

SERVICE DATE – FEBRUARY 20, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36714 (Sub-No. 1)

SUNFLOWER STATE INDUSTRIAL RAILWAY, LLC—
PETITION FOR DECLARATORY ORDER

Digest:¹ This decision denies a request to reopen the Board’s March 2025 decision declining to issue a declaratory order. It also rejects a notice that proposes to operate private track within a right-of-way subject to interim trail use.

Decided: February 20, 2026

On June 24, 2025, Sunflower State Industrial Railway, LLC (Sunflower),² filed a request to reopen the Board’s March 2025 decision declining to issue a declaratory order. See Sunflower State Indus. Ry.—Pet. for Declaratory Ord. (March 2025 Decision), FD 36714 (Sub-No. 1) (STB served Mar. 28, 2025). Additionally, on June 23, 2025, Sunflower filed what it calls a “Notice [of] Intent to Operate Pvt Rail Track.” Sunflower also filed a second request to reopen the March 2025 Decision on November 13, 2025. For the reasons discussed below, the Board will deny Sunflower’s requests to reopen and reject Sunflower’s notice.

BACKGROUND

On July 17, 2023, Sunflower filed a “Notice of Intent to Construct & Operate Private Rail Tracks” in Docket No. FD 36714. In that filing, Sunflower proposed to construct a 2.5-mile line, between milepost 83.+2185 and milepost 85.+0495, in Garnett, Kan. (the Line). Sunflower asserted that Board authority under 49 U.S.C. § 10901 was not required because the proposed track would be ancillary track under 49 U.S.C. § 10906 and that, regardless of the track’s classification, construction of the trackage would not result in Sunflower becoming a common carrier. (Notice 1, July 17, 2023.) Additionally, although Sunflower titled its filing as a “Notice

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 Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Sunflower represented in a June 2025 federal court filing that “Sunflower State Industrial Railway, LLC was officially [d]is[s]olved” and that Mr. Steven Gorsline had converted the business into a “sole proprietorship.” See Sunflower State Indus. Ry. v. STB, No. 5:25-cv-04056, Pl.’s Answer to Show Cause Order, ECF No. 6 (D. Kan. June 23, 2025). The Board takes no position on this representation. References to “Sunflower” in this decision refer to the entity involved in this proceeding regardless of its corporate form.

of Intent to Construct & Operate Private Rail Tracks,” it nevertheless stated that it was “[n]ot planning to construct private tracks.” (*Id.*) Sunflower also claimed that Union Pacific Railroad Company (UP) was “agreeable to constructing a[n] interchange in Garnett,” and that Sunflower’s “sole customer on the line” would be East Kansas Agri Energy, LLC (EKAE), an ethanol plant owner. (*Id.*)

By decision served on September 19, 2023, the Board rejected the notice because it provided insufficient information to determine the nature of the proposed project and whether Board authorization would be required. See Sunflower State Indus. Ry.—Constr. & Operation in Garnett, Kan. (September 2023 Decision), FD 36714, slip op. at 1 (STB served Sept. 19, 2023). The Board noted, among other things, that the notice contained sparse and contradictory information about the proposed track and provided “little indication as to how the track would connect to the rail network beyond a vague indication” that UP was “‘agreeable’ to construction of an interchange at Garnett.” *Id.* at 2 (quoting Notice 1, July 17, 2023).³ The Board also observed that it was unclear “whether EKAE actually intend[ed] to use the industrial spur as described by Sunflower.” *Id.*

On June 18, 2024, Sunflower filed a petition for a declaratory order in Docket No. FD 36714 (Sub-No. 1), asking the Board to find that “Sunflower qualifies to operate as a Class 3 [Private Railroad].” March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 1 (quoting Pet. 1). Sunflower again stated that it intended to serve EKAE as its sole customer and added that the track also would be used for a private dining car service, rail car storage, and accessing Sunflower’s maintenance garage. *Id.* (citing Pet. 3-4). Sunflower asserted that it and UP would “enter into an [a]greement . . . whereby UP switches [rail] cars to [and] from Sunflower’s rails” at “the Garnett interchange.” *Id.* (quoting Pet. 2).

