

Before the
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
December 2, 2020
Part of
Public Record

STB Docket No. FD 36447

**LAKE PROVIDENCE PORT COMMISSION – FEEDER LINE
APPLICATION – LINE OF DELTA SOUTHERN RAILROAD
LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

**REPLY OF DELTA SOUTHERN RAILROAD, INC.
TO PETITION SEEKING EXPEDITED CONSIDERATION OF FEEDER LINE
APPLICATION AND THE ACCEPTANCE OF THE APPLICATION PRIOR TO THE
DETERMINATION OF THE CONSTITUTIONAL MINIMUM VALUE OF THE
PROPERTY THAT IS THE SUBJECT OF THE APPLICATION**

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Attorneys for
Delta Southern Railroad, Inc.*

Dated: December 2, 2020

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36447

**LAKE PROVIDENCE PORT COMMISSION – FEEDER LINE
APPLICATION – LINE OF DELTA SOUTHERN RAILROAD
LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

**REPLY OF DELTA SOUTHERN RAILROAD, INC.
TO PETITION SEEKING EXPEDITED CONSIDERATION OF FEEDER LINE
APPLICATION AND THE ACCEPTANCE OF THE APPLICATION PRIOR TO THE
DETERMINATION OF THE CONSTITUTIONAL MINIMUM VALUE OF THE
PROPERTY THAT IS THE SUBJECT OF THE APPLICATION**

Delta Southern Railroad, Inc. (“DSRR”) hereby respectfully submits this Reply as permitted pursuant to 49 C.F.R. §1104.13 to the petition filed on behalf of the Lake Providence Port Commission (“LPPC”) and Southeast Arkansas Economic Development District (“SEAEDD”)¹ seeking expedited consideration of its feeder line application and acceptance of the application prior to the determination of the constitutional minimum value of the property that is subject to the application (the “Petition”). DSRR will submit its response to the LPPC Feeder Line Application (the “Application”) if the Board accepts the Application, and in accordance with the procedural schedule that would be established by the Board at that time. *See* 49 C.F.R. §1151.2(b)(1).

As discussed below, no justification has been provided for the Board to accept an incomplete application or otherwise grant expedited consideration. A grant of the Petition would

¹ SEADD is not the applicant or a party to the associated feeder line application, and thus it is unclear as to how it qualifies to be a petitioner or seek the relief requested.

deprive DSRR the opportunity to make a full and fair review all of the information required by the Board's regulations, and accordingly, the Petition should be denied.

BACKGROUND

DSRR is a Class III railroad that operates rail lines in Louisiana, including the rail line that it owns between Tallulah (milepost 500) and Lake Providence Port (milepost 471.0) (the "Eastern Line").² Since 2015, DSRR has been owned by West Branch Intermediate Holdings, LLC, ("West Branch") and managed by Continental Rail, LLC ("Continental").³ Under its new ownership and management DSRR invested heavily in the Eastern Line, clearing overgrowth, adding ties and upgrading bridges. Although some of the track remains as Federal Railroad Administration ("FRA") "excepted" track, all of it is serviceable and open. However, the only requests for service over the Eastern Line for the last several years has been traffic to be moved south from Madison Parish Port (milepost 491.0) to Tallulah.

On November 12, 2020, LPPC filed the Application under the feeder line statute and regulations seeking to force DSRR to sell the northern two-thirds of its Eastern Line between Madison Parish Port (milepost 491.0) and Lake Providence Port (milepost 471.0) (the "Subject Segment") to LPPC. A central element driving the Application appears to be a \$10,000,000 INFRA grant that SEAEDD was awarded by the FRA in 2019 for improvements to the 100-mile corridor between Tallulah and McGehee, Arkansas, and where and how DSRR should spend the portion (approximately \$2,000,000) of the INFRA grant allocated to DSRR.⁴ LPPC wants it all spent on the Subject Segment, while DSRR disagrees.

² DSRR also operates a line that it leases from Union Pacific Railroad between Monroe (milepost 566) and Sterlington (milepost 554), Louisiana (its "Western Line").

³ Both West Branch and Continental are non-carriers that control only one carrier, DSRR.

⁴ In the grant application process, DSRR never committed to the FRA or to any of the other participants to provide any "matching funds" for the INFRA grant; LPPC and Madison Parish

Along with the Application, LPPC filed the Petition seeking “expedited consideration” of the Application, and acceptance of the Application prior to the determination of the Constitutional minimum value. LPPC asks for “expedited consideration” because of unspecified time constraints on SEAEDD in the INFRA grant. Additionally, or as part of the “expedited consideration,” LPPC requests that the Board accept the Application and begin consideration of the Application although the Application admittedly is missing one of the required elements – Applicant’s estimate of “Constitutional Minimum Value.” *See* 49 C.F.R. §1151.3(a)(4) (requiring an estimate of net liquidation value and going concern value, and supporting evidence). Applicant blames the omission on the prior commitments of its selected valuation contractor and the pandemic.

