

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36447

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

302313

ENTERED
Office of Proceedings
May 11, 2021
Part of
Public Record

SUPPLEMENTARY NEW EVIDENCE AND LEGAL ARGUMENT

Lake Providence Port Commission (LPPC), the applicant in the above-referenced matter, by and through counsel of record, respectfully submits newly discovered evidence and legal arguments to support LPPC's acquisition of the critical railroad infrastructure located between MP 491 and MP 471 of the Line that is the subject of this proceeding. This new evidence was not discovered until after the procedural schedule was suspended on March 9, 2021. Most importantly, it could not have been reasonably discovered by LPPC before it filed its application in November 2020. Given the Board's recent decision in *R. J. Corman Railroad Property, LLC—Abandonment Exemption—In Scott, Campbell, and Anderson Counties, Tenn.*, AB 1296X, (STB served May 3, 2021, LPPC requests the Board to accept this submission which further demonstrates the inadequate nature of Delta Southern Railroad's (DSR) service and why the Board should direct DSR to sell the Line to LPPC. Because DSR will have a full and fair opportunity to respond, it will not be prejudiced or deprived of due process.

DSR By Various “Means Or Devices” Has Improperly Prevented The Carriage Of Freight By Rail From Being Continuous From The Place Of Shipment To The Place of Destination In Violation Of 49 U.S.C. § 10744.

As the Interstate Commerce Commission (ICC) explained, when Congress enacted the original Act to Regulate Commerce, it recognized that “one of the most serious problems in the early days of railroads was the devising of ways and means of assuring a sufficient integration of different lines to enable commerce to flow freely from one road to another without unnecessary interruptions or other frictions.”¹ Therefore, “Congress inserted [Section 7] in the original Act to Regulate Commerce specifically to deal, as far as possible, with obstructions set up for competitive purposes.”² Section 7 (now codified without substantive change at 49 U.S.C. § 10744) provided as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied to prevent, by change of time schedule, carriage in different cars, or by other means or devices the carriage of freights from being continuous from the place of

¹ *Florida East Coast Railway Company Reorganization*, Fifth Supplemental Decision, 282 I.C.C. 81, 124 (1950). The ICC’s plan of reorganization that was approved in the Fifth Supplemental Decision was subsequently revoked and superseded on other grounds in the ICC’s Seventh Supplemental Decision, 307 I.C.C. 5, 35 (1958). However, the ICC’s final approval imposed seven explicit conditions that, as herein relevant, required (1) the preservation of existing route and channels of trade and commerce; (2) maintenance of existing gateways for the interchange of traffic; (3) maintenance of complete neutrality as between connecting lines in handling traffic, inbound and outbound; (4) preservation and maintenance of equal service and routing or movement of traffic to and from connecting lines; (5) maintenance of the line as an open route equally available to connecting carriers; and (6) restraint from influencing or attempting to influence by any means the routing of movement of traffic by any third person. Not only were these restrictions affirmed on appeal, but the court forever enjoined their violations. *In re Florida East Coast Railway Company*, 171 F. Supp. 512, 525 (S.D. Fla. 1959).

² *Id.*

shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.³

In *Charles Davis v. Cleveland, Cincinnati, Chicago, & St Louis Railway*, 217 U.S. 157, 178 (1910), the Supreme Court explained that Section 7 of the Interstate Commerce Act “regulates interstate railroads and makes it unlawful for them, by any ‘means or devices,’ to prevent ‘the carriage of freight from being continuous from the place of shipment to the place of destination.’” As the Court further noted, “[t]he interstate commerce law, therefor, is directed against the acts of railroad companies which may prevent continuity of transportation.”

In reaching its decision herein on LPPC’s feeder line application, the Board must consider DSR’s treatment of Bayou Bioenergy (Bioenergy) in light of the Supreme Court’s construction of former Section 7 in *Charles Davis*. As explained in the attached Affidavit of Donald Bush, Bayou, which was engaged in the production of a glycerin product and wet methane, opened a new facility in Lake Providence in 2016.⁴ Although it initially utilized trucking, by the end of the year, Bayou had attracted new customers who could accept all of its 80% glycerin product by rail. In response to their request for rail service, Mr. Bush located a rail spur that was one mile from Bayou’s facility in Lake Providence

³ Act to Regulate Commerce, 24 Stat. L. 379, 382 (1887).

