

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35802

NORTHWEST TENNESSEE REGIONAL PORT AUTHORITY—CONSTRUCTION AND
OPERATION EXEMPTION—IN LAKE COUNTY, TENN.

Digest:¹ Northwest Tennessee Regional Port Authority is authorized to build and operate approximately 5.5 miles of new rail line in Lake County, Tenn., subject to environmental mitigation conditions and the requirement that it build Alternative A, the environmentally preferable route.

Decided: April 19, 2016

On June 27, 2014, the Northwest Tennessee Regional Port Authority (NWTRPA),² a noncarrier political subdivision of the State of Tennessee, 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 an approximately 5.5-mile line of railroad in Lake County, Tenn. (the Line). NWTRPA states that the Line would extend from a connection with an existing line of railroad near Tiptonville, Tenn., to the site of a newly constructed port on the Mississippi River at Cates Landing (Port). According to NWTRPA, the Line would serve the Port as well as a new industrial park being developed by Lake County in conjunction with the Port. NWTRPA states that the purpose of the proposed construction is to attract industrial and commercial activity to Lake County and to provide rail service in an area where it does not currently exist.

In a decision served on September 16, 2014, the Board instituted a proceeding under 49 U.S.C. § 10502(b). No comments opposing the transportation merits of NWTRPA's petition were filed.

As discussed below, the Board's Office of Environmental Analysis (OEA) has completed a thorough environmental analysis that carefully evaluated NWTRPA's proposed route and several alternatives and took a hard look at potential environmental impacts, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(f). Based on that analysis,

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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² NWTRPA was established by Dyer, Lake, and Obion Counties in northwest Tennessee for the purpose of owning, constructing, and operating a regional river port in Lake County.

OEA has identified an environmentally preferable alternative and has recommended a number of environmental conditions to avoid, minimize, or mitigate potential environmental impacts. The environmental review process included ample opportunity for public input, and OEA incorporated the comments of agencies and other interested parties in preparing its environmental analysis and developing its final recommended environmental conditions.

This decision grants the exemption NWTRPA requests, authorizing it to construct and provide rail service over the proposed 5.5-mile rail line, subject to the environmental conditions set forth in the Appendix and the condition that NWTRPA build Alternative A, the route designated by OEA as environmentally preferable.

BACKGROUND

In 2013, NWTRPA completed construction of the Port, which is located approximately five miles north of the town of Tiptonville, Tenn. The Port is located on the highest point on the eastern bank of the Mississippi River between Memphis, Tenn., and Cairo, Ill. (NWTRPA Pet. 4.) The Port features a 9,000-foot slack water harbor and an approximately 66-acre port facility adjacent to the harbor. (*Id.*) An industrial park, known as the Lake County Industrial Park (Industrial Park), is currently being developed by Lake County in connection with the Port. (*Id.* at 5.) According to NWTRPA, the Industrial Park will be constructed in three phases, beginning with the approximately 345 acres of land adjacent to and immediately south of the Port that have been zoned for industrial development.³ NWTRPA states that it intends, along with Lake County, to expand the site in the future. (*Id.* at 5 n.2.)

Although the Port has been completed and the Industrial Park is being developed, NWTRPA states that the Port is economically disadvantaged by the lack of available rail service.⁴ Thus, NWTRPA proposes to construct an approximately 5.5-mile rail line that would extend from the Port to a connection with a rail line owned by the Hickman River City Development Corporation of Hickman, Ky. (HRCDC), and leased and operated by the TennKen Railroad, a Class III common carrier. (NWTRPA Pet. 4.) NWTRPA states that the Line would service the Port as well as the Industrial Park. (*Id.* at 5.) According to NWTRPA, the new line would begin at a wye track connection with HRCDC's existing rail line at Tiptonville and extend in a westerly direction. (*Id.* at 6.) About three miles from that connection, the Line would bisect the proposed first phase of the Industrial Park. (*Id.*) Approximately 2.5 miles northwest of the Industrial Park, the Line would enter the campus of the Port and run parallel to the Port's slack

³ In 2004, the Memphis District of the United States Army Corps of Engineers (Corps) issued an Environmental Assessment that assessed the environmental impacts associated with the construction of the slack water harbor, the 66-acre port facility, and the 345-acre Industrial Park. Pursuant to that Environmental Assessment, the Corps imposed environmental mitigation.

