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SERVICE DATE - JANUARY 19, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34646 (Sub-No. 1)]

D&I Railroad Company — Trackage Rights Exemption — State of South Dakota and
Sioux Valley Regional Railroad Authority

The State of South Dakota (the State) and Sioux Valley Regional Railroad Authority (SVRRA) have agreed to grant overhead trackage rights to D&I Railroad Company (D&I) over a State-owned line of railroad extending between milepost (MP) 533.4 near Elk Point, SD (also known as MP 0.0 at East Wye Jct.) and MP 511.90 in Sioux City, IA, including such yard tracks, sidetracks, and connecting tracks (existing or to be constructed) as are reasonable to interchange railcars with The Burlington Northern and Santa Fe Railway Company (BNSF), Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The total distance of the trackage rights to be granted to D&I is approximately 21.5 miles. The D&I-SVRRA transaction contemplated by the parties was scheduled to be consummated on or after January 5, 2005.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III carriers. Accordingly, the Board

may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

The notice of exemption filed in this docket was filed under 49 CFR 1180.2(d)(7). If the 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. 34646 (Sub-No. 1), 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 D&I's President: Jack Parliament, D&I RAILROAD COMPANY, P.O. Box 5829, Sioux Falls, SD 57117.

The notice of exemption filed with respect to the D&I-SVRRA transaction in this docket is related to a notice of exemption concurrently filed in a related docket: STB Finance Docket No. 34646, Sioux Valley Regional Railroad Authority — Trackage Rights Exemption — Lines of the State of South Dakota. The notice of exemption filed in the related docket contemplates SVRRA's acquisition from the State of the trackage rights that SVRRA intends to grant to D&I.

SVRRA and D&I have advised that the Elk Point-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. SVRRA and D&I have also advised: that, under the Operating Agreement, the State has the right to grant trackage rights on the Elk Point-Sioux City

line subject to certain BNSF consent; that, although the State has the right to grant trackage rights to SVRRA for operations by SVRRA's third-party operator (D&I), 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). SVRRA and D&I have further advised that they recognize that BNSF consent may have to be obtained, either voluntarily or through litigation, before D&I can commence trackage rights operations on the Elk Point-Sioux City line. SVRRA and D&I 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 30, 2004, BNSF has advised that it has not given its consent to the third-party trackage rights operation contemplated by SVRRA and D&I, which (BNSF adds) would violate the 1986 Operating Agreement. BNSF has further advised that, in its view, the filings by SVRRA and D&I 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 represent a determination, by the Board, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without

BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent.

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 the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City 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: January 12, 2005.

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

Vernon A. Williams

Secretary