

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
March 24, 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.

RESPONDENTS' JOINT
MOTION TO STRIKE

Lake Providence Port Commission (LPPC), Southeast Arkansas
Economic Development District (SEAEDD), Monroe Parish Port
Commission and North Louisiana & Arkansas Railroad (NLA) (hereinafter
jointly referred to as Respondents), by and through counsel of record,
requests the Board to strike the “Reply to a Reply” filed March 22, 2021,
by Delta Southern Railway, Inc. (DSR). DSR’s submission is prohibited
by 49 C.F.R. § 1104.13(c). Briefly stated, the latest allegations that the
“*Feeder Line Application is fatally deficient*” and that the Respondents
have engaged in “*abusive tactic of supplementing the Feeder Line
Application*” add nothing to the record. They merely repeat DSR’s prior
arguments raised in its Motion to Dismiss and its follow-up Motion to
Strike.¹

¹ See, e.g., Motion to Dismiss at pp. 3-6, 9 & 10; Motion to Strike at pp. 1-4, 4 n2, 5-6.

DSR's assertion that "*Respondents cannot resist engaging in the abusive tactic of supplementing the Feeder Line Application whenever, and with whatever, they choose*"² ignores the fact that its own pleadings triggered each of the replies. If DSR feels compelled to file a Motion to Dismiss, Respondents must have an unquestioned right to file replies to protect their interests.

Without belaboring the issue, the joint Replies filed by LPPC and its supporting witnesses were not intended in any fashion to harass or prejudice DSR. They were intended to highlight evidence already of record that rebuts DSR's positions.

The assertion that the "*late arrival of new parties prejudices DSR*"³ is absurd. As the Feeder Application reflects, it was filed by Lake Providence Port Commission and was supported by Verified Statements filed by SEAEDD, MPPC, NLA, Complex Chemical, and Epstein Gin Company and Epstein Transloading.

DSR, without any support, speculates that NLA "invoked non-party status in an attempt to evade discovery responses that it did not want to supply."⁴ It then uses that comment to claim that it is now "unclear

² Letter at p. 2 (incorrectly numbered p. 3).

³ *Id.* at p. 1.

⁴ *Id.* at p. 2 (incorrectly numbered p. 3).

whether DSR would have a full and fair opportunity to undertake discovery of MPPC.”⁵

If DSR was interested in obtaining information from MPPC in a timely fashion, why did it not seek discovery from MPPC when it sought discovery from LPPC, SEAEDD and NLA? Similar to NLA, MPPC has been involved in the INFRA Grant process for several years and filed in support of LPPC’s Feeder Application. Given the above, DSR’s claim that MPPC’s “last-minute-intervention” has cast doubt on its ability to “have a full and fair opportunity to undertake discovery of MPPC” reflects a lack of candor.

With all due respect, the undersigned counsel believes that NLA’s objections to DSR’s First Set of Interrogatories that are set forth in its Motion Seeking the Entry of a Protective Order were and are valid for the reasons stated therein. Furthermore, on February 25, in response to DSR’s Request to Produce, LPPC and SEAEDD produced in excess of 88 MB of information leaving very little in terms of documents for NLA to produce.

Despite the fact that LPPC and SEAEDD had produced the documents via email during the normal course of business on February 25 and that it was in receipt of these documents, DSR on February 26 filed its Reply in Opposition to NLA’s Motion Seeking Entry of Protective

⁵ *Id.*

Order and its Petition for Issuance of a Subpoena.⁶ DSR never mentioned the fact that Respondents had already produced a substantial amount of the documents the day before in either of these documents. Nor did it bother to review the documents in connection with NLA's prior responses to determine whether its requests could be greatly narrowed. Had it done so, it would have discovered that NLA's responses clearly indicate that NLA either had no documents (see Responses to Interrogatories 7-10, 12-16, 18, 19, 22, 23, 25, 26, 29 and 30) or that the requested document would be produced either by SEAEDD (17 and 28) or LPPC (21).

With respect to Interrogatories 1 through 3, DSR has repeatedly stressed that there are no "On-Line Customers" that are physically located on the 20-mile Segment between MP 471 and 491 (other than stored railcars). Hence, there can be no documents that are capable of being produced by anyone.

Interrogatories 4-6, which request information regarding communications with "Non-On-Line Customers, are the subject of Mr. Robbins' Supplemental Response, filed March 8. That response not only reflects NLA's communications with Customers that have expressed an interest in routing traffic over the Segment, but it also reflects the names of various DSR employees who worked with Mr. Robbins in attempting to attract new business. Given the participation of DSR's own employees in

⁶ A copy of its pleadings was served on NLA's counsel at 7:08 p.m. on February 26.

these marketing efforts, DSR already has *all* such information in its possession. The fact that none of that business materialized, coupled with the information set forth in LPPC's Application and Robbins' Supplemental Response, clearly demonstrates an unquestionable need for the through service over the Segment that DSR alone denied.

Interrogatory 11 seeks information of all cars that crossed over the LPPC Segment since January 1, 2015. Should the Board require NLA to produce such information, NLA will produce what information it has been able to retrieve. However, NLA notes that any such information does not appear to be relevant.

Interrogatory 24 seeks identification of all Communications that NLA had with HDR in preparing the INFRA Grant Application, the Corridor, the Segment, or the Application. The relevancy of such information, even if it happens to exist, is questionable. Simply put, NLA's dealings with HDR pertained only to its own segment of the Corridor and had nothing to do with DSR's segment of the Corridor. In short, what is the purpose of seeking such information from NLA?

For all the above-stated reasons, the Board should reject DSR's request to file yet another pleading in which it claims to have been

prejudiced by what are actually legitimate efforts to counter DSR's
Motions that seek the summary dismissal of the Feeder Application.

Respectfully submitted,

/s/ Richard H. Streeter

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Dated: March 24, 2021

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 24th day of
March 2021, I served a true copy of the foregoing on Thomas J. Healey,
counsel for Delta Southern Railroad at THealey@fletcher-sippel.com.

/s/ Richard H. Streeter