⁴ Currently, transportation to and from the Port and Industrial Park is limited to truck transportation via State Route 22.

water harbor to the main dock facility. (Id.) NWTRPA intends to contract with a qualified Class III rail carrier to operate the Line, but also seeks operating authority itself because it intends to retain a residual common carrier obligation on the Line. (Id. at 5; see also Eriksen Verified Statement 3.)

DISCUSSION AND CONCLUSIONS

Rail Transportation Analysis. The construction of new railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. § 10901 or, as requested here, through an exemption under 49 U.S.C. § 10502 from the formal application procedures of § 10901. Under § 10502(a), the Board must exempt a proposed rail line construction from the prior approval requirements of § 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

Based on the record before us, we conclude that the proposed construction, which was unopposed on the transportation merits, qualifies for an exemption under § 10502 from the prior approval requirements of § 10901. Detailed scrutiny of the proposed construction under 49 U.S.C. § 10901 is not necessary to carry out the rail transportation policy. The record here shows that the proposed rail line would provide rail service to the port and to NWTRPA's proposed development site (which includes the industrial park), as well as to other shippers in the area. Currently, there is no rail service to NWTRPA's proposed development site, and the site does not cross the line of any other railroad. Without rail service, trucks on local roads and highways would be used to provide transportation to the Port and Industrial Park. Thus, the proposed rail line would enhance intermodal competition by providing shippers in the area with a freight rail option that does not currently exist, consistent with 49 U.S.C. §§ 10101(4) & (5). Exempting the proposed construction from the requirements of § 10901 would also minimize the need for federal regulation and reduce regulatory barriers to entry in furtherance of 49 U.S.C. §§ 10101(2) & (7).

In addition, consideration of the proposed rail line under § 10901 is not necessary to protect shippers from an abuse of market power.⁵ Rather, as explained above, the proposed Line would enhance competition by providing rail service where it does not currently exist, and thereby create an alternative to trucking.

⁵ Given our finding regarding the lack of need for shipper protection under § 10502(a)(2)(B), we need not determine whether the transaction is limited in scope under 49 U.S.C. § 10502(a)(2)(A).

Environmental Analysis. NEPA requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public concerning those effects. Balt. Gas & Elec. Co. v. Natural Res. Def. Council, 462 U.S. 87, 97 (1983). While NEPA prescribes the process that must be followed, it does not mandate a particular result. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350-51 (1989). Thus, once the adverse environmental effects have been adequately identified and evaluated, an agency may conclude that other values outweigh the environmental costs. Id. at 350-51.

A Draft Environmental Assessment (Draft EA) prepared by OEA and the Corps (which participated in the environmental review as a cooperating agency) was issued on December 28, 2015, for public review and comment. The Draft EA analyzed a number of environmental issue areas, including: transportation and safety, land use, energy resources, air quality, noise and vibration, biological resources, water resources, socioeconomics, environmental justice, geological resources, hazardous waste sites, cultural and historic resources, greenhouse gas emissions and climate change, and cumulative impacts. The Draft EA considered four alternatives in detail: the No-Action Alternative, NWTRPA's proposed alternative (Alternative A), and two other alternatives (Alternatives B and C).⁶ (Draft EA 7-13.) See maps at Draft EA 8-12.

As the Draft EA explained, under the No-Action Alternative, a new rail line would not be constructed. (Draft EA 10.) NWTRPA and Lake County would continue to develop the Port and the Industrial Park as planned, but rail transportation would not be available for customers at those facilities. (Id.) Without rail transportation as an option, trucks would continue to transport freight to and from the Port and Industrial Park using State Route 22. (Id.)

NWTRPA's preferred alternative, Alternative A, would begin at a "wye junction" connection with the TennKen Railroad north-northeast of Tiptonville, and would extend approximately 0.5 mile in a northwesterly direction before crossing an unnamed agricultural stream and turning north. (Id. at 7.) The alignment would remain to the west of the agricultural stream north of the crossing. (Id.) Approximately three miles from the wye junction, the rail line would bisect the proposed Phase I of the Industrial Park. Approximately 2.5 miles beyond the Industrial Park, the rail line would terminate at the Port. (Id.)

Alternative B would follow an alignment similar to Alternative A. The rail line would begin at a wye junction connection with the TennKen Railroad north-northeast of Tiptonville, and would extend 0.5 miles in a northwesterly direction until reaching the unnamed tributary and turning north. (Id.) This alternative, however, would remain to the east of the stream and would bisect the proposed Phase I of the Industrial Park before terminating at the Port. (Id.)

⁶ An additional alternative (Alternative D) was considered but eliminated early in the environmental review process due to concerns regarding potential impacts to Reelfoot Lake, Reelfoot Lake State Park, and Reelfoot Lake National Wildlife Refuge. (Draft EA 10-13.)

Alternative C would be constructed to the east of, and parallel to, the right-of-way of State Route 22. (*Id.* at 10.) The alignment would begin at a wye junction connection with the TennKen Railroad north-northeast of Tiptonville, about 0.25 miles north of the intersection of State Route 22 and State Route 78, and would proceed north, closely following the east side of State Route 22.⁷ Approximately 1.25 miles south of Cates Landing-New Markham Road, the rail line would leave the State Route 22 right-of-way and would continue north; after crossing Cates Landing-New Markham Road, the rail line would terminate at the Port.

The Draft EA concluded that Alternatives A, B, and C would have similar, but not significant, environmental impacts if the mitigation measures set forth in the Draft EA were imposed. Accordingly, OEA determined that the Environmental Impact Statement (EIS) process was unnecessary in this case. (Draft EA 83.)

In response to the Draft EA, NWTRPA submitted comments urging OEA to select Alternative A as the environmentally preferable alternative.⁸ According to NWTRPA, that alternative, as compared to the other build alternatives considered in the Draft EA, would require the smallest area of land to be developed, impact the fewest land owners, potentially permit the railroad to serve the largest area within the proposed Industrial Park, and maintain a buffer between the rail line and residences in the project area.⁹

On March 30, 2016, OEA issued a Final EA concluding the environmental review process. Based on its review of the available information, including the information provided by NWTRPA in its comments on the Draft EA, OEA concluded that Alternative A would be the environmentally preferable alternative for this project because it would require purchasing a smaller area of land than would be required under Alternatives B or C, thus resulting in the smallest area of land being converted from farmland to other use. OEA further agreed with NWTRPA that the vegetation present along the agricultural stream under Alternative A would provide an additional barrier between the proposed rail line and the residences located to the east of the agricultural stream and that Alternative A would permit the greatest number of potential customers to receive rail service within the proposed Industrial Park. OEA also recommended that the 32 environmental mitigation measures set out in the Draft EA be imposed by the Board.

The Board's Analysis of the Environmental Issues. We adopt all of OEA's analysis and conclusions, including those not specifically addressed here. We are satisfied that the Draft EA and the Final EA together have taken the requisite hard look at the potential environmental

⁷ Approximately three miles from the wye junction, the rail line would bisect the proposed Phase I of the Industrial Park. (Draft EA 10.)

⁸ No other comments to the Draft EA were submitted.

⁹ NWTRPA also asserted that both Alternative A and Alternative B would result in fewer environmental impacts than Alternative C.

impacts associated with NWTRPA's proposal and that OEA properly determined that, with its recommended environmental mitigation, the proposed project will not have potentially significant environmental impacts and that preparation of an EIS is unnecessary.

We agree with OEA's analysis of alternatives and adopt OEA's recommendation of Alternative A as the environmentally preferable alternative, because it most effectively avoids and minimizes potential environmental impacts. Each of the three build alternatives under consideration would result in minor negative impacts to waterways, soil, and wildlife in the project area, as detailed in the Draft EA. However, the potential for environmental impacts from the construction and operation of the proposed rail line would be most effectively minimized under Alternative A, as it would: require the smallest land acquisition of the alternatives, result in the smallest loss of farmland, provide for a vegetated barrier between the proposed rail line and the residences located to the east of the stream, and permit the greatest number of potential customers to receive rail service within the proposed Lake County Industrial Park. The No-Action alternative would avoid the potential environmental impacts of the proposed construction but would not bring rail service to the area at issue, and would result in more truck traffic on State Route 22.

CONCLUSION

After weighing the transportation merits and environmental concerns, and considering the entire record, the Board finds that the petition for exemption to allow construction and operation of the 5.5-mile rail line in Lake County should be granted, subject to compliance with the environmental mitigation listed in the Appendix to this decision and the requirement that NWTRPA build Alternative A.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts NWTRPA's construction and operation of the environmentally preferable alternative (Alternative A) from the prior approval requirements of 49 U.S.C. § 10901.
2. The Board adopts the environmental mitigation measures set forth in the Appendix to this decision and imposes them as conditions to the exemption granted here.
3. Notice will be published in the Federal Register on April 25, 2016.
4. Petitions for reconsideration must be filed by May 11, 2016.

5. This decision is effective May 21, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

APPENDIX

ENVIRONMENTAL MITIGATION CONDITIONS

Transportation and Safety

1. NWTRPA shall schedule construction activity so as to minimize the periodic closing of roads or traffic delays to the public. NWTRPA shall coordinate with Tennessee Department of Transportation (TDOT) and the Lake County Highway Commission regarding the scheduling of construction activities that could result in the temporary closing of roads and shall provide for detours and associated signage, as appropriate, or maintain at least one open lane of traffic at all times to allow for the passage of emergency and other vehicles.
2. NWTRPA shall confine all project-related construction traffic to a temporary access road within the right-of-way or established public roads. Where traffic cannot be confined to temporary access roads or established public roads, NWTRPA shall make necessary arrangements with landowners to gain access. After construction is completed, NWTRPA shall remove and restore any temporary access roads constructed outside the rail line right- of-way unless otherwise agreed to with the landowners.
3. NWTRPA shall ensure that proposed activities within and along existing roads are consistent with the *Manual on Uniform Traffic Control Devices* for installation of signs (e.g., regulatory, warning/caution, speed), delineators, and other roadway appurtenances and in compliance with the terms and conditions of any American Association of State Highway and Transportation Officials safety standards.
4. NWTRPA shall consult with appropriate federal, state, and local transportation agencies to determine the final design and other details of the grade-crossing warning devices on public roads. Implementation of all grade-crossing warning devices on public roadways will be subject to the review and approval of reasonable warning devices by TDOT and by the Lake County Highway Commission. NWTRPA shall coordinate with TDOT and Lake County Highway Commission to identify the maintenance and repair responsibilities of each party for project-related warning devices and at-grade road crossings.
5. NWTRPA shall comply with the safety regulations implemented and enforced by the Federal Railroad Administration (FRA), including regulations that establish safe speed limits for train operations and regulations that establish procedures for implementing an inspection and maintenance program to minimize the potential for derailments and other rail-related accidents.

Land Use

- 6. NWTRPA shall, to the extent practicable, design the proposed rail right-of-way to minimize the conversion of prime farmland to nonagricultural use.
- 7. NWTRPA shall ensure that land areas directly disturbed by NWTRPA’s project-related construction are restored to their original condition, as may be reasonably practicable, after project-related construction is completed.
- 8. NWTRPA shall require contractors involved in construction or operation of the proposed rail line to remove all trash and debris generated as a result of the project from public land and dispose of it at an authorized facility in accordance with all applicable federal, state, and local regulations.
- 9. NWTRPA shall consult with utility managers during design and construction so that utilities are protected during project-related construction activities. NWTRPA shall notify the manager of each such utility identified prior to project-related construction activities and coordinate with the owner to minimize damage to utilities.

Geological Resources

- 10. NWTRPA shall limit ground disturbance to only those areas necessary for project-related construction activities.
- 11. NWTRPA shall employ Best Management Practices (BMPs) during construction to minimize the erosion of soil from disturbed areas.
- 12. NWTRPA shall stabilize any disturbed areas outside of the rail corridor with appropriate vegetative cover after the completion of construction activities.
- 13. NWTRPA shall design the rail line in accordance with engineering criteria related to seismic events and other geologic hazards to comply with applicable design codes. For example, NWTRPA shall design the proposed rail line in accordance with the latest applicable seismic codes taking into account the region’s potential for earthquake activity to mitigate potential damage to bridges and tracks.

Water Resources

- 14. NWTRPA shall design and construct the rail line authorized by the Board, including culverts and bridges, in such a way as to maintain natural water flow and drainage patterns to the extent practicable.