ARGUMENT

LPPC has not set forth any basis for the Board to accept an incomplete Application, or otherwise expediting consideration of the Application. Because the feeder line process is a drastic remedy that forces a carrier to sell all or a portion of its lines, the Board’s regulations provide a detailed process for review of an application, and provide the incumbent carrier an adequate opportunity to review all of the information included in the application before requiring a response. The Board, through the Director of the Office of Proceedings, must first confirm within 30 days that the application is substantially complete. 49 C.F.R. §1151.2(b)(1). Once it is accepted, the Board will also set a procedural schedule that is to provide the incumbent carrier an initial 60-day period to respond. 49 C.F.R. §§1151.2(b)(1), (f). Further, while the regulations provide that extensions of filing dates may be granted for good cause (49 C.F.R. §1151.2(g)),

Port committed to provide those funds (including the shortfall between the \$25,000,000 requested and the \$10,000,000 awarded). *See* Petition at 2, 3.

there are no regulations that provide for shortening the periods for considering or responding to an application.

It is not clear from the Petition whether it seeks any expedited consideration other than the acceptance of the admittedly incomplete Application. No specific deadlines or dates have been cited in connection with the INFRA grant which has already been awarded, and the Application acknowledges that the proposed improvements to the Corridor will take an unknown period of time. *See generally*, Application, p. 4, ¶ F. No suggested changes to the Board's procedural schedule have been proposed, nor would any be justified given the paucity of information provided in the Petition.

Moreover, the Petition acknowledges that its Application is incomplete because it is missing an estimate of net liquidation value and going concern value, and supporting evidence. Petition, pp. 4-5. *See also* Application, p. 4, ¶ B. As the provision of this information within LPPC's control (it could have hired a different valuation expert if its initial choice was unavailable and it did not want to wait to file the Application),⁵ there is no basis for the Board to accept the Application without this essential element.

The Application is also missing several other required elements. It lacks the dates for proposed operation (Application, p. 4, ¶ F), an operating plan (Application, p. 5, ¶ G), and proof of liability coverage (Application, p. 4, ¶ H). Additionally, the Application does not include any information demonstrating that the proposed operator (North Louisiana & Arkansas Railroad) has the financial ability to maintain and operate the Subject Segment for three years without preconditions or subsidy. 49 C.F.R. §1151.3(c)(3); Application, p. 4, ¶ C, p. 5-6 ¶¶ I, J.

⁵ Neither LPPC nor its valuation expert has yet asked DSRR for permission to enter onto the Subject Segment to inspect the line. DSRR will grant such permission subject to all persons entering onto the property executing a right of entry form agreeing to waive liability and to repair any damage done to the property.

Even where the Board determines to conditionally accept an application, the regulations provide that it will wait until all of the missing information is provided before publishing the initial Federal Register notice with the procedural schedule. 49 C.F.R. §§1151.3(d)(2) and (3). Thus, in the event the Board were to conditionally accept the Application without the estimates of NLV and GCV and supporting evidence (or the other missing information), there is no basis for expediting consideration of the Application, for publishing the Federal Register notice or establishing a procedural schedule until all of the required information is provided. DSRR must be given the full opportunity to review all of the required information before it is required to respond.

CONCLUSION

For the reasons stated above, DSRR respectfully requests that the Board deny the Petition's requests for expedited consideration and acceptance of the application prior to the determination of the constitutional minimum value of the property.

Respectfully submitted,



Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Attorneys for Delta Southern Railroad, Inc.

Dated: December 2, 2020

VERIFICATION

I hereby verify on behalf of Delta Southern Railroad, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on December 2, 2020.



John H. Marino, Jr., Manager

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing documents was served by email (where indicated) and U.S. first class mail, postage pre-paid on the following:

Mr. Richard H. Streeter
5255 Partridge Lane, NW
Washington, DC 20016
rhstreeter@gmail.com

Louisiana Public Service Commission
Galvez Building
12th Floor
602 North Fifth St.
PO Box 91154
Baton Rouge, LA 70821-9154

East Carroll Parish
400 First St.
Lake Providence, LA 71254

Madison Parish
100 North Cedar St.
Tallulah, LA 71282



Justin J. Marks

Dated: December 2, 2020