

SERVICE DATE – JULY 3, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36627

TGS CEDAR PORT RAILROAD LLC—OPERATION EXEMPTION—
IN CHAMBERS COUNTY, TEX.

Decided: July 3, 2023

On July 7, 2022, TGS Cedar Port Railroad LLC (TGSC), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate on track extending approximately 1.28 miles from a connection with the Cedar Bayou Industrial Lead at milepost 5.22 in Chambers County, Tex. (a line owned by Union Pacific Railroad Company (UP) over which UP and BNSF Railway Company (BNSF) operate) to milepost 6.5 (as measured from the southern end of the Cedar Bayou Industrial Lead) (the Line). According to the verified notice, the Line is owned by a noncarrier TGSC affiliate (TGS Cedar Port Partners LP), was being operated as private industrial track by TGSC's parent company (Trans-Global Solutions, Inc.), and connects to ancillary track within the TGS Cedar Port Industrial Park (the Park). Notice of the exemption was served and published in the Federal Register on July 22, 2022 (87 Fed. Reg. 43,929). The exemption became effective on August 6, 2022. See TGS Cedar Port R.R.—Operation Exemption—in Chambers Cnty., Tex., FD 36627 (STB served July 22, 2022).

On April 4, 2023, UP filed a petition to revoke TGSC's exemption, asserting that the verified notice contained false information about TGSC's right to continue to interchange traffic with BNSF if TGSC institutes common carrier operations over the Line. (Pet. 2.) UP asserts that under the conditions imposed in Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp., 1 S.T.B. 233 (1996), and the terms of a related settlement agreement approved during the Board's review of the UP merger with Southern Pacific Rail Corporation (SP), "BNSF cannot interchange with any new short line railroad that, like TGSC, would connect to a merger-related trackage rights line via existing track." (Pet. 2-3.)

Three replies to the petition were filed on April 24, 2023. TGSC replied in opposition, claiming that UP is not legally entitled to block direct BNSF access to the Park simply because the Park's owner has chosen to provide first-mile/last-mile rail service on a common carrier basis and that the contested statement in the verified notice was neither false nor misleading. (TGSC Reply 1-3, 14, Apr. 24, 2023.) BNSF asked the Board to confirm that the UP-SP merger conditions "do not allow UP to block BNSF from providing competitive line-haul service to customers simply because a common carrier railroad replaces a private railroad as the provider of first-mile/last-mile service." (BNSF Reply 1, Apr. 24, 2023.) And the American Chemistry Council (ACC) asserted that the Board should grant UP's petition to revoke on the alternative basis that the verified notice's statement about BNSF access was materially misleading without

deciding BNSF's access rights. (ACC Reply 1.) UP filed a surreply to TGSC's and BNSF's replies on May 3, 2023; TGSC responded to ACC's reply on May 5, 2023; and BNSF and TGSC responded to UP's surreply on May 15 and May 23, 2023, respectively.

The requests to revoke TGSC's exemption raise issues that require further consideration by the Board. A proceeding will be instituted under 49 U.S.C. § 10502(d) to consider the revocation requests. No further briefing is requested at this time.

It is ordered:

1. Under 49 U.S.C. § 10502(d), a proceeding is instituted to consider the pending requests to revoke TGSC's exemption.
2. This proceeding will be completed by April 3, 2024.
3. This decision is effective on its service date.

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