

SERVICE DATE – JULY 18, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36201

EASTERN KENTUCKY RAILWAY COMPANY—LEASE & OPERATION EXEMPTION—
KENTUCKY STEAM HERITAGE CORPORATION IN ESTILL COUNTY, KY.

Decided: July 18, 2018

On July 2, 2018, Eastern Kentucky Railway Company (EKRC), a noncarrier, filed a verified notice of exemption (Notice) under 49 C.F.R. § 1150.31 to lease from Kentucky Steam Heritage Corporation (KSHC) and operate approximately 10.6 miles of track at Ravenna, in Estill County, Ky. The Notice states that the track is often referred to as Ravenna Yard, but that this is a misnomer, and that the track in question is a line of railroad over which EKRC will provide rail service to three shippers at the inception of operations. (Notice 1 n. 1.)¹

As described in the Notice, the proposed transaction also includes KSHC's assignment to EKRC of 7.9 miles of trackage rights over a CSX Transportation, Inc. (CSXT) line between milepost 142.2 OVB at or near Irvine, Ky., and milepost 150.1 OVB at or near Pryse, Ky. (Id. at 1.) EKRC states that CSXT has consented to the assignment, and that interchange between EKRC and CSXT will take place at or near Pryse, Ky. (Id.) The Notice does not state how KSHC acquired the trackage rights from CSXT or attach a copy of the trackage rights agreement. Nor does it state whether KSHC is a rail carrier or the nature of the interest KSHC holds in the Ravenna Yard.

According to its website, KSHC is a 501(c)(3) non-profit organization “operating with the intent to educate, entertain and inspire past, current and future generations by operating historic rail equipment.”² A June 29, 2018 press release published on KSHC's website describes the Ravenna Yard as “a decommissioned facility and accompanying rail yard” that KSHC plans to repurpose into a “rail-based multi-use campus” featuring educational programs and tourist

¹ According to the Notice, EKRC “intends to add to the number of shippers at Ravenna.” (Id.) EKRC states that there are no milepost designations associated with the Ravenna track. (Id. at 4.)

² See “About KSHC” at <https://www.kentuckysteam.org>.

attractions.³ The press release states that “KSHC has entered into a contract with CSX to purchase much of Ravenna Yard” and “plans to finalize the purchase of the property with CSX in mid-August.” The Notice makes no mention of this sale of property or that it has yet to take place.

EKRC’s notice of exemption raises questions about the proposed transaction and related transactions that must be addressed before the Board can properly evaluate the notice and take further action. Where a notice of exemption raises such issues, publication of the notice and the related exemption proceeding may be held in abeyance pending the Board’s receipt and evaluation of supplemental information. See N. Shore R.R.—Acquis. & Operation Exemption—PPL Susquehanna, LLC, FD 35377 (STB served June 3, 2010). Accordingly, this proceeding will be held in abeyance and EKRC will be directed to supplement its Notice to clarify the following:

1. When and how KSHC acquired the trackage rights from CSXT that will be assigned to EKRC; whether the trackage rights encompass common carrier freight service; and whether Board authorization was sought for KSHC’s acquisition of the trackage rights (with details thereof). If Board authorization was not sought, the supplemental filing should explain why and provide a copy of the trackage rights agreement.
2. Whether the property in the KSHC-CSXT transaction referenced in the June 29, 2018 press release includes the 10.6 miles of Ravenna trackage identified in the Notice; and if so, whether the parties to that transaction intend to seek Board authorization for KSHC to purchase the Ravenna track.⁴
3. If KSHC already owns the Ravenna trackage identified in the Notice, when, how, and from whom KSHC acquired the Ravenna track, and whether Board authorization was sought (with details thereof).
4. Explain how EKRC intends to provide freight rail service on the tracks at issue in this proceeding given the other anticipated uses of the Ravenna Yard described in the June 29, 2018 press release, including KSHC’s rail-based multi-use campus, and include a more detailed map to illustrate the nature of multiple uses of the track.

³ Available under “News” at <https://www.kentuckysteam.org>.

⁴ The acquisition of an active rail line requires a license from the Board, and a Board license imposes a common carrier obligation. See MCM Rail Servs. LLC—Operation Exemption—HRE Sparrows Point, LLC, FD 35725 et al., slip op. at 2 (STB served Apr. 5, 2013) (citations omitted). Accordingly, insofar as the Ravenna track is a line of railroad under 49 U.S.C. § 10901 that is not excepted track under § 10906, Board authorization for the purchase of that track by KSHC would be required.

EKRC will be directed to provide this supplemental information by August 7, 2018. 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. EKRC is directed to file the supplemental information identified in this decision by August 7, 2018.
3. This decision is effective on its service date.

By the Board, Amy C. Ziehm, Acting Director, Office of Proceedings.