

SERVICE DATE – JULY 26, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36762

STATE OF OKLAHOMA BY AND THROUGH THE OKLAHOMA DEPARTMENT OF
TRANSPORTATION AND BLACKWELL INDUSTRIAL AUTHORITY—ALTERNATIVE
RAIL SERVICE—LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD
COMPANY

Digest:¹ This decision extends for an additional 120 days, to November 26, 2024, the authority of Chicago, Rock Island & Pacific Railroad, LLC, to provide emergency local rail service over a rail line owned by the State of Oklahoma and the Blackwell Industrial Authority.

Decided: July 25, 2024

By decision served on March 1, 2024, the Board issued an order under 49 U.S.C. § 11123 authorizing Chicago, Rock Island & Pacific Railroad, LLC (Rock Island), to provide emergency local rail service over 37.26 miles of rail line owned by the State of Oklahoma through the Oklahoma Department of Transportation (ODOT) and the Blackwell Industrial Authority (BIA) and leased to the Blackwell Northern Gateway Railroad Company (BNGR) (the Line) for an initial period of 30 days.²

The State of Oklahoma, acting by and through ODOT, joined by BIA, on behalf of themselves and impacted shippers (collectively, Petitioners), filed a petition on March 15, 2024, seeking an extension of the emergency service authority for 120 days (until July 29, 2024). The Board granted that petition on March 28, 2024.

On July 23, 2024, Petitioners filed a second petition requesting a further extension of the emergency service authority for an additional 120 days. Petitioners explain that Rock Island (which ODOT and BIA earlier had identified as a potential long-term operator of the Line) has established a wholly owned subsidiary—Oklahoma & Kansas Railroad, LLC—to lease and

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 Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² ODOT owns the portions of the Line extending from milepost 18.32 at Hunnewell, Kan., to milepost 35.35 at Blackwell, Okla., and from milepost 127.0 to milepost 126.45 in Blackwell. BIA owns the portions of the Line extending from milepost 0.09 at Wellington, Kan. to milepost 18.32 at Hunnewell, and from milepost 126.45 to milepost 125.0 in Blackwell. See Blackwell N. Gateway R.R.—Lease Exemption—Okla. Dep’t of Transp., FD 35441 (Sub-No. 1) (STB served Oct. 18, 2023).

operate the Line, but the parties require an extension to finish negotiating a long-term agreement. (Pet. 2, July 23, 2024.) Petitioners further report that BNGR has not indicated any intention of remedying the issues identified by the Federal Railroad Administration (FRA) Emergency Order No. 33 Notice 1 (FRA Order) pursuant to which BNGR has ceased operations so that it may reinstate service. (Id. at 2-3.) No party has opposed this second requested extension.

The Board has the authority to extend an emergency service order past the initial 30-day period if it determines that a “transportation emergency described in subsection (a) continues to exist.” 49 U.S.C. § 11123(c)(1). Upon request, the Board may extend an emergency service order for up to 240 days beyond the initial 30-day period. Id. The undisputed record in this case shows that the transportation emergency continues to exist, as BNGR has not provided any indication that it plans to remedy the issues identified in the FRA Order so that it may resume service. Moreover, the record indicates that additional time is needed to permit the parties to finalize a long-term rail service solution, which Petitioners report to be nearing. (Pet. 2 n.2, July 23, 2024). The Board therefore finds that extension of the emergency order is appropriate, and the requested 120-day extension will be granted.

Because this decision will extend the emergency service order to the full 270-day duration permitted by law, see 49 U.S.C. § 11123(c)(1), no more extensions will be entertained.

Additionally, should the parties successfully conclude negotiations for a long-term lease and operation of the Line, Rock Island is encouraged to ensure that its subsidiary seeks the necessary Board authority sufficiently in advance of termination of the emergency service order to ensure that the authority, if granted, will become effective in the normal course under the Board’s regulations without a gap in authorized service. See 49 C.F.R. part 1150.

It is ordered:

1. The joint petition to extend the emergency service order is granted; Rock Island is authorized to provide alternative rail service over the Line for an additional 120 days, until November 26, 2024.

2. A copy of this decision will be served on the FRA.

3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.