⁴ See Attachment 1, Verified Statement of Donald Bush, at p. 1.

where its products could be conveniently transloaded into rail tank cars. The spur track was attached to the mainline of the North Louisiana & Arkansas Railroad (NLA), which directly connected with the Union Pacific Railroad (UP) in McGehee, Arkansas. Mr. Bush also determined that Kansas City Southern Railroad's (KCS) rates were much lower than those offered by Union Pacific. Because KCS's lower rates would allow Bayou to offer competitive prices for its product and earn enough profit to expand its operations, Mr. Bush met with Danny Robbins, NLA's Vice-President to see whether NLA would be able to transport the loaded tank cars to KCS in Tallulah, Louisiana. As Mr. Robbins has confirmed,⁵ he advised Mr. Bush that "to reach KCS, NLA would spot tank cars on the spur at MP 469.0 for loading and then move them to the point of interchange that had been established with DSR between MP 472.2 and 472.5 just to the south of Lake Providence, a distance of only 3.5 miles. DSR would then move the loaded tank cars directly to KCS at Tallulah."⁶ Thereafter, Bush and Robbins contacted Craig Huff, who then was DSR's General Manager, who initially agreed to interchange with NLA at Lake Providence.

Based on the foregoing, Bayou initially planned to load the tank cars at the spur where they would be spotted by NLA. After the cars were loaded, the cars were to be moved by NLA to the point of interchange with DSR. However, although NLA agreed to interchange Bayou's tank cars with DSR, Mr. Huff

⁵ See Attachment 2, Robbins' Supplemental Verified Statement at p. 2 at ¶ 3.

⁶ Supplemental Verified Statement of Daniel B. Robbins at p. 2.

subsequently advised Mr. Bush that DSR would *not* come to Lake Providence to interchange with NLA.

DSR's refusal to interchange with NLA at Lake Providence forced Bayou to truck its product to the Port of Madison Parish to be transloaded at DSR's facility. As Mr. Bush has explained, the increased costs associated with trucking 280 miles (28 miles each way) to load a single tank car destroyed Bayou's competitive advantage that was premised on its ability to take full advantage of KCS's lower rates by loading the tank car near its facility.⁷ DSR's refusal to interchange with NLA coupled with the demand that Bayou employ inefficient and costly trucking to transport its product to DSR's transload facility deprived Bayou of a feasible and available continuous routing by railroad from the place of shipment to the place of destination. These factors ultimately forced Bayou to shut down its operations in Lake Providence in December 2019.

By preventing the carriage of Bayou's freight by rail from being continuous from the place of shipment to the place of destination, DSR's forced arrangement violated 49 U.S.C. § 10744. Given NLA's agreement to transport Bayou's freight to the point of interchange, DSR's demand that Bayou utilize trucking was unnecessary and was plainly made with "the intent of avoiding or unnecessarily interrupting the continuous carriage"⁸ by rail.

⁷ V.S. Bush at ¶ 6.

⁸ 49 U.S.C. § 10744.

LPPC respectfully submits that DSR's motive is explained by the fact that DSR was utilizing its common carrier main line track to store rail cars. By forcing Bayou to use trucks to move its product to Madison Parish Port for transloading, DSR totally avoided the inconvenience and costs associated with the need to clear the track completely in order to interchange with NLA.

DSR's Refusal To Interchange Traffic With NLA For Over Four Years Has Deprived Shippers Of Adequate Through Service That Is More Efficient And Economical Than The Circuitous "Around The Horn" Routing That DSR Forced Upon Shippers By Refusing To Interchange With NLA.

In its Motion to Dismiss, DSR stated that it "thus far has concluded that the desired track renovations as to the long-dormant Line are unjustified and unwarranted."⁹ To support its conclusions, DSR claims that the entire 20-mile Segment of the Line that is the subject of PLLC's Feeder Line Application "has no active customers ... [and that] there have been none on the Line for more than three years."¹⁰ DSR has also expressed the unverified claim that it has not been approached "by any prospective customers seeking to originate or terminate traffic from any point along the Line."¹¹ That claim is unquestionably refuted by Mr. Bush's verified testimony.

