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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34630]

MRC Regional Railroad Authority — Trackage Rights Exemption — Lines of the State of South Dakota

MRC Regional Railroad Authority (MRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the State of South Dakota (the State)¹ overhead trackage rights over a line of railroad extending between milepost 654 near Mitchell, SD, and milepost 511.90 in Sioux City, IA, including such yard tracks, sidetracks, and connecting tracks (existing or to be constructed) as are reasonable: (a) to interchange railcars with The Burlington Northern and Santa Fe Railway Company (BNSF) and Dakota, Minnesota & Eastern Railroad Corporation at Mitchell; (b) to access the State-owned line extending westerly from Napa Junction, SD, to Platte, SD; and (c) to interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. MRC will also acquire from the State limited local trackage rights on the Mitchell-Sioux City Line: (i) to move loaded cars of corn, soybeans, and wheat originating at points on the line between Mitchell and Kadoka, SD,² and terminating at the Mitchell Elevator in Mitchell

¹ The trackage rights will be granted by the State acting by and through the South Dakota State Railroad Board and the South Dakota Department of Transportation, Office of Railroads.

² The previously abandoned Mitchell-Kadoka Line, which is now owned by the State, has been leased to MRC. And MRC, in turn, has subleased the Mitchell-Kadoka Line to Dakota

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and the Beardsley Elevator in Beardsley, SD; and (ii) to move empty cars via the reverse route.

The total distance of the trackage rights to be acquired is approximately 142.1 miles.

MRC certifies that its projected revenues as a result of the MRC-South Dakota transaction will not result in MRC becoming a Class I or Class II rail carrier, and further certifies that its projected revenues will not exceed \$5 million. The MRC-South Dakota transaction was scheduled to be consummated on or after December 17, 2004.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34630, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on MRC's representative: Kenneth W. Cotton, WIPF & COTTON LAW OFFICES, LLC, 107 South Main Street, Wagner, SD 57380.

The notice of exemption filed with respect to the MRC-South Dakota transaction in this docket is related to a notice of exemption concurrently filed in a related docket: STB Finance Docket No. 34630 (Sub-No. 1), Dakota Southern Railway Company — Trackage Rights Exemption — State of South Dakota and MRC Regional Railroad Authority. The notice of exemption filed in the related docket contemplates the operation of MRC's Mitchell-Sioux City Line trackage rights by DSRC on behalf of MRC.

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Southern Railway Company (DSRC), which operates over the line.

MRC and DSRC have advised that the Mitchell-Sioux City Line, which is owned by the State, is now operated on behalf of the State by BNSF, pursuant to a 1986 Operating Agreement. MRC and DSRC have also advised: that, under the Operating Agreement, the State has the right to grant trackage rights on the Mitchell-Sioux City Line subject to certain BNSF consent; that, although the State has the right to grant trackage rights to MRC for operations by MRC's third-party operator (DSRC), BNSF has not consented to the grant of those rights; and that the failure to provide this consent is now the subject of litigation between the State and BNSF in The Burlington Northern and Santa Fe Railway Company v. State of South Dakota, Case No. 04-470 (S.D. 6th Circuit). MRC and DSRC have further advised that they recognize that BNSF consent may have to be obtained, either voluntarily or through litigation, before DSRC can commence trackage rights operations on the Mitchell-Sioux City Line. MRC and DSRC have suggested, however, that, inasmuch as the Board's authority respecting the notices filed in this docket and in the related docket is "permissive" in nature, the filing of the notices in the two dockets is appropriate as a "prelude" to obtaining any necessary consent.

By letter filed December 17, 2004, BNSF has advised that it has not given its consent, and does not intend to give its consent, to the third-party trackage rights operation contemplated by MRC and DSRC. BNSF has further advised that, in its view, the filings by MRC and DSRC in this docket and in the related docket are intended to improperly influence the pending state court litigation. BNSF has asked that the Board stress that issuance by the Board of the notices filed in this docket and in the related docket: does not constitute any finding by the Board concerning either the Board's jurisdiction over these transactions or

DSRC's right to operate over the line without BNSF's consent; and does not provide any basis for MRC or DSRC to claim that the Board has permitted DSRC to operate over the line in the absence of a final decision by the courts that DSRC has a legal right to conduct such operations.

In view of the ongoing litigation concerning the right of the State to grant the trackage rights contemplated in this docket and in the related docket, it seems best to note that the Board has made no determination, one way or the other, concerning either the right of the State to grant these trackage rights without BNSF's consent or the right of DSRC to operate over the line without BNSF's consent. The contractual dispute respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction.

Board decisions and notices are available on its website at "WWW.STB.DOT.GOV."

Decided: December 21, 2004.

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

Vernon A. Williams

Secretary