

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35237

CITY OF DAVENPORT, IOWA—CONSTRUCTION AND
OPERATION EXEMPTION—IN SCOTT COUNTY, IOWA

Digest:¹ The City of Davenport, Iowa (the City) is authorized to build a 2.8-mile rail line in southern Eldridge, northern Davenport, and an unincorporated area of Scott County, Iowa, subject to environmental mitigation conditions. The new line will provide the Eastern Iowa Industrial Center, an industrial park, with rail access. The City will hire an operator to provide service on the line, but the City also will be required to ensure continued rail service.

Decided: March 30, 2011

By petition filed on July 21, 2009, the City of Davenport, Iowa (the City) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct approximately 2.8 miles of rail line in southern Eldridge, northern Davenport, and an unincorporated area of Scott County, Iowa.² On October 19, 2009, the Board instituted this proceeding under 49 U.S.C. § 10502(b). No comments opposing the petition have been filed.

BACKGROUND

The project consists of construction of a rail line to handle freight traffic to and from the Eastern Iowa Industrial Center (EIIC), a 300-acre industrial park located in the northeast quadrant of the Interstate 80 and Northwest Boulevard interchange. The EIIC's purpose is to provide large industrial development sites with highway, barge, air, and rail access. The proposed 2.8-mile rail line would begin at the Blackhawk Road crossing of the Iowa Chicago & Eastern Railroad (IC&E), then curve to the west through Eldridge Industrial Park and Commercial Development, cross First Street into agricultural land, turn south through agricultural land, and end at the EIIC. Rail traffic on the proposed line initially is anticipated to

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 By letter filed September 9, 2009, the City amended the petition by adding a request for operating authority.

be two trains per week (one round trip), and each train would have two to three rail cars. As industrial development continues, train traffic is expected to increase to a maximum of two trains per day (one round trip). Goods to be shipped over the rail line would vary depending on the specific industries that may locate along the route, but would likely consist of agricultural equipment, manufactured goods, and corn.

The City, as the line's owner, will retain a common carrier obligation. The City intends to contract with IC&E to operate the line pursuant to a notice of exemption that IC&E will file. The City asserts that an application under 49 U.S.C. § 10901 for this proposed construction is not necessary to further the national transportation policy set out in 49 U.S.C. § 10101. Rather, the City claims that granting its petition for exemption would ensure the development of a sound rail transportation system with effective competition and coordination between railroads, minimize the need for Federal regulatory control, and reduce regulatory barriers to entry.

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, we must exempt a proposed rail line construction from the detailed application procedures of § 10901 when we find that: (1) those procedures are not necessary to carry out the rail transportation policy of § 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 detailed scrutiny of the proposed construction under § 10901 is not necessary to carry out the rail transportation policy, and that the proposed construction project is therefore appropriate for handling under the exemption process. The proposed rail line would provide the EIIC, and any future shippers associated with the development of the EIIC, an efficient alternative to truck shipment of materials. § 10101(4) and (5). Exempting the proposed construction project from the requirements of § 10901 would also minimize the need for Federal regulation and reduce regulatory barriers to entry. § 10101(2) and (7).

Use of the formal application process is not necessary here to protect shippers from an abuse of market power. Rather, the proposed line will enhance competition and provide an alternative to truck shipment of materials. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

The Environmental Review in This Case. In reaching our decision that this project is appropriate for an exemption, we have also analyzed the environmental impacts associated with the construction proposal. We have reviewed the environmental record and are satisfied that the project should be exempted with appropriate mitigation. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-43, 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, Inc., 462 U.S. 87, 97 (1983). With the assistance of the Office

of Environmental Analysis (OEA),³ the Board has analyzed the potential environmental impacts associated with the City's construction proposal. Prior to the Board's involvement, the Federal Highway Administration (FHWA), the lead federal agency on this rail project, and the City conducted an environmental and historic review.⁴ The FHWA and the City issued an Environmental Assessment (EA) for public review and comment on March 17, 2008, after Federal, state, and local agencies were notified about the project and a public information meeting was held. Subsequent to the EA, a public hearing was held and a number of comments were filed in response to the EA. On July 8, 2008, the FHWA issued its Record and Finding of No Significant Impact (Record and Finding) and recommended 3 environmental conditions to mitigate the impacts of the project. The conditions were developed in response to specific concerns: (1) that the rail line will cross safety zones for two runways at the Davenport Municipal Airport, (2) about the effect of construction activity on soil by the Iowa Department of Natural Resources Conservation and Recreation Division, and (3) by property owners over loss of land access. The FHWA concluded that the construction and operation of the proposed line would have no significant environmental impacts if the mitigation conditions were imposed and the City implemented them.

