

SERVICE DATE – AUGUST 24, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36616

SAVAGE TOOEELE RAILROAD COMPANY—CONSTRUCTION AND OPERATION
EXEMPTION—LINE OF RAILROAD IN TOOEELE COUNTY, UTAH

Decided: August 24, 2022

On June 30, 2022, Savage Tooele Railroad Company (STR),¹ a noncarrier, filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately 11 miles of rail line connecting the Union Pacific Railroad Company (UP) Shafter Subdivision mainline near Burmester, Utah, to the Lakeview Business Park (the Park) in Grantsville, Utah.²

STR asserts that, without rail service, the Park would be served only by truck. (Pet. 3.) STR claims that adding a rail transportation option would permit business diversity in the Park and provide “greater mode optionality for business park tenants, competitive freight optionality, lower total emissions due to fewer truck movements, reduced overall truck traffic, and improved road longevity due to less wear and tear from trucks.” (*Id.* at 3-4.)

STR argues that the proposed transaction meets the statutory standard for exemption under 49 U.S.C. § 10502, and it requests that the Board grant conditional approval of the transaction, subject to completion of the environmental review process. (Pet. 8-10.)

¹ STR is a wholly owned subsidiary of Savage Enterprises, LLC, and both are subsidiaries of Savage Companies (Savage). (Pet. 3.)

² In September 2021, STR filed a verified notice of exemption in Docket No. FD 36524 (Acquisition Notice) to acquire and operate certain UP rail lines and construct rail lines and operate rail service on to-be-acquired property adjacent to the UP lines, for the purpose of serving the Park. At the same time, Savage Companies filed a verified notice of exemption in Docket No. FD 36525 (Control Notice) to continue in control of STR upon STR’s becoming a railroad. Both proceedings were held in abeyance pending clarification of certain issues. Savage Tooele R.R.—Acquis. & Operation Exemption in Tooele Cnty., Utah—Union Pac. R.R., FD 36524 et al. (STB served Sept. 30, 2021). Later, the Acquisition Notice was withdrawn at STR’s request; the Control Notice proceeding remains in abeyance. Savage Tooele R.R.—Acquis. & Operation Exemption in Tooele Cnty., Utah—Union Pac. R.R., FD 36524 (STB served May 26, 2022).

The petition raises an issue that must be addressed before the Board can determine how to proceed. According to the petition, the proposed line would consist of approximately six miles of abandoned rail line (Warner Branch segment) owned by UP and approximately five miles of new rail line. As to the Warner Branch segment, STR would purchase, “at a minimum,” UP’s right-of-way and track assets between milepost 1.04 and milepost 6.94.³ (*Id.* at 4.) STR states that UP may retain the right-of-way and track between milepost 0.0 and milepost 1.04, “in which event STR contemplates this track would become part of the non-jurisdictional ancillary tracks” used to interchange cars with STR. (*Id.* at 4-5.) STR states that, if UP conveys the track between milepost 0.0 and milepost 1.04 to STR “and their intent is for STR to reinstate common carrier service over it,” then STR will amend its petition. (*Id.* at 5.)

According to the petition, the Warner Branch segment connects to UP’s mainline at milepost 0.0, but STR’s proposed line begins at milepost 1.04. (Pet. 5 n.9, Ex. A at 1.) As UP may retain the right-of-way between milepost 0.0 and milepost 1.04 to use as ancillary track under 49 U.S.C. § 10906,⁴ and STR has not sought authority to operate between milepost 0.0 and milepost 1.04, it is not clear how STR’s proposed line will connect (and remain connected) to the national rail network. (See Pet. 1-2 (stating that STR would “re-establish the . . . connection to UP’s Shafter Subdivision”)); see also *Tri-City R.R.—Pet. For Declaratory Ord.*, FD 36037, slip op. at 4 (STB served June 1, 2017) (explaining that excepted track is within the Board’s jurisdiction, but that Board authorization is not required to, inter alia, abandon or discontinue such track). Therefore, STR will be directed to submit a verified supplement that clarifies:

- Whether STR will (a) purchase the right-of-way and track between milepost 0.0 and milepost 1.04 and reinstate common carrier service over it, or (b) obtain operating rights over that track and amend its petition to seek authority for such operations.
- Alternatively, whether that track will become part of UP’s mainline and UP will obtain authority to operate over it.

STR will be directed to file a verified supplement addressing the above issues by September 13, 2022, and to serve a copy of its pleading and this decision on UP. UP will be permitted to file a response within 20 days from the service date of STR’s verified supplement.

By this decision, the Board is instituting a proceeding under 49 U.S.C. § 10502(b). STR’s request that the Board follow a two-step approach addressing the transportation aspects of the project in advance of the environmental issues will be addressed in a subsequent decision.

³ According to the petition, milepost 6.94 is the approximate northern boundary of the Park and where STR would begin construction of new rail line. (Pet. 4.)

⁴ Section 10906 states that “[t]he Board does not have authority . . . over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.”

It is ordered:

1. Under 49 U.S.C. § 10502(b), a proceeding is instituted.
2. STR is directed to file a verified supplement addressing the information described above by September 13, 2022, and to serve a copy of the verified supplement and this decision on UP.
3. UP may file a response to STR's verified supplement within 20 days from the service date of STR's verified supplement.
4. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.