

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
March 1, 2021
Part of
Public Record

Finance Docket No. 36447

LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN
EAST CARROLL AND MADISON PARISHES, LA.

REPLY TO DELTA SOUTHERN RAILROAD, INC.'S
PETITION FOR ISSUANCE OF A SUBPOENA

North Louisiana & Arkansas Railroad (NLA), by and through undersigned counsel of record, requests the Board to deny Delta Southern Railroad, Inc.'s (DSR) Petition seeking the issuance of a subpoena. In reaching its decision, the Board is requested to focus on DSR's frank admissions at page 1 of its concurrently filed *Reply in Opposition to Motion Seeking Entry of Protective Order* that Lake Providence Port Commission (LPPC) "seeks to force DSR to relinquish ownership of an *inactive railroad line*", and that DSR is the owner of the "*long-out-of-service railroad line* that is the target of LPPC's Application." (Emphases added).

Given DSR's admission that the railroad line has been long-out-of-service, the only legitimate question in this proceeding is why DSR refused to remedy the situation by upgrading its tracks. Instead of actively encouraging new business, DSR, which is knowledgeable about

the entire line and every potential shipper that is located along the entire corridor, has discouraged shippers from tendering traffic by (i) refusing to bring the railroad line back into service and (ii) by blocking the movement of traffic over the Segment with over ten miles of empty rail cars stored on the main line. There are no hidden motives behind LPPC's decisions to file its Feeder Application and contract with NLA to extend its operations. There is only the obvious need to rebuild the *entire* Corridor consistent with the goals of the INFRA Grant. In short, there is no need whatsoever for any discovery.¹

In its Petition and concurrently filed Motion, DSR has acknowledged that NLA has offered substantive responses to DSR Interrogatories 7-10, 12-23, 25-26, and 28-31. DSR, however, has sought to cast doubts on the veracity of NLA's witnesses who, through no fault of their own,² did not comply with 49 C.F.R. § 1114.26(a) by failing to sign and subscribe by an appropriate verification generally in the form prescribed in § 1112.9. To "cure" this problem, appropriate verifications

¹ Despite the lack of need, Respondents have been forced to spend over a hundred hours reviewing years of emails and other matters to respond to DSR's Interrogatories, while in LNA's case, running a railroad during the Pandemic and during a major winter storm. Most importantly, DSR's interrogatories do not relate to the Feeder Application, which was filed as an emergency response to DSR's refusal to commit to the rehabilitation of the Segment between MP 471 and MP 491.

² Counsel accepts full responsibility for not including the verifications with the Motion Seeking Entry of Protective Order that incorporated NLA's responses and objections.

are being submitted as an attachment to this Reply for all of the Respondents.

Interrogatories Nos. 1 through 6 and 11.

NLA respectfully submits that because past shipper information is not at all relevant to the issues facing the Board, such information will not affect the outcome of this proceeding. As the Board has recognized:

[P]arties are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter in a proceeding.” 49 C.F.R. § 1114.21(a)(1). “The requirement of relevance means that the information might be able to affect the outcome of a proceeding.”

Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions, FD 35557 at 2 (STB served March 5, 2012).

As LPPC’s Feeder Application and Southeast Arkansas Economic Development District’s (SEAEDD) INFRA Grant Application reflect, they are focused on the need to rehabilitate the *entire* Corridor to make it possible for shippers to move their traffic safely and economically by rail. This has not been possible due to the deteriorated condition of the infrastructure attributable to the refusal and inability of the prior owner of the track and DSR to address the situation.

DSR ostensibly seeks information from NLA regarding the prior “inability of DSR and NLA to develop any meaningful interchange business over the years, ...[and to] assist DSR in addressing the substance and merit of the claims contained in LPPC’s Application that

rely on through traffic expectations.”³ DSR does not need to burden NLA to ferret out the full extent of past shipments and conversations that NLA has had with “customers or would-be customers on the DSR Line” since January 2015. The reasons behind the inability of DSR and NLA to develop any meaningful interchange business over the years are well known to DSR.

If DSR requires additional information, it should carefully review the FY 17-18 and FY 19-20 INFRA Grant Applications which detail in depth the reasons why it has been difficult to develop interchange business. Due to its participation in the INFRA Grant process that began on September 26, 2016, at DSR’s office in Tallulah; its past ownership of the Corridor; and joint marketing efforts with NLA, DSR does not need duplicate information that is already in its possession.

