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BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB Docket No. AB-1277X

SAVAGE DAVENPORT RAILROAD COMPANY
— DISCONTINUANCE OF SERVICE EXEMPTION —
IN SCOTT COUNTY, IA

SAVAGE DAVENPORT RAILROAD COMPANY'S
VERIFIED REPLY TO STERILITE'S PETITION FOR LEAVE TO FILE A SUPPLEMENT
TO PETITION TO REOPEN AND STAY DECISION

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Date: October 30, 2019

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Savage Davenport Railroad Company (“**SDR**”) hereby files its reply to Sterilite Corporation’s October 25, 2019 petition for leave to file a supplement to its October 9, 2019 request for a stay of the Board’s decision allowing SDR to discontinue rail service on a 2.8-mile rail line near Davenport, Iowa owned by the City of Davenport.¹

Sterilite’s most recent submission contains factual misstatements that SDR wishes to correct. Moreover, there is nothing in Sterilite’s submission to justify any reopening or stay of the Board’s Decision. The Decision allowing SDR to discontinue rail service on the terms set forth by the Board should take effect as scheduled.

SDR Told Sterilite About Its Plan to Discontinue Service

Sterilite’s October 25 submission asserts that SDR “did [not] make [Sterilite] aware that it proposed to exit the rail line,” and that this “failure of notification” to Sterilite “misled the Board.” Submission at 2, 3. These assertions are incorrect.

¹ *Savage Davenport Railroad Company – Discontinuance of Service Exemption – in Scott County, Iowa, No. AB-1277X* (STB served Sep. 30, 2019) (“Decision”).

Phillip Hoskins, who is Sr. Director Business Development at SDR's affiliate Savage Services Corporation with direct responsibility for business negotiations between SDR and Sterilite (and whose Verification accompanies this submission), had email and telephone communications with Sterilite, primarily with Rob Rogers, purchasing manager at Sterilite's Davenport plant, to tell Sterilite that SDR planned to discontinue its rail service on the line owned by the City of Davenport where the Sterilite plant is located. These discussions and communications took place well before the Board's decision served September 30. Mr. Hoskins possesses email communications with Mr. Rogers confirming very explicitly that Sterilite knew about, and was making plans for, SDR's proposed service discontinuance at least two weeks before the Board's decision was served on September 30, 2019. Mr. Hoskins also has personal recollection of, and possesses follow-up emails confirming, telephone discussions in the preceding months in which Mr. Hoskins told Sterilite's Mr. Rogers about SDR's concerns about the uneconomical service on the rail line and its need to consider alternatives.

Thus, SDR's statement in its Petition for Exemption that "SDR has also made the only shipper on the Line, Sterilite Corporation, aware that SDR is exploring options to discontinue service," is correct. Sterilite's statement that SDR "did [not] make [Sterilite] aware that it proposed to exit the rail line" is inaccurate. SDR most assuredly has not misled the Board.

A Dissatisfied Customer Is Not a Basis to Reopen or Stay the Board's Decision

An unhappy customer is not a reason to reopen or alter the Board's Decision allowing SDR to discontinue service. Presumably no rail customer wants to lose its transportation service, but the Board's regulations do not suggest that a customer complaint precludes the Board's exemption and approval of service discontinuance under 49 U.S.C. § 10502.

There is a separate and simpler procedure under the Board's regulations to exempt service discontinuance from regulation when, among other requirements, there has been no local traffic on a rail line for two years. See 49 C.F.R. § 1152.50(b). The existence of this procedure for *inactive* rail lines confirms that the alternative procedure under which SDR obtained exemption and approval of its discontinuance of service – that is, the general exemption provisions of 49 U.S.C. § 10502, and the implementing regulations for exempt service discontinuance at 49 C.F.R. § 1152.60 – can allow discontinuance when there *are* customers using a rail line, obviously including customers that would prefer to keep their rail service. That is the case here.

The Board has clearly stated that customer desires cannot override a rail carrier's need to discontinue money-losing service when the applicable statutory standards (in the instant case, the exemption standards of section 10502) are satisfied:

[R]ailroads are not required to operate an unprofitable line simply to prevent existing shippers from incurring higher transportation costs by truck. *CSX Transportation, Inc. – Abandonment Exemption – in Harrison County, WV*, STB Docket No. AB-55 (Sub-No. 563X) (STB served Sept. 25, 1998). Departing from this longstanding policy in a case like this one – where the Line is not even close to profitability—would seriously discourage needed private investment in smaller railroads. Thus, any harm to the shippers and the community caused by higher transportation costs is outweighed by the burden of requiring [a railroad] to continue service on this uneconomic Line.

Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, OR, No. AB-515 (Sub-No. 2) (STB served Oct. 31, 2008).

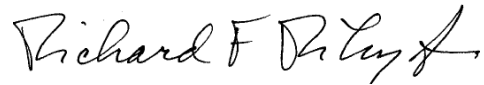
Conclusion

The Board has already determined in its September 30 Decision that the statutory requirements to exempt from regulation, and thereby allow, SDR's discontinuance of service on the City of Davenport's line have been met. Sterilite itself acknowledged in its October 9 filing that Sterilite does not "inherently oppose" SDR's service discontinuance. SDR has agreed to a

temporary service extension to accommodate Sterilite and the City. There is no legal or factual basis to reopen or stay the Board's Decision, or to alter its effective date. The Decision should be allowed to become effective on October 30, 2019 according to its terms.

Respectfully submitted,

Savage Davenport Railroad Company



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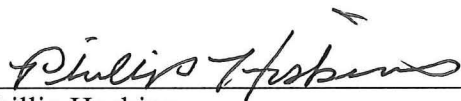
*Attorneys for Petitioner Savage
Davenport Railroad Company*

Dated: October 30, 2019

VERIFICATION

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

Phillip Hoskins, being duly sworn, deposes and says that he is the officer of Savage Services Corporation primarily responsible for business negotiations between Savage's affiliate Savage Davenport Railroad Company and Sterilite Corporation with respect to Sterilite's plant near Davenport, Iowa; that he has read the foregoing Verified Reply to Sterilite's Petition for Leave to File a Supplement to Petition to Reopen and Stay Decision in STB Docket AB-1277X; and that the facts set forth therein with regard to Savage's communications with Sterilite are true and correct to the best of his knowledge and belief.



Phillip Hoskins
Sr. Director Business Development
Savage Services Corporation

Subscribed and sworn to before me this 29th day of October, 2019 by Phillip Hoskins.



Notary Public

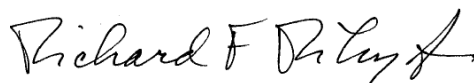


CERTIFICATE OF SERVICE

I certify that on the 30th day of October, 2019, copies of the foregoing document were served upon the following parties by email delivery pursuant to 49 C.F.R. § 1104.12(a):

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