

SERVICE DATE – MAY 18, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 33792

NOBLES ROCK RAILROAD, INC.—MODIFIED RAIL CERTIFICATE

Digest:¹ This decision accepts a 60-day notice of intent to terminate a modified certificate filed on behalf of an operator by the State of South Dakota, the owner of the rail line.

Decided: May 17, 2021

BACKGROUND

On September 16, 1999, Nobles Rock Railroad, Inc. (NRR), was granted a modified certificate of public convenience and necessity (modified certificate) under 49 C.F.R. part 1150, subpart C, to operate a rail line owned by the State of South Dakota (the State or South Dakota), extending from milepost 378.5 west of Mitchell, S.D., to milepost 517.5 at Murdo, S.D. (the Line), a total distance of approximately 139 miles. Nobles Rock R.R.—Modified Rail Certificate, FD 33792 (STB served Sept. 16, 1999).

On March 19, 2021, the State filed a Verified Notice of Termination of Modified Certificate, requesting that the Board accept the 60-day notice of intent to terminate service over the Line on behalf of NRR. The State explains that the Line is part of an approximately 285.43-mile rail line that it is in the process of selling to the Ringneck & Western Railroad L.L.C. (RWR).² (South Dakota Notice 1.) According to the State, while conducting due diligence related to the sale, it determined that NRR had never terminated its modified certificate authority over the Line and it appears that NRR no longer exists. (Id. at 1-3.)

South Dakota acknowledges that the Board's rules require that the carrier holding the modified certificate file the termination notice itself. (Id. at 2.) The State argues, however, that the Board has allowed a line owner to file a termination notice on behalf of a modified certificate operator where the operator has ceased operations, the operating agreement has expired, and the

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 According to South Dakota, RWR is currently a noncarrier that plans to operate over portions of the Line after the sale is complete and appropriate Board authority is granted. (South Dakota Notice 1.)

operator is no longer recognized as a corporate entity in the state where the line is located. (*Id.* at 2 (citing S.D. Ry.—Notice of Interim Trail Use & Termination of Modified Rail Certificate, FD 31874, slip op. at 2 (STB served July 17, 2007); Chesapeake R.R.—Certificate of Interim Trail Use & Termination of Modified Certificate, FD 32609 et al., slip op. at 1 n.2 (STB served Jan. 9, 2006)).) According to the State, that is the case here. It contends that NRR ceased operations “years ago” and that, to the best of its knowledge, the operating agreement with NRR also expired “years ago when NRR ceased operations.” (South Dakota Notice 2-3.) The State also provides a copy of a certificate issued by the Office of the Secretary of the State of South Dakota, indicating that NRR is no longer recognized as a corporate entity in South Dakota as its authority to transact business was revoked in 2001. (*Id.* at 3.) No responses to South Dakota’s request have been filed.

DISCUSSION AND CONCLUSION

The Board has special rules for operations over rail lines that have been approved for abandonment and acquired (through purchase or lease) by states, including political subdivisions of states and instrumentalities through which states can act. 49 C.F.R. part 1150, subpart C; Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions 49 CFR 1120A, 363 I.C.C. 132 (1980), *aff’d sub nom. Simmons v. ICC*, 697 F.2d 326 (D.C. Cir. 1982). Carriers that operate such lines pursuant to a modified certificate are exempt from, among other things, the statutory requirements governing the termination of operations under 49 U.S.C. § 10903. 49 C.F.R. § 1150.22. Instead, operators under a modified certificate may terminate service after providing 60 days’ notice to the state entity, the Board, and all persons that have used the line within the six months preceding the date of the notice. 49 C.F.R. § 1150.24.

While the Board’s regulations require the operator itself to provide a 60-day notice of termination of service, the Board has accepted termination notices filed by line owners on behalf of operators where: (1) the operator has ceased operating on the line, (2) the agreement granting operating rights to the operator has expired, and (3) the operator is no longer recognized as a corporate entity in the state where the line is located. *See, e.g., S.D. Ry.*, FD 31874, slip op. at 2; Chesapeake R.R., FD 32609 et al., slip op. at 1 n.2.

The facts in this record mirror prior circumstances where the Board has accepted termination notices of modified certificates filed by line owners. South Dakota’s verified notice of termination indicates that, although the exact date is not known, NRR ceased operations over the Line “years ago,” and a different carrier, the Dakota Southern Railway Company (DSRC), is, and for many years has been, the only carrier providing service over the Line.³ (South Dakota Notice 2-3.) South Dakota also states that, to the best of its knowledge, the agreement that had set forth NRR’s rights to operate over the Line “expired years ago when NRR ceased operations.” (*Id.* at 3.) Finally, as noted above, the State has submitted a copy of a certificate

³ On March 23, 2021, DSRC filed a notice of intent to terminate its modified certificate to provide service over the Line. (Dakota S. Ry. Notice 1, Dakota S. Ry.—Modified Rail Certificate, FD 36291.)

indicating that NRR's authority to transact business in South Dakota was revoked in 2001. (Id. Ex. 2.) Neither NRR nor any other interested entity has appeared in this proceeding or challenged the State's evidence and argument.

Accordingly, the Board will accept the verified notice of termination filed by the State on behalf of NRR.

It is ordered:

1. The Board accepts the verified notice of termination filed by the State on behalf of NRR.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.