NLA submits that DSR appears to be searching for reasons to blame NLA for the lack of interchange traffic that would warrant DSR’s expenditure of funds to maintain its own tracks. This approach has been taken despite sworn evidence of record that DSR has repeatedly declined to interchange cars that NLA sought to interchange and its current admissions that the line is a long-out-of-service railroad line.

DSR gravely distorts the situation by suggesting that Mr. Robbins in his Verified Statement in support of LPPC’s Feeder Application listed

³ DSR Petition at p. 3.

“the names of ‘multiple customers’ on NLA who would ship over the DSR Line segment *if* DSR were forced by Board order to relinquish that railroad property.”⁴ The named shippers would have shipped future traffic via DSR over the Segment had it opted to restore its track. However, by refusing to make the repairs, DSR took itself out of the game and created the need for LPPC (not NLA) to request the Board, upon finding that the public convenience and necessity require or permit the sale of the Segment, to exercise its statutory authority to force the sale of the Segment.

While DSR insists that “NLA clearly believes that it has information relative to the traffic that LPPC envisions would move over the DSR Line, and the volume of such traffic,” such is not the case. In responding to Interrogatories Nos. 22 and 23, NLA’s President and Vice-President have already responded that “NLA has made no projections regarding the number of loaded railcars to be moved over the Segment.”⁵ In addition, they have also stated that “NLA has made no projections regarding the revenue to be earned for the movement of rail traffic over the Segment.”⁶ Simply put, they, as well as LPPC, SEAEDD and MPPC, have placed their faith in the assumption that if the entire line of railroad is rebuilt, the shippers will come. In short, unlike DSR, NLA believes in the project in

⁴ Petition at p. 3 (emphasis added).

⁵ Motion Seeking Entry of Protective Order, NLA’s Response to Interrogatory 22.

⁶ *Id.* NLA’s Response to Interrogatory 23.

which it and the others have invested countless hours of time, cash and research.

Moreover, interrogatories that seek information to highlight past movements of freight in interchange service over the Segment are not relevant in any reasonable manner to the issues involved in the Feeder Application. Instead, such interrogatories are intended to seek information that justifies DSR's refusal to rehabilitate the segment of its track. That there may be little current interchange traffic over the entire Corridor is of no moment. The obvious purpose and goal of the INFRA Grant is to encourage future interchange of traffic.

Confidential shipper information that dates to January 1, 2015, necessarily reflects the lack of reliable rail service over the entire corridor. Such information will be useless once the rehabilitation is completed, and therefore is not relevant in this proceeding.

NLA acknowledges that it has encountered difficulties in the past due to the past owner's inability to properly maintain the Corridor. Not only has it invested over \$2,000,000 to upgrade its segment of the Corridor, NLA has committed additional corporate funds to partially match the INFRA Grant. The same is true of SEAEDD, LPPC and MPPC, each of which have agreed to spend millions of dollars to cover the shortfall from the INFRA Grant funding. Only DSR, the owner of a crucial segment of a line of railroad, has refused to provide matching funds.

Interrogatory No. 24

This interrogatory request all Communications between NLA and HDR regarding the Grant, the Corridor, the Segment, or the Application. HDR was hired by SEAEDD to prepare the Grant Application. NLA adopts by reference its response in the Motion for Protective Order filed February 18, 2021 in this proceeding. In further answer, NLA states that it did not have any communications with HDR regarding the Feeder Application or the Segment that is owned by DSR. Any information provided to HDR for purposes of the Grant Application and the segment of the Corridor that is owned by NLA is not relevant for the reasons stated above. In any event, NLA intends to rehabilitate its segment of the Corridor utilizing Grant Funds in accordance with the Grant Agreement.

Interrogatory 27

In its Response to DSR's Interrogatory 27, which sought all versions of the "Consortium Agreement" that is referenced on p. 11 of the Feeder Application, NLA stated that because SEAEDD had prepared and circulated the drafts of the Consortium Agreement that "NLA must leave it to SEAEDD to respond." On February 26, SEAEDD provided copies to DSR of all versions of the Consortium Agreement , including the July 30 draft that had been previously provided to DSR, which triggered DSR's refusal to commit to the rehabilitation of the Segment at issue herein.

