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SERVICE DATE - JUNE 10, 1999

SURFACE TRANSPORTATION BOARD

CERTIFICATE AND DECISION

STB D-OP No. 100

CERTIFICATE OF DESIGNATED OPERATOR,
BRANDYWINE VALLEY RAILROAD COMPANY

Decided: June 9, 1999

On May 3, 1999, Brandywine Valley Railroad Company (Brandywine) filed a certificate of designated operator to operate a railroad line known as USRA line 939 between milepost 12.7 at the Delaware/Pennsylvania border and milepost 2.9 at Elsmere Jct., DE, a distance of 9.8 miles (the Line). The Line is owned by the Wilmington & Northern Railroad Company (W&N).

Brandywine entered into an interim agreement with W&N whereby Brandywine could, beginning immediately, operate until September 30, 1999, and from month-to-month thereafter. Brandywine states that during the interim period it expects to enter into a longer term arrangement with W&N.

Delaware Valley Railroad Company (DV) has operated as a designated operator over the Line since July 1, 1994. Certificate of Designated Operator, Delaware Valley Railway Co., D-OP 59 (USRA Line No. 907/939-RDG) (ICC served Oct. 14, 1994). Because its lease with W&N has been terminated, DV is apparently operating as a holdover tenant. See March 29, 1999, Response of DV at 3 in Brandywine Valley Railroad Company--Petition for Prescription of Alternative Rail Service— Line Operated by the Delaware Valley Railway Company, STB Finance Docket No. 33732 (Finance Docket No. 33732).

Brandywine states that, when it began operations over connecting lines in Pennsylvania (see Brandywine Valley Railroad Company — Modified Rail Certificate, STB Finance Docket No. 33722 (STB served Apr. 16, 1999)),¹ it believed that DV would not be able to operate over the Line. Consequently, it filed a petition with the Board for alternative rail service over the Line in

¹ Brandywine began operating over the following lines of railroad: (a) between milepost 12.7 at the Delaware/Pennsylvania state line and milepost 30.29 at Modena, PA, a distance of 17.59 miles; and (b) between milepost 18.0 at Wawa, PA, and milepost 54.50 at the Pennsylvania/Maryland state line near Sylmar, MD, a distance of 36.50 miles. A Chairman decision, served March 26, 1999, denied a petition by DV to stay the effectiveness of the modified rail certificate notice.

Finance Docket No. 33732. While awaiting Board action on this request, Brandywine sought authority directly from W&N to operate the line, and has entered into an agreement.²

Brandywine contends that, under 49 CFR 1150.11, the duration of DV's designated operator certificate is determined by its contract with W&N, which was terminated as of July 1, 1996. According to Brandywine, W&N will be giving DV notice to vacate the line, and Brandywine hopes that DV will voluntarily terminate operations and vacate the line. Nevertheless, Brandywine argues that, even if DV does not do so, the Board can authorize two carriers to operate the line while state court remedies are pursued by Brandywine and/or W&N to remove DV. Brandywine requests that, if DV does not immediately discontinue operations, the Board should order it to coordinate with Brandywine's operations under the direction and dispatching of Brandywine as provided by the Brandywine-W&N agreement.

DISCUSSION

Brandywine's request for a certificate is granted. Brandywine has submitted the information required by the Board's regulations at 49 CFR 1150, subpart B. It is an existing Class III carrier that has been operating since 1982. It is self-insured, and it submitted a copy of its balance sheet as of December 31, 1998.

The line segment was not included in the Final System Plan at the time Consolidated Rail Corporation was formed, and as such, service over the line may be discontinued or abandoned without further Board approval under section 304 of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210. Brandywine is entitled to commence and terminate service over the above-described line pursuant to the terms of its agreement with W&N. 49 CFR 1150.11. Brandywine's operations will be subject to all applicable provisions of 49 U.S.C. 10101 et seq. and the rules and regulations of the Board relating to rail carriers. This certificate is issued to reflect those rights and duties. While Brandywine's filing notes other potential issues, there is no need to address issues not now before the Board.

This certificate is issued with the understanding that the following conditions will be met: (1) in the event of termination of service or cancellation of the operating agreement, Brandywine shall notify all rail patrons on the line at the time it gives or receives notice of termination or cancellation; and (2) Brandywine shall also notify the Board regarding any extension of, or substitutions for, the agreement with appropriate reference to this certificate.

² In a letter filed May 3, 1999, Brandywine withdrew its petition for alternative rail service filed in Finance Docket No. 33732. That proceeding is being discontinued in a separate decision.

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

It is ordered:

1. A Certificate of Designated Operator is issued to Brandywine, subject to the conditions listed above.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary