

## Policies and Procedures

No. 12

**SUBJECT:**

**Board Approval:** 2/12/04

OWNERSHIP AND OPERATION OF THE SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY

**PURPOSE:**

To establish a method for handling matters relating to the management, operations, administration, and property of the San Diego and Arizona Eastern (SD&AE) Railway Company.

**BACKGROUND:**

The San Diego Metropolitan Transit System (MTS) purchased SD&AE as a means of assuring right-of-way for actual and proposed light rail transit (LRT) projects. Freight service is continued by contract over the SD&AE right-of-way by RailTex, Inc. through its subsidiary, San Diego Imperial Valley Railroad Company, Inc. (collectively referred to as "SD&IV"). MTS also contracts with San Diego Trolley, Inc. for passenger service.

1. Ownership. SD&AE is a nonprofit corporation registered in the State of Nevada. MTS is the sole owner of the SD&AE.
2. Freight Operations. Through an "Agreement for the Operation of Freight Service and Control through Management," dated March 8, 1984, SD&AE and MTS contracted with RailTex to operate freight service over the SD&AE and to manage the SD&AE. RailTex, Inc., with the consent of MTS, assigned its contract to SD&IV.
3. Transit Passenger Operations. The agreement between SD&AE, MTS, and RailTex for the operation of freight service excludes passenger operations. Where trackage is jointly used by passenger and freight operations the agreement states, "MTS, through San Diego Trolley, Inc., shall have exclusive dispatching control, provided that reasonable provisions shall be made for orderly, scheduled freight service during nighttime "window" or such other times



acceptable to San Diego Trolley, Inc. so as not to unreasonably interfere with the Operating Company's obligation to maintain effective freight service."

4. Management of the SD&AE. The Board of Directors of SD&AE is composed of a representative of MTS, to be selected by MTS (currently the Chief Executive Officer or his designated representative) and two representatives of SD&IV, to be selected by SD&IV. In the event that SD&IV defaults with regard to freight operations, MTS (as the owner of the SD&AE) has the right to remove SD&IV directors on the SD&AE Board and replace them with MTS directors. SD&IV provides management for SD&AE. It is contemplated that SD&AE will function as a land-holding company as opposed to acting as an operator.

POLICY:

1. Management Relationships—Freight Operations. MTS has no immediate involvement in the day-to-day management of freight operations by SD&IV. All matters concerning freight shippers, the quality of freight service, the maintenance of the freight right-of-way, freight operator labor and freight management will be handled by SD&IV, and all problems relating thereto will be referred thereto by MTS without action.

The foregoing notwithstanding, as a public agency, MTS may be subject to criticism by the public for freight operations conducted over the SD&AE right of-way. MTS can be expected to request certain actions or make certain recommendations to SD&IV to preserve a positive quality of freight service and community confidence in MTS and SD&IV. MTS will in such instances endeavor:

- (a) to work with SD&IV;
- (b) To identify SD&IV as the action agent in all public communications and actions; and
- (c) only in extreme cases involving public safety or dereliction of service responsibility seek direct action from the Boards of Directors of SD&AE and MTS.

2. Management Relationships—Joint Operations and Right-of-Way Matters. As the owner of SD&AE, MTS will have the final decision in all matters involving joint operation and right-of-way. The desires of SD&IV as freight operator and the desires of San Diego Trolley, Inc. as transit passenger operator will, at all times, be given full consideration. SD&AE may take actions affecting the operational status of the joint passenger/freight corridors (actual or proposed) and the physical status of all corridors only with the full prior knowledge and consent of MTS. Such actions will include but not be limited to:

- (a) The granting, changing, or canceling of easements and other rights affecting the right-of-way.
- (b) Changes in scheduled freight operations, equipment, and maintenance that might impact passenger operations, safety, and service.

- (c) The negotiation and agreement with local government entities and agencies on matters concerning grade crossings, street improvements or changes, bicycle paths, pedestrian access, and public safety.
- (d) The location, construction, and content of advertising structures.
- (e) The review of adjacent improvements (subdivisions, rezonings, construction of industrial facilities and shopping centers, recreational facilities, etc.) that might impact passenger operations directly or indirectly through constraints imposed on passenger or freight operations. SD&IV shall work with the MTS staff in all matters where the SD&AE is the legal entity entering agreements, granting rights, making concessions, reviewing proposals, or otherwise interacting with the community.

In the event that MTS staff and SD&IV staff are unable to reach an agreement, the matter, with SD&AE Board action, will be referred to the MTS Board of Directors and the SD&IV Board of Directors for resolution within the scope and authority legally residing with the various parties to the dispute.

3. SD&AE Monitoring by MTS.

- (a) Participation on Board. Board membership on the SD&AE gives MTS management a direct line of communication on all significant matters relating to the SD&AE.
- (b) Quarterly Reports to MTS Board. On a quarterly basis, SD&IV management is required to report items of significance as they affect the SD&IV and its operations to MTS.
- (c) Monthly Review. MTS staff will confer with SD&IV staff on a regular basis, such conferences to include a review of the following areas:
  - (1) Cash-flow problems/financial status.
  - (2) Requests for changes, additions, deletions of easements and other rights affecting the right-of-way, and physical assets of the SD&AE.
  - (3) Maintenance of way activities.
  - (4) Customer complaints.
  - (5) Schedule adherence/problems.
  - (6) Freight moved.
  - (7) Customers gained/lost.
  - (8) Capital investment activities.

- (9) Marketing efforts.
  - (10) Labor relations/employment level.
  - (11) Community relations—noise, crossings, accidents, repair upgrading requests, easements/property requests.
  - (12) Results of Federal Railroad Administration (FRA)/Public Utilities Code (PUC) Inspections.
  - (13) Other areas of concern.
- (d) MTS or its representatives shall have the unrestricted right at all reasonable times to inspect and audit the physical properties, books, and records of SD&AE and the SD&IV, and the physical properties, books, and records of the freight and transit operators, which are pertinent to SD&AE freight and/or transit operations.

Audits, reviews, and/or inspections will be conducted at least once a year.

#### PROCEDURES:

1. Matters Related to Freight Operations. All inquiries, requests, complaints, and suggestions concerning freight operations received by MTS will routinely be referred to SD&IV by MTS. SD&IV management will, to the extent possible and subject to limitations of this policy and the written agreement between the parties, resolve the matter directly with the initiator without participation by MTS. MTS will not be or become an ombudsman in freight matters. However, public safety or other public considerations may indicate MTS involvement from time to time; for example, as a mediator or communications conduit. The delicate balance required is to show MTS acting responsibly and constructively while not undermining the authority of SD&IV as the action agent.
2. Matters Related to Joint Operations and Right-of-Way Considerations. All inquiries, requests, complaints, suggestions, and actions to be taken with regard to transit passenger operations and joint-track operations will be referred to San Diego Trolley, Inc.
3. Processing Applicants Affecting SD&AE or MTS Property. All applications and requests relating to SD&AE or MTS property will be referred to MTS staff for initial review, recommendation, and processing:
  - (a) All applications that seek rights to construct items such as utilities, drainage structures, roadway improvements/widening, signs, or freight leads will be reviewed by MTS staff.
    - (1) All applications that may affect other SDTI or SD&IV operations will be referred in writing by MTS staff to SDTI and SD&IV with replies in writing requested by a specific date.

- (2) Applications viewed favorably by the applicable staffs shall be referred to the Board of Directors of SD&AE for implementation and final endorsement by the MTS Board of Directors or the Board's designate.
  - (3) Where appropriate, general counsel for MTS and the MTS insurance consultant will review proposed actions and comments and/or make recommendations.
  - (4) Where circumstances dictate expedited handling, the MTS Chief Executive Officer may, with consent of SD&IV management, grant a temporary right of entry if the applicant's activity will not be detrimental to freight and/or transit operations and/or safety.
  - (5) All final agreement documents between SD&AE and/or SD&IV management and applicants will be reviewed by MTS general counsel before execution. Such agreements will utilize standard forms and conditions where possible.
  - (6) MTS staff will maintain a log of all applications. Staff will ensure that prompt action is taken at each step so that applications may be promptly processed.
  - (7) MTS shall establish and charge applicants fees for such processing, based upon the actual costs incurred, as determined by the Director of Engineering and Construction. Such fees shall be waived when the applicant is SD&IV or SDTI.
4. Use of Fees Paid by SD&IV and Railway Museum. Such fees shall be reserved by MTS in a rail improvement fund and made available to SD&AE for such capital improvements and other rail uses as may, from time to time, be recommended by SD&IV and approved by MTS. Monies existent in this rail improvement fund shall be invested in accordance with MTS's applicable statutes and the interest earned on the invested money shall accrue to the fund. Those fees paid by the Railway Museum shall be used on capital improvements and other rail uses within the areas or properties licensed for museum use.

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POLICY.12.OWNERSHIP OPERATION SDAE RAILWAY CO  
7/11/06

Original Policy adopted on 1/14/80.  
Policy revised 2/28/83.  
Policy revised 10/18/84.  
Policy revised 6/25/92.  
Policy revised/renumbered on 2/12/04.