Under 40 C.F.R. § 1506.3, the Board may adopt an environmental document prepared by another agency in order to avoid duplication of efforts. After OEA's independent review of the FHWA's EA, which included a site visit on August 18, 2009, and an additional 30-day opportunity for public comment, OEA prepared and issued on January 28, 2010, a Review of Environmental Matters and Final Environmental Recommendations (Review) for this proceeding. In the Review, OEA considered the comments received on the EA during its 30-day comment period, set forth its further independent analysis, and made its final recommendations on environmental mitigation.

Specifically, OEA recommended that the Board adopt the FHWA EA and impose the 3 environmental conditions recommended by the FHWA, as follows: (1) (a) The Airport Layout Plan showing the rail alignment⁵ and the Agreement between the City of Davenport and the Davenport Airport Commission shall be amended and submitted to the Federal Aviation Administration (FAA), and (b) the City shall submit to the FAA, and receive approval of, a Notice of Proposed Construction or Alteration for Objects Affecting Navigable Airspace; (2) the City shall apply to, and receive approval from, the Iowa Department of Natural Resources for the National Pollutant Discharge Elimination System for the disturbance of more than one acre of land; and (3) the City shall acquire new right of way for the project in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601-4655.

³ When the environmental review here began, OEA was the Section of Environmental Analysis.

⁴ The FHWA was the lead agency in the environmental review because the project was selected to receive a grant under a program administered by the FHWA. The Iowa State Historic Preservation Officer concluded that no historic properties would be affected by the proposal, thus completing the historic review process in this case.

⁵ The rail alignment is the arrangement of the tracks.

Approximately 7 months after OEA issued its Review, the City notified OEA of a change in project design and in the proposed rail alignment. According to the City, the curve at the eastern end of the proposed line would need to be reduced from 11 degrees to 8 degrees to adequately handle the transport of large and extra-large cargo used to build wind turbines. In view of this change, the City invited the Board to be a cooperating agency in the event that preparation of a Supplemental EA pursuant to 40 C.F.R. § 1501.6 would be appropriate. OEA accepted the invitation on behalf of the Board and, in cooperation with the FHWA, the Iowa Department of Transportation, and the City, conducted a reevaluation of the project to determine whether supplemental environmental documentation should be prepared. In December 2010, the FHWA determined that the proposed project change did not warrant a Supplemental EA. On February 8, 2011, after assessing the City's proposed alteration of the alignment, OEA concurred with the FHWA's conclusion that no supplemental environmental review is required, and that the FHWA's Record and Finding and the Board's Review are adequate environmental documentation. Accordingly, OEA recommended that the 3 mitigation measures previously recommended be imposed on any grant of authority here.

After considering the entire record, we adopt the FHWA EA, and OEA's analysis and conclusions, including those not specifically discussed above. We have considered the FHWA EA, the Record and Finding and the Review and are satisfied that the requisite "hard look" at the potential environmental impacts associated with this construction proposal has been taken, and that the final recommended mitigation is adequate to address the environmental concerns raised during the course of the environmental review.

CONCLUSION

We find, after weighing the transportation merits and the entire environmental record, that the petition for exemption should be granted, subject to compliance with OEA's final recommended mitigation. Accordingly, we will grant the requested exemption and authorize the construction of the rail line, subject to the environmental mitigation measures set forth in the Appendix.

As conditioned, this action will not significantly affect either 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 the construction of the above-described line from the prior approval requirements of 49 U.S.C. § 10901, subject to the environmental mitigation measures set forth in the Appendix.
2. Notice will be published in the Federal Register on April 6, 2011.
3. Petitions to reopen must be filed by April 26, 2011.

4. This decision will be effective May 6, 2011.

By the Board, Chairman Elliott and Commissioner Mulvey.

APPENDIX

ENVIRONMENTAL MITIGATION CONDITIONS

1. (a) The Airport Layout Plan showing the rail alignment and the Agreement between the City of Davenport and the Davenport Airport Commission shall be amended and submitted to the Federal Aviation Administration (FAA), and (b) the City of Davenport shall submit to the FAA, and receive approval of, a Notice of a Proposed Construction or Alteration for Objects Affecting Navigable Airspace.

2. The City shall apply to, and receive approval from, the Iowa Department of Natural Resources for the National Pollutant Discharge Elimination System for the disturbance of more than one acre of land.

3. The City shall acquire new right of way for the project in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601-4655.