

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Finance Docket No. 31874

SOUTH DAKOTA RAILWAY COMPANY—NOTICE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE

Decided: July 16, 2007

In South Dakota Railway Company—Modified Rail Certificate, Finance Docket No. 31874 (ICC served May 30, 1991), South Dakota Railway Company (SDRC) was issued a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 83.3 miles of rail line between milepost 0.0, at a point known as Napa Junction, SD, and milepost 83.3, in Platte, SD (the Line).

On May 15, 2007, pursuant to 49 CFR 1150.24, the South Dakota Department of Transportation (SDDOT), on behalf of the State of South Dakota (State), filed notice on behalf of SDRC of its intent to terminate service over the Line under the modified certificate. SDDOT claims that SDRC has ceased operating over the Line, and that, at least as of December 31, 1994, has not exercised its operating rights. SDDOT adds that it is filing this notice on SDRC's behalf because SDRC has forfeited its status as a corporate entity in South Dakota¹ and because the parties' operating agreement has expired.²

The South Dakota State Railroad Board (SDRB), a political subdivision of the State, pursuant to 49 CFR 1152.29, concurrently filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) Trails Act), for the segment of the Line between milepost 54.5 in Ravinia, SD, and milepost 83.3 in Platte (Ravinia-Platte segment). SDRB also submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. See 49 CFR 1152.29. SDDOT states that it supports SDRB's request for a NITU and

¹ A copy of a certification to that effect from the South Dakota Secretary of State is attached.

² SDRC subleased the line from the Napa-Platte Regional Railroad Authority (NPRRA), which leased the Line from the State.

that it is willing to negotiate a trail use/rail banking agreement with SDRB for the Ravinia-Platte segment.³

Under 49 CFR 1150.24, an operator (in this instance, SDRC) must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. Here, SDDOT's request on SDRC's behalf to terminate service under the modified certificate will be granted because: (1) SDRC has ceased operating on the line; (2) the operating agreement that granted operating rights to SDRC has expired; and (3) SDRC is no longer a recognized corporate entity in South Dakota. See Chesapeake Railroad Company—Certificate of Interim Trail Use and Termination of Modified Rail Certificate, STB Finance Docket No. 32609 et al. (STB served Jan. 9, 2006).

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. Moreover, the Board has jurisdiction to issue a NITU in a proceeding where a notice is filed under 49 CFR 1150.24 to terminate operations under a modified certificate. See, e.g., Sammamish Transportation Company—Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 33398 (Sub-No. 1) (STB served Feb. 26, 1998); Wisconsin and Calumet Railroad Company, Inc.—Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 30724 (Sub-No. 1) (ICC served Aug. 8, 1989).

Because SDRB has met the requirements of 49 CFR 1152.29, a NITU will be issued for the Ravinia-Platte segment. SDRB is free to negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, the line may be fully abandoned. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for a notice of interim trail use under the Trails Act is accepted.

³ Operations on the remaining segments of the Line will continue. On May 15, 2007, NPRRA filed: (1) a notice of exemption under 49 CFR 1150.31 to lease from the State and to operate a segment of the Line between milepost 0.0 near Napa and milepost 13.4+/- near Tabor, SD; and (2) a notice for a modified rail certificate under 49 CFR 1150, Subpart C, Modified Certificate of Public Convenience and Necessity, to operate another segment of the Line between milepost 13.4+/- near Tabor and milepost 54.5 near Ravinia. See Napa-Platte Regional Railroad Authority—Lease and Operation Exemption—Dakota Short Line Corp., STB Finance Docket No. 35025 (STB served May 31, 2007) and Napa-Platte Regional Railroad Authority—Modified Rail Certificate, STB Finance Docket No. 35026 (STB served June 14, 2007).

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
4. If interim trail use is implemented and the user subsequently seeks to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
5. If an agreement for interim trail use/rail banking has been reached by the 180th day after service of this decision and notice (until January 13, 2008), interim trail use may be implemented. If no agreement is reached by that time, the line may be fully abandoned.
6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary