

SERVICE DATE – MARCH 1, 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:<sup>1</sup> This decision permits Chicago, Rock Island & Pacific Railroad, LLC, to provide rail service for 30 days over a line of railroad owned by the State of Oklahoma and the Blackwell Industrial Authority.

Decided: March 1, 2024

On February 26, 2024, the State of Oklahoma, acting by and through the Oklahoma Department of Transportation (ODOT), joined by the Blackwell Industrial Authority (BIA), on behalf of themselves and impacted shippers (collectively, Petitioners) filed with the Board an unopposed petition for an emergency service order under 49 U.S.C. § 11123 and 49 C.F.R. § 1146.1. The petition requests that the Board issue an emergency service order allowing Chicago, Rock Island & Pacific Railroad, LLC (Rock Island), to provide local rail service over 37.26 miles of line owned by Petitioners and leased to Blackwell Northern Gateway Railroad Company (BNGR) (the Line).<sup>2</sup> The Board will grant the petition, as discussed below.

BACKGROUND

The petition states that on September 25, 2023, Petitioners and BNGR entered into a joint track lease and operating agreement, with BNGR agreeing to provide common carrier service over the Line, along which two shippers, Tensar International, LLC, and A-Line T.D.S., Inc. (collectively, Shippers), are located. (Pet. 3); see Blackwell N. Gateway R.R.—Lease Exemption—Okla. Dep’t of Transp., FD 35441 (Sub-No. 1). However, the Federal Railroad

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<sup>1</sup> 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).

<sup>2</sup> 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).

Administration (FRA) issued Emergency Order No. 33, Notice 1, effective February 3, 2024 (FRA Order), finding that BNGR was operating with a combination of unsafe conditions and practices creating a situation involving hazardous injury or death. 89 Fed. Reg. 8,739, 8,740. In the interest of public safety, FRA ordered that “BNGR must discontinue, and may not permit under any circumstances, the operations of trains, locomotives, or any other on-track rail vehicles or equipment on any part of the track that it owns or leases from ODOT or BIA, including all track between Wellington, Kansas, and Blackwell, Oklahoma.” Id. The FRA Order then listed 14 steps that BNGR must take before receiving full relief and resuming operations, including submitting various records; meeting training, safety, and certification requirements for FRA approval; and completing all remedial actions deemed necessary by FRA track inspectors. Id. at 8,740-41. As a result, Petitioners sent a letter to BNGR on February 5, 2024, providing notice of BNGR’s default under the terms of the operating agreement, and notifying BNGR that the operating agreement would terminate after 90 days from the date of the notice. (Pet., Ex. B.)

Counsel for ODOT states that BNGR disputes the assertion that it defaulted under the operating agreement but is “conditionally willing to peacefully transfer its operating rights to a successor carrier,” and does not object to the filing of the petition. (Pet. 6, 9.) BNGR did not file a reply in response to the petition.<sup>3</sup> Moreover, ODOT’s counsel represents that in multiple discussions with BNGR’s counsel about the situation, BNGR indicated that it does not have a plan to take the steps necessary to resume rail service under the FRA Order. (Id. at 8-9.) Shippers verify that they have faced or are facing harmful consequences due to the cessation of rail service over the Line. (Id., V.S. Edgecombe; V.S. Lapczenski.)

Petitioners request relief for a period of at least 30 days and explain that they have identified Rock Island as a carrier capable of meeting Shippers’ transportation needs over the Line until a long-term operator can be found and receive operating authority from the Board. (Id. at 9.) A verified statement from Rock Island CEO Robert Riley, appended to the petition, confirms that Rock Island and Petitioners have agreed to terms for Rock Island to provide emergency service. (Id., V.S. Riley.) According to Rock Island, because BNGR is prohibited from operating on the Line by the FRA Order, no coordination of operations between Rock Island and BNGR is necessary. (Id.)

## DISCUSSION AND CONCLUSIONS

The Board may issue an order pursuant to 49 U.S.C. § 11123(a) when it determines that circumstances, such as the unauthorized cessation of operations or other failure of traffic movement, exist that creates “an emergency situation of such magnitude as to have substantial adverse effects on shippers . . . or that a rail carrier providing transportation subject to the jurisdiction of the Board . . . cannot transport the traffic offered to it in a manner that properly serves the public.” The Board “will [prescribe alternative service] under 49 U.S.C. [§] 11123(a) if the Board determines that, over an identified period of time, there has been a substantial,

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<sup>3</sup> Counsel for ODOT filed a letter on March 1, 2024, requesting that the Board expeditiously grant the petition because no replies in opposition were filed and the reply deadline had passed.

measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.” 49 C.F.R. § 1146.1(a).

The Board finds that an order under § 11123 is warranted under these particular circumstances. The record shows that rail service over the Line has completely ceased, and BNGR cannot transport the traffic offered to it in a manner that properly serves the public as it is currently prohibited from operating under the FRA Order, and Shippers warn that they are currently suffering from substantial adverse effects (and face further harm) due to the loss of rail service over the Line. These facts are uncontested, Rock Island supports the petition, and BNGR does not oppose it. The conditions, which have precluded service by BNGR for some time, meet the criteria for relief in § 1146.1(a). Accordingly, Rock Island will be granted the authority to provide alternative rail service over the Line for an initial period of 30 days under the terms of its agreement with ODOT and BIA mentioned in the verified statement of Riley. (Pet., V.S. Riley); see § 11123(a).

If Petitioners intend to seek an extension of this order, they should do so well in advance of the 30-day deadline to provide the Board sufficient time to consider and issue a decision before the authority under this order expires. Any such request should include further information from Petitioners regarding their efforts to identify a carrier to operate over the Line on a long-term basis and an explanation as to why an extension of the emergency service order is the appropriate mechanism for continuing service on the Line.

It is ordered:

1. The petition for an emergency service order is granted; Rock Island is authorized to provide alternative rail service over the Line, as described above, until March 31, 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, Oberman, Primus, and Schultz.