15. During project-related construction and operation, NWTRPA shall avoid and minimize impacts to waterbodies and wetlands. NWTRPA shall obtain from the United States Army Corps of Engineers (USACE) any federal permits required by Section 404 of the Clean Water Act before initiating project-related construction activities that would impact wetlands and waterbodies. NWTRPA shall comply with all reasonable requirements as required by USACE and shall incorporate the stipulations of these permits and authorizations into construction contract specifications. NWTRPA shall work directly with USACE to develop appropriate mitigation for direct wetland impacts as stipulated in the Section 404 permit.

16. NWTRPA shall coordinate with Tennessee Department of Environment and Conservation, Division of Water Resources to obtain all appropriate state permits related to impacts to water resources resulting from construction activities, including an Aquatic Resource Alteration Permit for alterations to waters of the state and coverage under Tennessee's General National Pollutant Discharge Elimination System Permit for Discharges of Storm Water Associated with Construction Activities.

17. In instances in which NWTRPA or its contractors need to apply herbicides for right-of-way maintenance, NWTRPA shall ensure the use of staff or contractors who are properly trained in herbicide application, shall require the following of label directions in herbicide application, and shall limit the amount potentially entering waterways. NWTRPA shall require the use only of herbicides regulated for such uses with United States Environmental Protection Agency and follow all state regulations that require their use.

Biological Resources

18. NWTRPA shall minimize disturbance to wildlife by restricting construction activities to the proposed rail right-of-way and immediate surrounding area.

19. NWTRPA shall notify OEA and the United States Fish and Wildlife Service if any federally listed threatened or endangered species are discovered during project-related construction activities.

20. NWTRPA shall consult with the Tennessee Wildlife Resources Agency and shall comply with the reasonable recommendations of that agency regarding the design of in-stream structures to permit migration of aquatic species.

Cultural Resources

21. If any cultural resources are discovered or uncovered during construction of the rail line, NWTRPA shall halt all work immediately and notify the Tennessee Historical Commission (the SHPO) and the OEA to identify and implement the required

consultation and mitigation. NWTRPA shall then consult with the SHPO and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Air Quality

22. NWTRPA shall work with its contractors to make sure that construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition to limit construction-related air pollutant emissions.

23. NWTRPA shall minimize fugitive dust emission during construction by confining construction activity and clearing to the rail right-of-way and by employing BMPs in the control and suppression of dust emissions.

24. NWTRPA shall comply with all applicable federal, state, and local regulations regarding the control of air emissions.

Noise and Vibration

25. NWTRPA shall control temporary noise from construction equipment through the use and maintenance of appropriate muffler systems on machinery.

26. NWTRPA shall comply with FRA regulations that establish decibel limits for train operations and locomotive noise standards.

Socioeconomics and Environmental Justice

27. NWTRPA shall, before commencing construction activities related to this project, notify local communities, local agencies, local emergency response providers, and landowners about construction timeframes and potential disturbances related to construction.

28. NWTRPA shall ensure that project-related construction vehicles, equipment, and workers will not access work areas through landowners' properties without the permission of the property owners. In the unlikely event of inadvertent damage, NWTRPA shall work with affected landowners to appropriately redress any damage caused by NWTRPA's project-related construction activities.

Hazardous Waste Sites and Transportation of Hazardous Materials

29. NWTRPA shall ensure that waste materials related to this project are removed and disposed of promptly at an appropriate waste-disposal site. NWTRPA shall store and

dispose of any hazardous waste generated or hazardous materials used in the normal course of construction, operation, and maintenance activities in accordance with applicable environmental laws.

30. NWTRPA shall develop a spill prevention plan for handling the release of petroleum products or other hazardous materials during construction activities and rail operations. In the event of a spill, NWTRPA shall comply with its spill prevention plan and applicable federal, state, and local regulations pertaining to spill containment and appropriate clean-up.

31. NWTRPA shall comply with applicable United States Department of Transportation regulations, policies, and procedures regarding the transportation of hazardous materials should any such material be transported on the proposed rail line.

32. If any undocumented hazardous waste sites are discovered or uncovered during construction of the rail line, NWTRPA shall immediately halt all work and notify the appropriate regulatory agencies.