

SOUTH DAKOTA STATE RAILROAD BOARD MEETING MINUTES
FEBRUARY 17, 2021 at 11:00 a.m. CST
BECKER-HANSEN BUILDING / DOT COMMISSION ROOM
700 EAST BROADWAY AVENUE, PIERRE, SOUTH DAKOTA

MEMBERS PRESENT: Jerry Cope, Chairman
Greg Carmon, Member

MEMBER PRESENT

VIA CONFERENCE CALL: Jeff Burket, Vice-chairman
Steve Scharnweber, Secretary/Treasurer
Jon Kirby, Member
Gary Doering, Member

DOT STAFF PRESENT: Joel Jundt, Karla Engle, Jack Dokken, and Kari Kroll

OTHERS PRESENT: Dick Huff, Alex Huff, Toby Morris, Steve Coomes – WATCO, and
Jimmy Patterson – WATCO

OTHERS PRESENT

VIA CONFERENCE CALL: John LeSuer – Slover & Loftus, Bruce Lindholm, and Heath Haden
– Dakota Southern Railway Company (DSRC)

Chairman Jerry Cope called the meeting of the South Dakota Railroad Board (the “Board”) to order at 11:00 a.m. CST. A roll call was taken, and a quorum was determined.

Cope opened the floor to the Board members to disclose potential conflicts of interest and to present request for waivers pursuant to the South Dakota Codified Law (SDCL) chapters 3 – 23.

Vice-chairman Burket and Cope both noted they would be recusing themselves during the discussion and any potential action on the *Consideration of Sale of Mitchell to Rapid City Rail Line* (the “MRC”) agenda item based on potential conflicts of interest disclosed previously.

Cope shared that the posted agenda order will be adjusted.

Cope asked for a motion for the Board to enter into executive session.

A MOTION WAS MADE by Carmon and seconded by Burket to enter into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters. All present voted aye by roll call vote. The motion carried.

Executive session began at 11:02 a.m. CST.

Cope called the meeting back into session at 11:35 a.m. CST. A roll call was taken, and quorum was determined with same members present (Burket, Scharnweber, Kirby, Doering, Carmon, and Cope).

Chairman Cope and Vice-chairman Burket recused themselves from the discussion of the proposed sale of the state-owned MRC rail line due to potential conflicts of interest that have been previously disclosed. Chairman Cope turned the meeting over to Board Secretary Steve Scharnweber.

Joel Jundt, Interim Secretary of the Department of Transportation (the "Department"), presented for the Board's consideration the proposed sale of the MRC Line to Ringneck and Western Railroad, L.L.C. ("Ringneck"), a new short line railroad that will be operated by Watco Transportation Services. Jundt shared the following highlights of the proposed sale agreement negotiated by the Department and Ringneck, including:

- PRICE: The purchase price is \$13 million total, with \$5 million paid at closing and the remaining \$8 million paid in equal installments over 5 years (\$1.6 million per year);
- The transfer will be done by quick claim deeds;
- Ringneck will purchase the rail from Rapid City to Mitchell but the Kadoka to Rapid City portion will remain railbanked and under the Department's trail sponsorship;
- Ringneck is asking for the termination of the Department's lease of the Maple Street Yard to American Colloid;
- Ringneck will initiate and pay for Surface Transportation Board ("STB") filings to complete its line purchase;
- Dakota Southern Railroad Company ("DSRC") will terminate its modified certificate operating rights with the STB;
- The lease between the Department and MRC Regional Rail Authority ("MRCRRA") and the sublease between MRCRRA and DSRC will be terminated, which will also terminate DSRC's purchase rights in the line.
- The loan agreement between the Department and MRC RRA will be assigned to Ringneck, and Ringneck will continue to make loan payments until paid in full.
- Upon closing of the sale, Ringneck will reduce the current surcharge for shippers from \$50 per car to \$25 per car.
- Ringneck will expend \$2.14 million per year for the first three (3) fiscal years after closing on track maintenance. For seven (7) years after that, Ringneck will spend an average of \$2 million on track maintenance.
- The State may repurchase the line if the line is proposed for abandonment or if existing service is discontinued.

- Once the meet and pass project funded by the Special Transportation Circumstances grant is constructed, Ringneck will pay the Department \$1.5 million over three years.

Scharnweber opened the floor to public comment.

Jerry Cope addressed the Board as an audience member asking about tax liability. Jundt shared it is an issue that needs to be cleared before the closing of the sale. Karla Engle, Office of Legal Counsel, shared the pages within the proposed sales document that address the issue of tax liability.

Jundt asked the Board to discuss the issue of the remaining \$25 per car surcharge and suggested that it should have an end date as part of the sale agreement. The Board discussed options to terminate the remaining \$25 per car surcharge within five or ten years after closing or completion of Ringneck's maintenance commitments.

With no further comments or questions from the Board or the public, Scharnweber asked for two motions.

A MOTION WAS MADE by Doering and seconded by Kirby to adopt a resolution to authorize the Secretary, Interim Secretary or his/her designee to execute the termination of the lease of the Maple Street Yard. All present voted aye by roll call vote except Cope and Burket who had recused themselves. The motion carried.

A MOTION WAS MADE by Kirby and seconded by Carmon to authorize the Secretary, Interim Secretary, or his/her designee to execute all documents necessary to sell the MRC line to Ringneck & Western Railroad, L.L.C. The sale shall be subject to: (1) the consent of the Governor; (2) the satisfaction of all contingencies set out in section 5 of the proposed agreement negotiated by the Department and Ringneck & Western Railroad, L.L.C.; and (3) termination of the remaining \$25 per loaded railcar surcharge within a time frame to be negotiated by the Department and Ringneck & Western Railroad, L.L.C. All present voted aye by roll call vote except Cope and Burket who were recused. The motion carried.

Cope resumed duties as Chair of the meeting.

Cope acknowledged a plaque donated by D&I Railroad Co. that will be given to former Secretary Darin Bergquist to honor his valued service to the railroad systems of South Dakota.

Cope asked for a motion to approve the December 16, 2020 Board meeting minutes.

A MOTION WAS MADE by Burket and seconded by Kirby to approve the December 16, 2020 Board minutes. All present voted aye by roll call vote. The motion carried.

Cope opened the floor to public input.

No members of the public addressed the Board or offered input.

Jundt presented to the Board the Secretary's Report. He updated the Board on current legislative status including SB93 which would allocate \$6 million to Rapid City, Pierre & Eastern (RCP&E) rail company for rail improvements west of Fort Pierre to Midland. This funding would be contingent on a federal grant that would be submitted by the Department with approval from the Board. Grant options would be a Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant and/or a Better Utilizing Investments to Leverage Development (BUILD) grant.

Jundt also asked the Board to consider potential 2021 CRISI and STC grants requests at its March meeting, with the goal of taking action at the April Board meeting. The Chair agreed to the request.

Jack Dokken, Program Manager for the Office of Air, Rail, and Transit, presented to the Board an update on the State Rail Plan.

Greg Carmon asked for an update on the Sisseton/Milbank bridge repair timeline. Dokken explained that progress is waiting for a response from the Federal Railroad Administration (FRA).

With no other business to come before the Board, Cope adjourned the meeting at 12:09 p.m.