DSR's conclusion that renovations are unjustified and unwarranted has nothing to do with the well-being of any current or future customer or its own statutory rail-common-carrier obligations. Its conclusion is based on the fact

⁹ DSR Motion to Dismiss at p. 2.

¹⁰ *Id.* at p. 3.

¹¹ *Id.*

that DSR has maximized its profits over the past four years by avoiding the cost of rehabilitating the tracks while it collected rental payments without having to engage in repeated costly shuttling of the stored cars that would be required if it provided common carrier operations over its main line consistent with its statutory obligations.

The prolonged effort to discourage interchange with NLA demonstrates DSR's and its owners' indifference to the fact that they own "a rail line meant to provide service to the public."¹² The track clearly was not intended to be used for extensive storage of idle railcars that would clog the mainline between McGehee and Tallulah. For this reason, the Board has repeatedly "rejected arguments that a carrier will be harmed because it would lose car storage revenues from a forced sale and not be compensated for that loss by receiving the Line's NLV."¹³

Second, DSR's arguments regarding the lack of any customer that "requires strictly local DSR-NLA interline service"¹⁴ are irrelevant and immaterial. As the record reflects, multiple prospective shippers have been identified that have expressed an interest in using the Corridor to reach KCS and the Madison Parish Port to south and UP and Arkansas Midland Railroad (AKMD) to the north. By closing interchange with NLA and by refusing to

¹² *KCVN, LLC and Colorado Pacific Railroad, LLC—Feeder Line Application—Line of V and S Railway, LLC, Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado*, FD 36005, slip op. at 10 (STB served July 31, 2017)

¹³ *Id.*, slip op. at 11.

¹⁴ Motion to Dismiss at p. 3. "Local service" was defined as a movement that would both originate on NLA and terminate on DSR or vice versa.

provide adequate facilities that would accommodate interchange, DSR has unreasonably interrupted and prevented the continuous carriage of freight over NLA's connecting line. As such, DSR's closure of interchange with NLA should be viewed as constituting an unlawful impediment to rail service under 49 U.S.C. § 10744.

Third, DSR's unverified claims that it has not been made aware of the existence of potential shippers are false and misleading. Its claims are rebutted by the results of joint marketing efforts undertaken by NLA and DSR between 2015 and 2017.¹⁵ As Mr. Robbins has explained in his sworn Supplement Response to DSR's First Set of Interrogatories, those marketing efforts identified multiple shippers that expressed an interest in using the direct routing over the Segment. However, even before DSR unilaterally closed the interchange in 2017, those efforts were undermined by DSR's management which actively discouraged through traffic over the Segment in order to maximize revenues earned through the storage of railcars on the mainline.

DSR's claims that the absence of traffic supports its refusal to commit to the rehabilitation of the 20-mile Segment must be rejected. As the Board also recognized in its July 31, 2017 Decision in the KCVN, LLC Feeder Line Application proceeding,¹⁶ the virtual embargo of a line of railroad for several

¹⁵ See *Supplemental Response to Delta Southern Railroad Inc.'s First Set of Interrogatories Nos. 1 through 6*, filed March 5, 2021.

¹⁶ *KCVN, LLC and Colorado Pacific Railroad, LLC—Feeder Line Application—Line of V and S Railway, LLC, Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado*, *supra*, slip op. at 10

years reflects the lack of interest in pursuing shippers that wish to transport traffic over such line. In this case, DSR's lack of interest is further demonstrated by its refusal to commit to rehabilitating the track that would be used even though \$3 million of funds from the INFRA Grant is to be used for that purpose. Plainly, DSR's actions would chill any desire of existing or potential shippers to rely on it for efficient and safe transportation service that would be performed over the Segment of track at issue herein.

By Refusing To Interchange With NLA, Thereby Depriving Shippers Of The Ability To Move Their Freight Over An Established Routing That Was More Efficient And More Economical Than Disjointed Route That DSR Has Forced Upon Them, DSR Caused Its Service To Be Inadequate under 49 U.S.C. 10907(c).

