

SERVICE DATE – SEPTEMBER 30, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1277X

SAVAGE DAVENPORT RAILROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN SCOTT COUNTY, IOWA

Digest:¹ This decision allows Savage Davenport Railroad Company to discontinue service over an approximately 2.8-mile rail line owned by the City of Davenport, in Scott County, Iowa, subject to standard employee protective conditions.

Decided: September 27, 2019

On June 28, 2019, Savage Davenport Railroad Company (SDR), a Class III rail carrier, filed with the Board a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903, to discontinue its operations over a rail line (the Line) owned by the City of Davenport (the City), in Scott County, Iowa. The Line is approximately 2.8 miles long, extending from a switch near milepost 191.2 on the main line of a Canadian Pacific Railway Limited (CP) subsidiary, west and south to the Davenport Transload Facility owned by the City.

On July 18, 2019, notice of the exemption proceeding was served and published in the Federal Register (84 Fed. Reg. 34,472). No comments were filed in response to SDR's petition. The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

The Line was constructed by, and is owned by, the City. See City of Davenport, Iowa—Construction & Operation Exemption—in Scott Cty., Iowa, FD 35237 (STB served Apr. 6, 2011). In 2017, SDR obtained authority to lease and operate the Line. See Savage Davenport R.R.—Lease & Operation Exemption—City of Davenport, Iowa, FD 36142 (STB served Sept. 1, 2017). In addition to leasing the Line from the City, SDR represents that it also entered into an operating rights and interchange agreement with Dakota, Minnesota & Eastern Railroad Corporation, a subsidiary of CP. (Pet. 2, 6); see also Savage Davenport R.R., FD 36142, slip op. at 1 n.1.

¹ 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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

SDR states that it began operations on the Line in March of 2018, serving one customer and the Davenport Transload Facility. (Pet. 3.) SDR states that it hoped and predicted that traffic would increase to more than 1,200 railcars per year by 2019. (*Id.*) However, according to SDR, between January and April 2019, traffic volume on the Line totaled only 84 railcars, and projected annual volumes are less than 350 railcars. (*Id.*) According to SDR, the Davenport Transload Facility currently has “zero activity,” and the only shipper on the Line is Sterilite Corporation (Sterilite). (*Id.* at 3 & n.3.) SDR states that its initial projection was to make a small but steady profit from a 1,200-car operation on the Line. (*Id.* at 3.) However, SDR represents that its operations generated an actual net loss during the 12-month period of April 1, 2018 through March 31, 2019 of over \$155,000, compared to a projected net profit of over \$50,000. (*Id.*)

SDR emphasizes that the City retains a common carrier obligation with respect to the Line. (*Id.* at 1 & n.1, 7 n.5 (citing *City of Davenport*, FD 35237, slip op. at 2 (“The City, as the [L]ine’s owner, will retain a common carrier obligation.”))). SDR states that it has advised the City of its desire to discontinue service, and that the City has raised no objection provided a suitable replacement is identified. (Pet. 3.) SDR further states that it has made Sterilite aware that SDR “is exploring options to discontinue service.” (*Id.*)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption would expedite regulatory decisions, foster sound economic conditions in transportation, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (5), (7), and (15). Other aspects of the RTP will not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction under 49 U.S.C. § 10903 is also not necessary to protect shippers from the abuse of market power.² The City, as the owner of the Line, retains a common carrier obligation to provide rail service on the Line, either itself or through another carrier (after acquiring the necessary Board authority), should Sterilite or any other potential shipper make a reasonable request for service. In addition, neither Sterilite, the sole shipper on the Line, nor any other interested party has filed a comment opposing the proposed discontinuance of service. Nevertheless, to ensure that Sterilite is informed of this decision,

² Because this decision finds that regulation is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. *See* 49 U.S.C. § 10502(a)(2).

SDR will be directed to serve a copy of this decision on Sterilite and to certify to the Board that it has done so within five days of the service date of this decision.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon SDR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the July 29, 2019 deadline, the Board will not consider subsidy OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i). And, because this is a discontinuance and not an abandonment, the Board need not consider OFAs to acquire the Line, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905.

Because there will be an environmental review during an abandonment, this discontinuance does not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service on the Line by SDR, as described above, subject to the employee protective conditions in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
2. SDR is directed to serve a copy of this decision on Sterilite and certify to the Board that it has done so within five days of the service date of this decision.
3. This exemption will be effective on October 30, 2019.
4. Petitions to reopen and stay the effectiveness of the exemption must be filed by October 15, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.