DSR's Remaining Contentions Are Groundless.

DSR's contention that the Feeder Line Application is a conspiracy "to divest DSR of its railroad assets"⁷ so that NLA can "operate over those railroad assets in place of DSR"⁸ should be summarily rejected. Nothing could be further from the truth.

If DSR had stepped up to the plate in August 2020, no feeder line application would have been filed. Instead, DSR engaged in a duplicitous breach of trust by not being forthcoming or straight forward from the outset regarding its actual intent, which was to use INFRA Grant funds only to rebuild its tracks between the point where it interchanges with KCS and MP 491. That DSR would not rehabilitate the twenty-mile Segment, but would retain ownership of that segment of its mainline and continue to use it for storage of rail cars, was never disclosed to its partners. While that currently would be a more lucrative practice for DSR than "reactivating" the Segment and holding out rail service to shippers, it is contrary to the public convenience and necessity.

DSR participated in the INFRA Application process and never indicated that it would not make the needed repairs and would ultimately benefit from the anticipated growth of rail traffic. As a result, LPPC *never* considered filing a feeder application until DSR made it

⁷ DSR Motion at 2.

⁸ *Id.*

crystal clear that it would not commit to making the necessary repairs to the Segment of the railroad line that is at issue herein. Finally, there is nothing to suggest that NLA is trying to take anything from DSR. From the beginning, NLA has participated in the INFRA Grant process to obtain federal funds that will allow it to rehabilitate its segment of the line of railroad to FRA Class 2 status. It was only after DSR chose not to commit that LPPC requested NLA to agree to extend its operations following LPPC's acquisition of the track between MP 471 and MP 491.

Respectfully submitted,

/s/ Richard H. Streeter

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Lake Providence Port Commission
Southeast Arkansas Economic
Development District

Dated March 1, 2021

AFFIDAVIT

STATE OF ARKANSAS)
) ss:
COUNTY OF POPE)

Timothy K. Robbins, being duly sworn, states that he is the President of North Louisiana & Arkansas Railroad (NLA), and that the facts asserted in the *Motion Seeking Entry of Protective Order Requested By North Louisiana & Arkansas Railroad*, whereby NLA responded to 22 of 31 of Delta Southern Railroad's *First Set of Interrogatories*, are known to him to be true and that the same are true as stated.

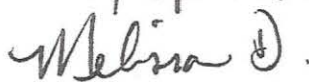
FURTHER SAYETH THE AFFIANT NOT.

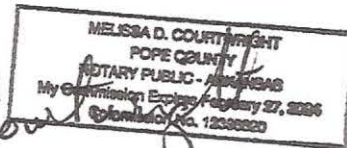

Timothy K Robbins

Subscribed and sworn to before me this 1st day of March 2021.

Notary Public of Pope County, Arkansas

My Commission expires 02/27/2024





AFFIDAVIT

STATE OF ARKANSAS)
) ss:
COUNTY OF POPE)

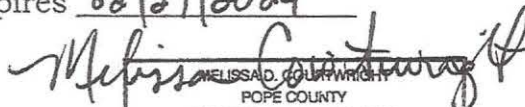
Daniel B. Robbins, being duly sworn, states that he is the Vice President of North Louisiana & Arkansas Railroad (NLA), and that the facts asserted in the *Motion Seeking Entry of Protective Order Requested By North Louisiana & Arkansas Railroad*, whereby NLA responded to 22 of 31 of Delta Southern Railroad's *First Set of Interrogatories*, are known to him to be true and that the same are true as stated.

FURTHER SAYETH THE AFFIANT NOT.



Daniel B. Robbins

Subscribed and sworn to before me this 1st day of March, 2021.
Notary Public of Pope County, Arkansas
My Commission expires 02/27/2024


MELISSA D. COURTWRIGHT
POPE COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires February 27, 2024
Commission No. 1239820

CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that on this 1st day of March 2021, I served a true copy of the foregoing on Thomas J. Healey, counsel for Delta Southern Railroad, Inc. at THealey@fletcher-sippel.com.

/s/ Richard H. Streeter