According to DSR, no customer has alleged or testified that the current interline service, which involves DSR, KCS and UP, is inadequate. That contention is rebutted by DSR's largest customer which has voiced its support for LPPC's Feeder Application on two occasions. In addition to filing a statement in support of the initial Feeder Application,¹⁷ Complex Chemical later filed a sworn statement that responded to DSR's argument by pointing to the restraint of trade that has resulted from DSR's refusal to maintain its own line and interchange with NLA. As Complex Chemical has testified:

For many years, Complex Chemical has chosen to route traffic over DSR/KCS and over DSR/NLA/UP. DSR's refusal to maintain its line between MP 471 and 491 has deprived Complex Chemical of its ability to reach UP directly. Because of that loss, Complex Chemical has been forced to utilize the DSR/KCS/UP

¹⁷ Feeder Application at Exhibit 8.

routing at a much higher rate than the rate paid for its DSR/NLA/UP routing.

This is significant in that Complex Chemical has 15 outbound destinations scattered throughout the United States, Canada and Mexico. In addition, it has inbound material from points in Texas, Louisiana, and Canada. Seven of its outbound customers are closed UP customers, while four (4) are closed KCS customers. In terms of incoming materials, five (5) origins are closed UP customers. As a result, the relationship with UP is significant.

Having to pay the higher rates that charged for the current routing that has been created by DSR's refusal to maintain its rail line imposes a penalty on Complex Chemical. As a result, I view DSR's self-imposed refusal to maintain its own line as a restraint on trade. That restraint also causes its service to be inadequate from an economic standpoint. While it may be financially rewarding for DSR to exact higher rates while collect[ing] rental payments for storing railcars on its mainline, that action is in my mind a violation of its statutory rail common carrier obligation.¹⁸

DSR's refusal to come to the point of interchange has compelled Complex Chemical's cars to be routed "around the horn" by linking UP, KCS and DSR instead of moving over the existing track that connects Tallulah and Madison Parish Port with McGehee. Because the shortest routing over UP/KCS/DSR is 92 miles longer than the direct movement of 60 miles between NLA and DSR and involves only one Class I rail carrier rather than two, Complex Chemical has been forced to pay higher charges for slower rail service.

As Complex Chemical's testimony reflects, the benefits DSR has realized for itself have been gained at the expense of shippers who have been put at severe rate and competitive disadvantage by being denied the ability to move their products over the shortest and most direct route to reach KCS on the

¹⁸ Complex Chemical sworn Letter of Support filed March 5, 2021 at p. 1.

south and UP on the north. In short, DSR's effort to maximize its income from storing railcars on its mainline instead of responding to requests for common carrier service has for the past four years forced shippers to endure slower rail service and higher rates and charges associated with the "around the horn" movements. In the case of Epstein Gin, the inability to reach KCS directly, has prevented it from opening new markets.

In its Motion to Strike, filed March 8, DSR responded to the foregoing by arguing that some NLA and DSR customers:

appear to claim that they would *prefer* to route overhead traffic via the Line, rather than via existing overhead routes, pointing in some instances to assumptions that DSR overhead service is cheaper than the alternatives.* But the feeder line statute is not a tool for forging more cost-advantageous route options for opportunistic freight shippers – it is about rectifying genuine, and proven, service inadequacies, and none exist here, as DSR has pointed out in its Motion, and as the Opponents have implicitly acknowledged in explaining that LPPC's efforts are ostensibly a 'means to ensure adequate rail service'* (rather than to rectify inadequate service).¹⁹

It is respectfully submitted that DSR's narrow construction of the Act and congressional intent must be summarily rejected in this proceeding based on ICC and Supreme Court precedents. In *D. A. Stickell & Sons, Inc. v. Alton R. Co.*, 255 I.C.C. 333, 343 (1943), the ICC was asked to find that an otherwise adequate routing was inadequate because it deprived Stickell of equal opportunities to compete in markets by forcing it to utilize a routing that was less efficient and less economical from the shipper's standpoint. Pursuant to

¹⁹ DSR Motion to Strike at 4 (emphasis in original, *notes omitted).

what is now 49 U.S.C. § 10705(2)(C), the ICC concluded that in order to determine whether a proposed through route is adequate, it is necessary to consider the issue from the shipper's as well as the carrier's standpoint. In other words, it is not enough to focus on whether the transportation is adequate from the carrier's standpoint.

