents that several rock quarries located along the Line have contacted Midland to provide freight rail service in both interstate and intrastate commerce. (Id.) Leavenworth states that, because of Midland's nonprofit status, Midland formed Leavenworth to operate the Line as a freight common carrier. (Id. at 4.) According to Leavenworth, Midland will grant Leavenworth operating rights, and Leavenworth plans to provide service under the trade name Baldwin City & Southern Railway Company.³ (Id.)

Leavenworth's verified notice raises questions about the proposed transaction that must be addressed before the Board can properly evaluate the notice and take further action. First, although Leavenworth states that the Line was approved for abandonment, it is unclear whether

¹ ATSF later merged with the Burlington Northern Railroad Company to form BNSF Railway Company.

² See Atchison, Topeka & Santa Fe Ry.—Aban.—in Douglas & Franklin Ctys., Kan., AB 52 (Sub-No. 37) (ICC served June 11, 1985).

³ In the notice, Leavenworth states that it and Midland have executed an agreement granting Leavenworth freight operating rights on the Line. (Verified Notice 3.)

ATSF consummated the abandonment before Midland purchased the Line. If it did not, Leavenworth should explain whether Midland obtained the ICC's (now, the Board's) authority to acquire the Line. See, e.g., MCM Rail Servs. LLC—Operation Exemption—HRE Sparrows Point, LLC, FD 35725 et al., slip op. at 2 (STB served Apr. 5, 2013). On the other hand, if ATSF did consummate abandonment of the Line, Midland, as Leavenworth's corporate parent, may need to obtain the Board's authority to acquire the Line (and assume a residual common carrier obligation) concurrently with Leavenworth's obtaining authority to operate it. See Wisc. Cent. Ltd. v. STB, 112 F.3d 881 (7th Cir. 1997); Dakota Rail, Inc.—Pet. for Exemption from 49 U.S.C. 10901, 10903, & 11301, FD 30721 (ICC served Nov. 14, 1985), pet. to reopen denied (ICC served Apr. 10, 1986), aff'd sub nom. Winter v. ICC, 828 F.2d 1320 (8th Cir. 1987); Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc., FD 35296 et al. (STB served Aug. 31, 2010). Leavenworth is therefore directed to supplement its notice to address these issues. In the meantime, this proceeding will be held in abeyance pending further Board order.

It is ordered:

1. This proceeding is held in abeyance until further Board order.
2. Leavenworth is directed to file the supplemental information identified in this decision by June 20, 2019.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.