On July 16, 2024, the Kansas Department of Wildlife and Parks (KDWP) filed a reply in opposition to Sunflower’s petition. *Id.* at 2. KDWP stated that Sunflower sought to construct the Line in a right-of-way subject to interim trail use that was implemented in 1992 in Docket No. AB 335 (Sub-No. 2X) and for which KDWP serves as the interim trail sponsor. (KDWP Opp’n 1, July 16, 2024); see March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2 (citing KCT Ry.—Aban. Exemption—in Franklin, Anderson, & Allen Cntys., Kan., 7 I.C.C.2d 1035 (1991) (granting KDWP’s request for issuance of a notice of interim trail use/rail banking)).⁴

³ In the same docket, on November 13, 2023, Sunflower supplemented its “Notice of Intent to Construct & Operate Private Rail Tracks.” The supplement made many of the same arguments raised in Sunflower’s June 2024 petition for declaratory order, which is discussed below. See March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 1 n.2.

⁴ On July 16, 2024, Sunflower filed a motion for leave to “amend” its petition to provide “missing information” addressing issues raised by KDWP. The Board denied the motion, finding that the “amended petition” was a prohibited reply to a reply. March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2 n.3. The Board nevertheless reviewed the “amended petition” and clarified that even if the filing had been accepted into the record, it would not change the outcome of the decision because it did not provide clarity on the issues. *Id.*

The Board in its discretion declined to issue a declaratory order “given the speculative and vague nature of the petition.” March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2 (citing Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675, 676 (1989)). Among other things, the Board noted that it was unclear what exactly Sunflower was asking the Board to declare. Id. at 4. The petition included inconsistent statements about how the proposed track should be categorized and whether the Line would be used to support common carrier operations. Id. at 2, 4. Additionally, despite Sunflower’s representations, EKAE had not provided any indication that it intended to use the Line. Id. at 2. Furthermore, it was unclear “whether Sunflower has any right vis-à-vis KDWP, or how it might obtain the right, to construct and operate ‘private’ track (i.e., not under the Board’s jurisdiction) within an existing right-of-way subject to interim trail use.” Id. at 2. While the Board declined to issue a declaratory order, it nevertheless offered guidance about the Board’s jurisdiction, the categories of track generally recognized by the Board, and when Board authority should be sought for the construction and operation of a rail line. Id. at 3-4.

On June 23, 2025, Sunflower filed a “Notice [of] Intent to Operate Pvt Rail Track” (June 23 Notice).⁵ Sunflower repeats certain information from its prior filings, including that Sunflower intends to serve a single customer, that Sunflower is not, and does not intend to become, a common carrier, and that Sunflower can access the rail network by interchanging with UP at Garnett. (June 23 Notice 1.)⁶ Sunflower further asserts, among other things, that it also plans to use the Line for “dining car operations, caboose rides, [and] excursion services.” (Id.) Sunflower also states that “a Federal Court will hear a lawsuit” to “resolve” Sunflower’s ability “to access [and] use an ex railbanked [right-of-way]” subject to interim trail use with a trail manager who is “unwilling to vacate.”⁷ (Id. at 2.)

⁵ Prior to this filing, the Board received from Sunflower a “Notice of Intent to Construct & Operate Private RR Tracks,” but without the required certificate of service. Board staff contacted Sunflower regarding the omission, but Sunflower did not subsequently provide a certificate of service, so that submission is not part of the record. Even if it were, however, the contents of that submission do not add in any material way to the arguments presented in the June 23 Notice or other filings discussed below and would not change the outcome of this decision.

⁶ The June 23 Notice, as well as submissions by Sunflower on June 24 and November 13, 2025 (discussed below) lack page numbers. The page numbers cited in this decision refer to the .pdf pages of the filings.

⁷ On June 12, 2025, Sunflower filed a complaint against the Board in the United States District Court for the District of Kansas. Sunflower State Indus. Ry. v. STB, No. 5:25-cv-04056 (D. Kan.). Sunflower sought a court order that would “direct the Board” to “act fairly in its management” of requests for the reactivation of rail service on rail lines that have been converted to interim trail use (i.e., railbanked), and “cease allowing trail managers to play decision making roles when new [railroad] entities seek entry to railbanked [rights-of-way].” Complaint, ECF No. 1-1 at 1, 4 (D. Kan. June 12, 2025) (cleaned up). On September 2, 2025, the Board moved to dismiss the complaint for lack of subject-matter jurisdiction and failure to state a claim. Def.’s Mot. to Dismiss, ECF No. 10 (D. Kan. Sept. 2, 2025). On September 17, 2025, Sunflower voluntarily moved to dismiss its complaint. Pl.’s Mot. to Dismiss, ECF No. 13 (D. Kan.