The ICC's approach was affirmed on appeal by the three-judge district court in *Pennsylvania R. Co. v. United States (Interstate Commerce Commission)*, 54 F. Supp. 381 (D.Md. 1944). As the court explicitly stated, a shipper "has the right to have its individual case considered from the point of view whether it is entitled to a route that is not *only* adequate, but *also* affords it 'more efficient' (that is, better) or 'more economic' (that is, cheaper) transportation service." *Id.* at 392 (emphasis in original).

In affirming the district court's decision, the Supreme Court stated that the gravamen of the shipper's complaint before the Commission was "that the back-hauls involved in existing routes delayed its shipments and, while the charge for such back-hauls was reasonable, the addition of this charge to the through rate cut into its margin of profit, which is small. These factors, it claimed, deprived it of its rightful competitive relation to other manufacturers of mixed feed." *Pennsylvania R. Co. v. United States*, 323 U.S. 588, 590 (1945). As the Court then explained, the Commission in its decision had correctly recognized that the "phrase 'adequate, and more efficient or more economic, transportation'" comprehends "the adequacy of service, its cost to the shipper, and the convenience, efficiency, and cost of the carriers' operations." *Id.* at 591.

The broad principles expressed in the Court’s ruling undercuts DSR’s assertion that the availability of a more expensive and circuitous “around the horn” routing is adequate to meet the needs of Complex Chemical and Epstein Gin. As they have already explained, they prefer the shorter and less expensive through route that has been closed by DSR from early 2017 until months after LPPC filed its Feeder Application. Furthermore, the impact on Bayou cannot be overlooked. DSR’s claim that there is no need for a direct interchange with NLA because traffic can be “adequately” handled is unquestionably repudiated by the foregoing. *See also, Denver & R. G. W. R. Co. v. Union Pac. R. Co.*, 287 I.C.C. 611, 655 (1953), *aff’d Denver Rio Grande Western R.R. Co. v. Union Pacific Railroad Co.*, 351 U.S. 321, 331-32 (1956).

LPPC respectfully submits that the foregoing principles should be applied in this case where DSR’s actions have adversely impacted the ability of shippers to compete by preventing them from being able to use a route that is more efficient and economic.²⁰ Plainly, the public interest does not favor a rail carrier’s interest in maximizing its profits by using its track to store rail cars rather than providing rail service to shippers. Indeed, 49 U.S.C. § 11101 specifically provides that “[c]ommitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.”

²⁰ It is noted that DSR is not being requested to short haul itself when it interchanges with NLA.

DSR, In Violation Of 49 U.S.C. § 10742, Has Failed To Provide Reasonable, Proper, and Equal Facilities That Are Within Its Power To Provide For The Interchange Of Traffic Between, And For The Receiving, Forwarding, And Delivering Of Property To And From, Its Respective Line And NLA's Connecting Line.

49 U.S.C. § 10742 was originally enacted in 1887 as Section 3 of the Act to Regulate Commerce.²¹ To ensure the continuous movement of freight between two rail carriers, the second sentence of Section 3, as herein relevant, declared that:

Every common carrier subject to the provision of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities of the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith[.]

As the ICC explained in *Florida East Coast Railway Company Reorganization*, 282 I.C.C. at 124, “[t]here can be no doubt that Congress was familiar with the history of past efforts to provide the country with an adequate system of rail transportation. It clearly has recognized, among other things, that there should be coordination between the different segments of the railroad network so that it may function as a national transportation system.”

As the record reflects, in 2017, 2019 and 2020, NLA attempted to interchange a number of cars with DSR only to be faced with DSR's refusal to come to the point of interchange to pull them to the Madison Parish Port or to

²¹ Sections 3 and 7 were initially codified in 1978 without substantive change. Moreover, the current provisions continue to closely track the original wording following the enactment of ICCTA in 1995. As a result, the Supreme Court's and the Interstate Commerce Commission's construction of the prior provisions are binding on the Board and all participants in this proceeding.

forward them to KCS. As Mr. Robbins has explained in his Supplemental Verified Statement, which is attached hereto, on Tuesday, August 22, 2017, NLA notified DSR that it had cars for them. After NLA interchanged 8 cars on Wednesday, August 23, NLA received word from Inteletrans that DSR said that the interchange was closed. This caused Robbins on August 24 to call Craig Huff, who was DSR's General Manager to find out why the interchange was closed. During the call, Craig Huff and Matt Prince "confirmed that the interchange was closed *based upon track issues on the DSR side.*"²²

