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ENTERED
Office of Proceedings
March 22, 2021
Part of
Public Record

March 22, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: **Docket No. FD 36447**
Lake Providence Port Commission – Feeder Line Application –
Line of Delta Southern Railroad Located in East Carroll and
Madison Parishes, Louisiana

Dear Ms. Brown:

Delta Southern Railroad, Inc. (“DSR”) hereby responds to “Respondents’ Reply to [DSR]’s Motion to Strike” (the “Reply”) filed on March 12, 2021.¹ The Reply isn’t really a defense against DSR’s March 8, 2021 Motion to Strike – to which it ostensibly is addressed – but is rather an effort to buttress (impermissibly) Lake Providence Port Commission’s (“LPPC”) deficient Feeder Line Application with new evidence and false allegations. As such, the Reply warrants a response.

“Who is driving the train,” indeed. The late arrival of new parties prejudices DSR.

Preliminarily, DSR observes that the subject Feeder Line Application was filed by LPPC, and LPPC alone, on November 12, 2020. That same day, Southeast Arkansas Economic

¹ Under 49 C.F.R. § 1104.13(c), the Board generally prohibits a “reply to a reply.” But DSR requests leave to submit a brief response strictly to defend itself against procedural abuse (and, as part of that, to urge the Board’s restoration of order in response to LPPC’s undisciplined supplementation of its Feeder Line Application without leave from the Board to do so), and as necessary to rebut false claims that DSR is unable and unwilling to handle through traffic in interchange with North Louisiana & Arkansas Railroad (“NLA”).

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Development District (“SEAEDD”) joined LPPC in seeking expedited consideration of the Feeder Line Application. Thereafter, NLA’s counsel (also counsel for LPPC and SEAEDD) advised that NLA was not a party, thus, in NLA’s view, insulating NLA from discovery that DSR sought of it. Madison Parish Port Commission (“MPPC”), also represented here by counsel for LPPC, SEAEDD and NLA was, ostensibly, only an interested third party, but not itself an active party to this proceeding. However, as of a March 5, 2021 Reply to DSR’s Motion to Dismiss, all four (none of which is a shipper – *in fact, there are no shipper parties to this proceeding*) emerge as parties of record, and all four are co-“Respondents” to DSR’s March 8, 2021 Motion to Strike. DSR objects to NLA’s and MPPC’s last-minute interventions (without leave to do so) as prejudicial to DSR and abusive of the Board’s procedures. As the Board knows, NLA has invoked non-party status in an attempt to evade discovery responses that it did not want to supply. Now, it is unclear whether DSR would have a full and fair opportunity to undertake discovery of MPPC. MPPC’s maneuver may have been intended to avoid becoming subject to DSR discovery, as NLA had attempted. If NLA and MPPC are permitted now to join as co-Respondents and new parties to the proceeding in support of the Feeder Line Application, then DSR must be afforded additional time to take discovery as necessary.

The Respondents cannot resist engaging in the abusive tactic of supplementing the Feeder Line Application whenever, and with whatever, they choose.

New uncertainty over who, exactly, the applicants in this proceeding are aside, a feeder line applicant must provide all of the evidence needed to establish the elements of its case in chief at the time it files its application. *Keokuk Junction Railway Company – Feeder Line Acquisition – Line of Toledo, Peoria and Western Railway Corporation between La Harpe and Hollis, IL*, FD 34335 (STB served Feb. 7, 2005), 4. It is hard to see how the law could provide anything else. A railroad facing the extreme potential of being compelled to sell a portion of its rail system against its will must be advised in the application of the nature and extent of all of the facts and allegations. Time is needed to investigate the facts and applicable law, and to respond. If necessary elements of a case were to be withheld, the feeder line target would be deprived of critical due process. Further, allowing an applicant to tender new facts, allegations and arguments, and to insert new parties into the proceeding months after the Feeder Line Application was filed, would frustrate the Board’s discovery processes.

The Respondents’ (or LPPC’s) repeated efforts to supplement the record without justification or leave from the Board tacitly acknowledge the Feeder Line Application’s fatal defects. The Respondents assert that they are entitled to point to “evidence that is contained in the Application” to defend against DSR’s Motion to Strike, which is reasonable and to be expected, but they add, alarmingly and without support, that they also “must be permitted to . . . offer additional evidence” not in the Feeder Line Application to defend against DSR’s Motion to Dismiss. Reply, 3. Such a position calls for Board intervention. The Respondent’s cannot be right in asserting entitlement to shore up a deficient Feeder Line Application by tossing new evidence, allegations and argument into the ring as they see fit. If nothing else, Respondent’s

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piecemeal development of the record also places DSR into the untenable position of having to guess what constitutes the record at this point.

Either the Respondents should seek permission to supplement the Application and join in it, at which time a new procedural schedule can be set that would afford DSR the opportunity to take discovery on *all* parties and test through discovery *all* allegations of fact, or LPPC alone should address DSR's Motion to Strike by relying exclusively on the evidence and argument contained in the Feeder Line Application, as supplemented by order of the Board on December 11, 2020, and nothing else. Anything beyond that, and the Respondents will have engaged in impermissible abuse that the Board must not sanction.

The Feeder Line Application is fatally deficient because DSR overhead service is available, and, although the evidence shows it isn't needed anyway, has not been proven to be inadequate.

The Feeder Line Application is not premised upon inadequate service to customers located on the Line (there are none), nor upon evidence showing that DSR's overhead service in conjunction with NLA is inadequate (currently, none exists due to the absence of any such demand). Rather, the Feeder Line Application's basis for relief, as is reflected in Respondent's Reply to the Motion to Strike, is either that the Line is impassable, or that DSR refuses to interchange traffic with NLA. But, aside from the fact that NLA and DSR customers have adequate overhead service options already (without the need for either DSR or NLA to serve as an overhead carrier for the other), DSR *can* provide overhead service upon reasonable request for NLA customers to reach a KCS interchange at Tallulah, and is willing to provide DSR customers access to NLA overhead service, and it is *willing* to do so. Respondent's latest assertion that "DSR overhead service is not available at all" (Reply, 3) is completely false, and, thus, there is no evidence of any inadequate DSR service, *a fortiori, ipso facto, ad hominem*, or otherwise.

Stored cars do not render the Line "impassable," as Respondents inexpertly assume and claim. Stored cars are moveable, and can be re-positioned, if needed, to clear a path for DSR-NLA interchange (and overhead) traffic. For example, DSR routinely moves cars into and out of the storage, wherever they are located, when requested by a car owner or lessee. Thus – *and to be very clear* – if DSR were advised of a request for movement of traffic via the DSR-NLA interchange at Lake Providence (and no such requests have arisen to DSR's knowledge in the recent past) DSR would arrange to move such traffic as directed to or from that interchange. The Respondents statement to the contrary is false: *DSR overhead service is available.*

Finally, the Respondents have falsely, and without any supporting evidence, alleged, once again, that DSR will not interchange freight traffic with NLA at Lake Providence. Reply, 4. While not knowing exactly how to rebut this negative, DSR will state once again that

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the Lake Providence interchange with NLA is open, and DSR will interchange freight traffic with NLA if called upon to do so.

Respectfully submitted,

Thomas J. Healey

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Attorney for Delta Southern Railroad, Inc.

TJH

cc: All parties of record