On June 24, 2025, Sunflower filed a “Motion & Brief to Re-open” the March 2025 Decision (June 24 Motion). Sunflower states that it seeks to reopen the March 2025 Decision to “ADD/CORRECT problems the Board had issue with,” and further asserts that “[r]eopening [and] repairing will give the Courts a much better understanding of the [p]roblems [Sunflower has] encountered with the STB and the Trail Manager in the involved case.” (June 24 Mot. 1.) Sunflower asserts that it is “try[ing] ONE last time” to urge the Board to “reach some kind of [d]ecision on Sunflower being: A PRIVATE RAILWAY.” (*Id.* at 2.) Sunflower’s argument focuses on “railbanking law” and Sunflower’s purported “reactivation rights” over the railbanked right-of-way for which KDWP serves as trail manager. (*Id.* at 6-7.) Specifically, Sunflower argues that the right to reactivate a railbanked line “belongs to [a]ny RR [railroad] that now / later may need the right of way,” and accordingly, “Sunflower, even as a private RR can automatically [a]cquire those [right-of-way] rights.” (*Id.* at 7.) According to Sunflower, any railroad has a right to reactivate even if the trail manager for the railbanked line “[r]efus[es] to vacate the needed [right-of-way] . . .” (*Id.*) Sunflower acknowledges the Board’s prior skepticism about whether EKAE intends to be served by Sunflower and confirms that “EKAE doesn’t [and] hasn’t public[ly] had anything to say regarding its use of Sunflower’s service.” (*Id.* at 6.) Nevertheless, Sunflower states that it “makes sense” to “[a]sk the Board to prohibit any interference in the matter by KDWP to EKAE’s personnel,” as KDWP has “been an antagonist to [Sunflower]’s rail plans . . . all the way back to 1992.” (*Id.*)⁸

On November 13, 2025, the Board received from Sunflower an additional “motion” to reopen the March 2025 Decision (Nov. 13 Motion). The contents of the filing are largely duplicative of prior filings. Among other things, Sunflower asserts that the Line should be deemed a “[p]rivate [railway],” that it plans to serve EKAE, and that KDWP is an “adversary opponent.” (Nov. 13 Mot. 3-5.) Sunflower claims that the Board “generally (more so as a Rule) disapproves of shortline Petitions,” citing its “[o]wn experience” as “proof.” (*Id.* at 4.) After noting that the March 2025 Decision cited KDWP’s objection to Sunflower’s petition for declaratory order, Sunflower argues that KDWP has no “standing to participate in rail reactivation talks.” (*Id.* at 5.) Sunflower also cites cases in which the Board declined to find that a petitioning railroad qualified as a “bona fide petitioner” for purposes of reinstituting rail service on railbanked lines. (See *id.* at 5-6 (citing Ballard Terminal R.R.—Acquis. & Operation Exemption—Woodinville Subdivision, FD 35731 et al. (STB served Dec. 30, 2014); GNP Rly.

Sept. 17, 2025). The Court dismissed Sunflower’s complaint and closed the case by order dated December 18, 2025. Mem. & Order, ECF No. 15 (D. Kan. Dec. 18, 2025).

⁸ The Board subsequently received from Sunflower an “‘Amended’ Notice of Intent to Construct & Operate Pvt Rail Tracks,” which, like its original notice of intent, did not include the required certificate of service. On July 14, 2025, Board staff contacted Sunflower regarding the omission and did not receive a response. Accordingly, although the contents of that submission do not add in any material way to the arguments presented in the June 23 Notice, the June 24 Motion, or the Nov. 13 Motion and would not change the outcome of this decision if considered, that submission is not part of the record.

Inc.—Acquis. & Operation Exemption—Redmond Spur & Woodinville Subdivision, FD 35407 et al. (STB served June 15, 2011)).⁹

For the reasons discussed below, Sunflower’s requests to reopen the March 2025 Decision will be denied and its June 23 Notice will be rejected.

DISCUSSION AND CONCLUSIONS

Sunflower’s requests to reopen the March 2025 Decision. Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of “material error, new evidence, or substantially changed circumstances.” The party seeking to reopen “must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.” 49 C.F.R. § 1115.4. The alleged grounds for reopening, if accepted, must be sufficient to “warrant[] a different outcome” for the prior decision. Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); see Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 5 (STB served Dec. 21, 2018) (petitioner must present a basis for reopening “that would ‘mandate a different result’ from the one the Board reached in the [prior decision]”) (quoting Montezuma Grain, 339 F.3d at 542).

