

SERVICE DATE – LATE RELEASE OCTOBER 29, 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 modifies the effective date of an exemption allowing Savage Davenport Railroad Company to discontinue service over a 2.8-mile rail line owned by the City of Davenport, in Scott County, Iowa.

Decided: October 29, 2019

BACKGROUND

By decision served September 30, 2019, the Board granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 for Savage Davenport Railroad Company (SDR) to discontinue service over a 2.8-mile rail line (the Line) owned by the City of Davenport (the City), in Scott County, Iowa.² The Board noted that 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, upon reasonable request. Under the September 30, 2019 decision, the exemption was scheduled to become effective on October 30, 2019.

On October 9, 2019, Sterilite Corporation (Sterilite), the sole shipper on the Line, filed a petition to reopen and stay the effectiveness of the exemption. Sterilite states that it is greatly concerned about the prospect of a discontinuance in service being granted prior to a new operator being in place, as all the plastic raw materials for its facility are transported by rail car and there is no economical alternative. (Sterilite Pet. to Stay 1-2.) Sterilite states that any disruption in continuous rail service would be logistically and financially detrimental to its business. (Id. at 2.) According to Sterilite, the City has issued a request for proposal inviting interested rail operators to provide evidence of qualifications to assist the City in selecting a company to succeed SDR as operator of the Line, but there is no date certain when a new operator will begin providing service. (Id.) While Sterilite states that it “does not inherently oppose” SDR’s petition

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).

² The Line extends from a switch near milepost 191.2 on the mainline of a Canadian Pacific Railway subsidiary, west and south to the Davenport Transload Facility owned by the City.

for exemption to discontinue service, it asserts that it would be appropriate for the Board to delay the final decision or impose a condition withholding the final decision until a suitable replacement operator can assume control of the Line without any disruption in service. (*Id.* at 3.)

On October 22, 2019, SDR filed a reply to Sterilite’s petition to reopen and stay. SDR advises the Board that on October 15, 2019, SDR and the City signed a written lease extension agreement under which SDR will maintain service on the Line through December 31, 2019, which will give the City additional time to locate an alternative rail service provider for the Line. (SDR Reply 2.) SDR states that it has made Sterilite aware of its commitment to maintain rail service through the end of 2019. (*Id.*) SDR argues that the Board should not stay the effectiveness of the exemption because SDR’s commitment to maintain service through the end of the year should resolve Sterilite’s concerns. (*Id.* at 2-3.)

On October 25, 2019, Sterilite filed a petition for leave to file a supplement to its petition to reopen and stay, along with a supplement.³ Sterilite maintains that, contrary to Savage’s allegations, an extension of Savage’s rail service through December 31, 2019, does not satisfy Sterilite’s concerns. (Sterilite Pet. to Suppl. 4.) Sterilite argues that it is “not at all likely, let alone certain,” that the time-consuming process for obtaining a replacement operator will be completed by December 31, 2019. (*Id.*) As a result, Sterilite states that it 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 operator commences service on the Line. (*Id.*)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a stay, when necessary to prevent irreparable harm. A party seeking a stay must establish that (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed, (2) it will suffer irreparable harm in the absence of a stay, (3) other interested parties will not be substantially harmed, and (4) the public interest supports the granting of the stay. *See, e.g., Ind. Harbor Belt R.R.—Trackage Rights—Consol. Rail Corp.*, FD 36099 et al., slip op. at 4 (STB served Mar. 14, 2017); *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

The Board will not rule on Sterilite’s petition to stay at this time. Nevertheless, execution of the lease extension clearly indicates the City’s and SDR’s intent that SDR remain the operator on the Line through December 31, 2019, beyond the otherwise applicable effective date of the exemption. The Board will therefore modify the effective date of the exemption at this time, in recognition of that intent, to January 1, 2020. SDR will be directed to serve a copy of this decision on the City and to certify to the Board that it has done so within five days of the service date of this decision. The City, in turn, will be directed to provide the Board a status update, by November 25, 2019, of its efforts to secure a replacement operator for the Line, including information on the steps it has already taken and when it expects the process to be completed.

³ The Board will grant Sterilite’s petition to supplement.

It is ordered:

1. Sterilite's petition for leave to file a supplement to its petition to reopen and stay is granted.
2. SDR's exemption will be effective January 1, 2020.
3. SDR is directed to serve a copy of this decision on the City and to certify to the Board that it has done so within five days of the service date of this decision.
4. The City is directed to provide the Board a status update by November 25, 2019.
5. This decision is effective on its service date.

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