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SERVICE DATE – JUNE 21, 2019

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36291]

Dakota Southern Railway Company—Modified Rail Certificate

On April 17, 2019, Dakota Southern Railway Company (DSRC), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 C.F.R. pt. 1150 subpart C—Modified Certificate of Public Convenience and Necessity, to provide freight rail operations over approximately 187.98 miles of rail line owned by the State of South Dakota (State) and located between milepost 374.44 in Mitchell, S.D., and extending in a westerly direction to milepost 562.53 in Kadoka, S.D. (the Segment). According to DSRC, the Segment is part of a longer line from Mitchell to Rapid City, S.D. (the MRC Line). DSRC states that the MRC Line, which was formerly owned by the Milwaukee, St. Paul & Pacific Railroad Company, is now owned by the State.

DSRC states that, in 1980, the U.S. District Court for the Northern District of Illinois authorized the abandonment of the MRC Line, following the issuance of a report by the Interstate Commerce Commission recommending abandonment. See Ogilvie—Aban.—in S.D., Iowa & Neb., AB 7 (Sub-No. 88) (ICC served May 14, 1980).¹

¹ The Milwaukee Railroad Restructuring Act transferred jurisdiction over Chicago, Milwaukee, St. Paul & Pacific Railroad Company abandonments from the Interstate Commerce Commission to the U.S. District Court for the Northern District of Illinois. Ogilvie, AB 7 (Sub-No. 88), slip op. at 1.

According to DSRC, abandonment of the MRC Line was not consummated and instead the MRC Line was acquired by the State in 1980. (DSRC Notice 3.) DSRC states that the portion of the MRC Line west of Kadoka is now railbanked. See Mitchell-Rapid City Reg'l R.R. Auth.—Modified Rail Certificate—Between Caputa & Rapid City, S.D., FD 35149 (STB served Apr. 28, 2009) (issuing notice of interim trail use between milepost 659.6 to milepost 646.0); Sammamish Transp. Co.—Notice of Interim Trail Use & Termination of Modified Certificate, FD 33398 (Sub-No. 1) (STB served Feb. 26, 1998) (issuing notice of interim trail use between milepost 646.0 to milepost 562.53). In addition, DSRC states that, to the best of its knowledge, two carriers have obtained modified certificate rights to operate over portions of the MRC Line east of Kadoka but no longer exercise those rights.²

The verified notice indicates that the State leases the Segment to the MRC Regional Rail Authority (MRCA), a political subdivision of the State. In 2012, MRCA entered into a sublease with DSRC, which provides that DSRC will be the operator of the Segment and will assume all common carrier obligations to provide service on the Segment. (DSRC Notice Ex. C, 2 ¶ 6.) Under the terms of the sublease, DSRC will

² See Nobles Rock R.R.—Modified Rail Certificate, FD 33792 (STB served Sept. 16, 1999); Burlington N. R.R.—Operations—in States of Iowa & S.D., FD 29672 (ICC served Aug. 17, 1981). DSRC states that, to the best of its knowledge, Burlington Northern's rights were terminated by notice, (see Burlington N. R.R. Letter, Oct. 14, 1986, Burlington N. R.R., FD 29672), and Nobles Rock became insolvent and no longer exists. (DSRC Notice 4 n.2.)

provide rail service on the Segment for 20 years from and after the effective date of January 1, 2012.³ (Id. at 4 ¶ 17.)

According to DSRC, it interchanges with BNSF Railway Company (BNSF) at or near Mitchell, pursuant to interchange, trackage, haulage, and lease agreements with BNSF.

The Segment qualifies for a modified certificate of public convenience and necessity. See Common Carrier Status of States, State Agencies & Instrumentalities & Political Subdivisions, FD 28990F (ICC served July 16, 1981); 49 C.F.R. § 1150.22.

DSRC indicates that no subsidy is involved and that there are no preconditions that shippers must meet to receive rail service; DSRC also provides information regarding the nature and extent of its liability insurance coverage. See 49 C.F.R. § 1150.23(b)(4)-(5).

This notice will be served on the Association of American Railroads (Car Service Division), as agent for all railroads subscribing to the car-service and car-hire agreement, at 425 Third Street, S.W., Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street, N.W., Suite 7020, Washington, DC 20001.

³ DSRC states that it has been operating pursuant to the terms of the sublease since January 1, 2012. According to DSRC, SDR Holding Company, which controls DSRC, had been under the impression that a modified certificate previously had been issued. (DSRC Notice 2, 4-5.)

Board decisions and notices are available at www.stb.gov.

Decided: June 14, 2019

By the Board, Allison C. Davis, Director, Office of Proceedings.