Sunflower does not cite the standard for reopening, let alone “state in detail” how the proceeding involves material error, new evidence, or substantially changed circumstances (nor does Sunflower make the required accompanying “request that the Board make such a determination”). 49 C.F.R. § 1115.4. Sunflower appears to suggest that the Board erred by not declaring that Sunflower may construct and operate private track within an existing right-of-way subject to interim trail use. (See June 24 Mot. 7 (“In Summary, for Sunflower (as Pvt RR) to gain use of ex railbanked ROW. . . & the ROW Trail Mgr is Refusing to vacate the needed ROW: did the Board wade into the issue? Not! a Decision was Needed by Board and it decided to kick the can down the road.”); Nov. 13 Mot. 4-5 (referring to “[a]n issue’ the STB chose to side step: The right of way is Railbanked. The STB did mention [KDWP] as Trail Manager – But KDWP doesn’t own it.”).) Sunflower also seems to suggest that the Board’s primary basis for denying Sunflower’s request for a declaratory order was KDWP’s objection thereto. (See June 24 Mot. 4-5 (describing KDWP as an “adversar[y],” arguing that trail sponsors have no right to block reactivation of railbanked lines, and implying that KDWP impermissibly “sway[ed]” the Board); Nov. 13 Mot. 5-6 (suggesting that the Board’s reference to KDWP’s opposition improperly “allowed a [non-rail] entity entry into the matter”).)¹⁰

⁹ Sunflower states that it would discuss three cases in the motion, but the motion cuts off mid-sentence in the discussion of what appears to be the second case. (See Nov. 13 Mot. 6.)

¹⁰ Sunflower does not appear to advance any “new evidence” or “substantially changed circumstances” arguments. Rather, Sunflower repeats assertions made in prior filings in this proceeding and the main docket, which the Board has already adequately considered. See, e.g., March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2 (addressing, among other things, Sunflower’s assertions that it intends to build a private track and serve EKA); September 2023 Decision, FD 36714, slip op. at 2 (referring to Sunflower’s “vague” and “unclear” assertions about its plans to interchange with UP at Garnett and serve EKA).

Sunflower’s vague allegations of error are unsupported and do not establish a basis for reopening the proceeding. To begin with, the Board does not license or have jurisdiction over the operation of private track. See B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord., FD 34013, slip op. at 2 (STB served Oct. 3, 2001); March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2, 4. Accordingly, Sunflower cannot use Board processes to reactivate a railbanked common carrier rail line¹¹ as private track (i.e., not licensed by the Board or otherwise within the Board’s jurisdiction). See Norfolk & W. Ry.—Aban. Between St. Marys & Minster in Auglaize Cnty., Ohio, 9 I.C.C. 2d 1015, 1018 (1993) (“The right to reinstitute rail service is a common carrier interest . . .”); see also March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2 (noting that it was not “clear whether Sunflower has any right vis-à-vis KDWP, or how it might obtain the right, to construct and operate ‘private’ track (i.e., not under the Board’s jurisdiction) within an existing right-of-way subject to interim trail use”).¹² The reactivation cases that Sunflower cites are not relevant to Sunflower’s position because they involved the reactivation of track as common carrier (mainline) track, not private track. See Ballard Terminal R.R., FD 35731 et al., slip op. at 3 (STB served Dec. 30, 2014) (noting that the petitioner sought “to acquire the residual common carrier rights and obligations on the [l]ine, including the right to reinstitute freight rail service”); GNP Rly, Inc., FD 35407 et al., slip op. at 2 (STB served June 15, 2011)

¹¹ See KCT Pet. for Exemption 1, KCT Ry.—Aban. Exemption—in Franklin, Anderson, & Allen Cntys., Kan., AB-335 (Sub-No. 2X) (Aug. 1, 1990) (stating that KCT seeks “abandonment of rail common carrier operations over approximately 50.2 route miles of rail line,” that in May 1990 “KCT acquired this rail line . . . and commenced operations as a rail common carrier,” and that “KCT acquired the line with the intent to operate the Rail Line and to provide common carrier service . . .”).

¹² As prior decisions have observed, Sunflower has provided conflicting descriptions of the proposed track, sometimes referring to it as private track and sometimes as ancillary track (i.e., track subject to the Board’s jurisdiction but excepted from Board licensing under 49 U.S.C. § 10906). See September 2023 Decision, FD 36714, slip op. at 2 (filing described proposed track as ancillary track and private track); March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2, 4 (similar). As Sunflower notes, the March 2025 Decision “define[d]” and “detailed” the different categories of track generally recognized by the Board. (June 24 Mot. 2; Nov. 13 Mot. 3.) For clarity, the Board notes that a party could not use Board processes to convert railbanked mainline track to reactivated ancillary track without that mainline track having first been abandoned. See, e.g., Sunrise Indus. Rail, FD 36876 et al., slip op. at 2 (STB served Aug. 29, 2025) (rejecting party’s assumption that it could operate certain track that appeared to be mainline track as ancillary track by noting that section 10901 track “remains as such until abandonment of it under 49 U.S.C. § 10903 is sought, approved, and consummated”) (citing City of Creede, Colo.—Pet. for Declaratory Ord., FD 34376, slip op. at 8 (STB served May 3, 2005); Atchison, Topeka & Santa Fe Ry.—Aban. Exemption—in Lyon Cnty., Kan., AB 52 (Sub-No. 71X), slip op. at 4 (ICC served June 17, 1991)). Moreover, as the Board previously explained, “a track segment that constitutes a carrier’s entire line of railroad cannot be a siding or spur and is not statutorily excepted under 49 U.S.C. § 10906.” March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 3 (citing Effingham R.R.—Pet. for Declaratory Ord.—Constr. at Effingham, Ill., FD 33468, slip op. at 5 (STB served Sept. 18, 1998)).

