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ENTERED
Office of Proceedings
October 25, 2019
Part of
Public Record

THOMAS F. MCFARLAND

October 25, 2019

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: STB Docket No. AB-1277X, *Savage Davenport Railroad Company --
Discontinuance of Service Exemption -- in Scott County, Iowa*

Dear Ms. Brown:

Hereby transmitted is a Petition For Leave To File A Supplement To Reopen And Stay
Decision Served September 30, 2019 for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Petitioner

TMcf:mg:1873 \efSTB1

cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

SAVAGE DAVENPORT RAILROAD	)	
COMPANY -- DISCONTINUANCE OF	)	DOCKET NO.
SERVICE EXEMPTION -- IN SCOTT	)	AB-1277X
COUNTY, IOWA	)	

**PETITION FOR LEAVE TO FILE A SUPPLEMENT TO PETITION TO
REOPEN AND STAY DECISION SERVED SEPTEMBER 30, 2019**

STERILITE CORPORATION
30 Scales Lane
P.O. Box 8001
Townsend, MA 01469-8001

Petitioner

THOMAS F. McFARLAND
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Attorney for Petitioner

DATE FILED: October 25, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

SAVAGE DAVENPORT RAILROAD	)	
COMPANY -- DISCONTINUANCE OF	)	DOCKET NO.
SERVICE EXEMPTION -- IN SCOTT	)	AB-1277X
COUNTY, IOWA	)	

**PETITION FOR LEAVE TO FILE A SUPPLEMENT TO PETITION TO
REOPEN AND STAY DECISION SERVED SEPTEMBER 30, 2019**

Pursuant to 49 C.F.R. § 1117.1, STERILITE CORPORATION (Sterilite) hereby petitions for leave to supplement its Petition to Reopen and Stay the Board's decision served September 30, 2019. Sterilite's Petition was filed on or about October 9, 2019.

BACKGROUND

The rail line under consideration is owned by the City of Davenport, Iowa (the City). It is operated by Savage Davenport Railroad Company (Savage). The line is used extensively by Sterilite.

On June 28, 2019, Savage filed a Petition for Exemption for discontinuance of its rail service. Notwithstanding Sterilite's receipt of hundreds of carloads of plastic raw materials, Savage did not provide a copy of that Petition to Sterilite, nor did Savage otherwise make its loyal shipper aware that it proposed to exit the rail line. Not knowing of Savage's plans, Sterilite did not file an opposition statement with the Board, as it would have done had it been aware of Savage's filing.

The City has a residual obligation to operate the rail line in Savage's absence, either in its own right or by means of a replacement rail operator. The City itself is not in a position to

operate the line as a practical matter. Savage did not claim in its Petition that the City had contracted with a replacement rail operator. Neither did the City file anything at the Board stating that it had done so.

In a decision served September 30, 2019, the Board granted Savage's Petition, thinking that it was unopposed, (. . .Sterilite. . .has (not) filed a comment opposing the proposed discontinuance of service. . .), *id* at 2.

On or about October 9, 2019, Sterilite filed a Petition to Reopen and Stay the Board's decision on the grounds that Savage's failure to have notified it of the proposed discontinuance was the only reason for Sterilite's failure to have conditionally opposed the discontinuance, and that the potential gap in rail service over the line would be extremely harmful to its business.

On October 22, 2019, Savage filed a Reply in opposition to Sterilite's Petition. Savage stated that it had agreed with the City to operate the rail line through December 31, 2019, which "will give the City additional time to work on locating an alternative rail service provider for the Line" (Reply at 2). Savage claimed that the additional time "should resolve Sterilite's reasonable concerns", and "provides reasonable accommodation to Sterilite" (*id*).

JUSTIFICATION FOR SUPPLEMENT TO PETITION TO REOPEN AND STAY

Between April 1, 2018 and the present, Sterilite has received more than 625 cars of plastic raw materials over the rail line under consideration. Basic fairness, if not Board regulations, would require that such a loyal rail user be notified that its rail service provider planned to exit the rail line. Instead, Savage's failure of notification misled the Board to find that the proposed discontinuance was unopposed. In view of that unfairness, the Board should grant

leave for Sterilite to supplement its Petition to Reopen and Stay (the Board's decision is scheduled to become effective on October 30, 2019).

SUPPLEMENT TO PETITION TO REOPEN AND STAY

Contrary to Savage's allegations, extension of Savage's rail service through December 31, 2019 does not satisfy Sterilite's legitimate concerns. The process for obtaining a replacement rail operator is not nearly as facile as assumed in Savage's Reply. Initially, a rail line owner must select a proposed replacement rail operator through a process allowing for adequate due diligence. Then, a rail line Lease or Operating Agreement must be negotiated. Then, the selected replacement operator must obtain Board authorization for the proposed rail operation. Lastly, the replacement operator must ready itself to conduct actual rail operations over the line.

It is not at all likely, let alone certain, that those time-consuming activities will be completed by December 31, 2019. What is certain is that there is nothing in Savage's Reply, and no evidence whatsoever otherwise provided by Savage or by the City, that any of those tasks have begun, let alone have been completed. In the absence of that critical evidence, Sterilite is adamantly opposed to Savage's discontinuance unless the exemption is conditioned to become effective no earlier than the date on which a Board-authorized replacement rail operator commences rail service over the line.

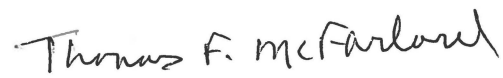
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should grant leave for the filing of this Supplement to Petition to Reopen and Stay the Board's decision served September 30, 2019, and, based on that Supplement, the Board should condition the proposed exemption for discontinuance of rail service to become effective no earlier than the date on which a Board-authorized replacement rail operator commences rail service over the line.

Respectfully submitted,

STERILITE CORPORATION
30 Scales Lane
P.O. Box 8001
Townsend, MA 01469-8001

Petitioner

A handwritten signature in black ink that reads "Thomas F. McFarland". The signature is written in a cursive style with a large, stylized 'T' and 'M'.

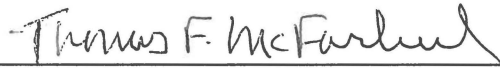
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Attorney for Petitioner

DATE FILED: October 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2019, I served the foregoing Petition For Leave To File A Supplement To Petition To Reopen and Stay the Board's Decision Served September 30, 2019 by e-mail on Richard F. Riley, Esq. at *rriley@foley.com* and on Kevin Sheys, Esq. at *kevin.sheys@hoganlovells.com*.



Thomas F. McFarland