(referring to trail sponsor’s prior acquisition of railroad’s “residual common carrier rights and obligations” and petitioner’s desire to reactivate service to serve shippers).¹³

Additionally, Sunflower’s suggestion that the Board’s denial of the requested declaratory order largely hinged on KDWP’s objections is inaccurate, as the Board cited other reasons for denying the request. See March 2025 Decision, FD 36714 (Sub-No. 1), slip op. at 2, 4 (explaining that the petition was “speculative and vague,” it provided no indication that EKAE intended to use the Line, and it was “unclear what exactly Sunflower [was asking] the Board to declare” due to inconsistent statements about how the proposed track should be categorized). Moreover, Sunflower fails to recognize that the Board has broad discretion in determining not to issue a declaratory order. See March 2025 Decision, slip op. at 2 (citing Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675 (1989)). The Board properly exercised that broad discretion in denying Sunflower’s request.

Because Sunflower has not shown any material error, new evidence, or substantially changed circumstances that would “warrant[] a different outcome” for the March 2025 Decision, Montezuma Grain Co., 339 F.3d at 541-42, the Board will deny Sunflower’s requests to reopen.

Sunflower’s June 23 Notice. Additionally, Sunflower’s June 23 Notice will be rejected. The notice describes Sunflower as a “[p]rivate rail entity with plans for rail service over” a line with a trail manager who is “UNWILLING to [v]acate.” (June 23 Notice 1-2.) As explained above, Sunflower has failed to explain how a party could use Board processes to reactivate a railbanked common carrier rail line as something other than section 10901 rail line—whether private track (not licensed by the Board or otherwise within the Board’s jurisdiction) or ancillary track (subject to the Board’s jurisdiction but excepted from Board licensing). Additionally, while Sunflower continues to assert that it will serve a customer (presumably referring to EKAE) and that it can access the national railroad system by interchanging with UP at Garnett, (*id.* at 1), neither EKAE nor UP have ever indicated to the Board an intention to engage with Sunflower. See September 2023 Decision, FD 36714, slip op. at 1 (rejecting a similar notice and referring to Sunflower’s “vague” assertions about plans to interchange with UP and serve EKAE). Indeed, Sunflower has confirmed that “EKAE doesn’t [and] hasn’t public[ly] had anything to say regarding its use of Sunflower’s service.” (Nov. 13 Motion 6.) This is in stark contrast to the

¹³ Sunflower also cites a decision that explains that “an interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service,” and that “[i]f and when the railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail user must step aside.” Nov. 13 Mot. 6 (citing Georgia Great So. Division—Aban. & Discon. of Service (Georgia Great Southern), 6 S.T.B. 902, 906 (2003)). Georgia Great Southern held that “[n]o authority under 49 U.S.C. 10901 is required to reactivate rail service where . . . the carrier who would have been the abandoning railroad had there not been rail banking and interim trail use, or its successor, is the one who decides to restore active rail service.” Georgia Great Southern, 6 S.T.B. at 906 (citing Iowa Power—Constr. Exemption—Council Bluffs, Iowa, 8 I.C.C.2d 858, 866-67 (1990)). Georgia Great Southern does not stand for the proposition that a party can use Board processes to reactivate a railbanked mainline track as private track.

Devens case cited by Sunflower, where it was the shipper who owned the track that sought a declaration that its exclusive contract for rail service would not require authority from the Board, and thus it was “clear that the track at issue would be private track.” See Devens Recycling Ctr., LLC—Pet. for Declaratory Order, FD 34952, slip op. at 2-3 (STB served Jan 10, 2007). For these reasons, the notice will be rejected.

It is ordered:

1. Sunflower’s June 24, 2025 and November 13, 2025 requests to reopen are denied.
2. Sunflower’s June 23, 2025 notice is rejected.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.