Given the lack of any evidence at all that shows that the "track issues on the DSR side" have been addressed, DSR's *unverified* claim in its March 26, 2021 letter that "interchange is available upon reasonable request, ongoing car storage notwithstanding" should be viewed with extreme skepticism. The Board is requested to note the subtle change that is reflected in DSR's pleadings between March 8 and March 22, 2021. At page 5 of its Motion to Strike filed March 8, DSR's counsel suggests that "DSR could provide overhead service (notwithstanding that no one has requested service for some time), even with the car storage business that DSR accommodates over a portion of the inactive track." By March 22, without having taken any observable steps to rehabilitate the track that was unable to accommodate railcars that NLA had attempted to place in interchange service, DSR's counsel announced that "the Lake

²² Supplemental V.S. Robbins at 4 (emphasis added).

Providence interchange is open, and DSR will interchange freight traffic with NLA if called upon to do so.”²³

As Mr. Robbins has explained in his Supplement Verified Statement that is attached hereto, because NLA holds trackage rights to operate over that section of DSR’s track between MP 471 and MP 472.25, he has personal knowledge of the physical condition of DSR’s track. Moreover, based on his 29 years of experience as a railroad engineer and the immediate need to rehabilitate other portions of the Line, it is his position that the track has deteriorated to the point that it would be unsafe to operate over it in the absence of substantial rehabilitation.

And because the entire track between MP 471 and 491 is visible from U.S. Highway 65, he is also aware that DSR has not made any attempt to rehabilitate any section of the track between those mileposts over the past four years with the exception of upgrading some bridges. In addition, DSR has declined to commit to reconstructing the track to FRA Class 2 standards between MP 491 and MP 471 even though \$3,207,789 of the estimated cost of \$11,448,000 of rehabilitating the rail infrastructure would be covered by INFRA Grant funds.²⁴

The Board should also note that on April 23, 2021, at least 471 cars were stored on the Segment of the track that is located between MP 491 and

²³ Letter to Cynthia T., Brown, dated March 22, 2021, at the last p. 3.

²⁴ See page 7 of SEAEDD’s letter, dated March 17, 2020, addressed to FRA, which is Attachment 1 to Respondents’ Reply to DSR’s Motion to Strike.

480.6.²⁵ As a result, it would be necessary to move all of the stored cars before DSR can use the track to move between MP 491 and MP 471 to pick up a car that has been spotted at the point of interchange with NLA. The same is also true if it were to move a car from Madison Parish Port to the interchange point.

Due to the deteriorated condition of the track, it is readily evident that any movement of the 471 stored cars will have to be made at greatly reduced speeds. Based on the condition of the track between MP 471 and MP 472.25, over which NLA holds trackage rights, Mr. Robbins has estimated that current track conditions would limit operations to speeds of less than 3 mph.

Finally, given DSR's contemporaneous statements on August 24, 2017 that track issues on its side of the interchange prevented it from accepting the cars that NLA had placed in interchange, what has happened in the interim – other than LPPC's filing of the Feeder Application -- that has prompted the sudden reopening of interchange? There is *nothing* in the record that demonstrates what DSR has done at any time in terms of repairs that has suddenly caused it to be able at this time to open the interchange. Of course, if the tracks were in good enough shape to be safely operated between 2017 and 2021, there was no legitimate reason to refuse interchange. DSR's repeated refusal during the past four years to interchange with NLA supports findings that (i) DSR's service over the Corridor between McGehee and Tallulah is

²⁵ Supplemental V.S. Robbins at 6.

inadequate and (ii) that LPPC has satisfied the requirements of 49 U.S.C. § 10907.

Conclusion

LPPC's intent to utilize the INFRA Grant funds to restore adequate rail service over the entire rail corridor is consistent with the intent of Congress and the series of Acts that have governed the interstate transportation by rail since 1887. DSR's refusal to commit to the rehabilitation of the track that is required for adequate rail transportation is not. Having resisted multiple opportunities to interchange traffic for over four years due to the condition of its track, the Board must question the timing and viability of counsel's comments that DSR is now offering interchange service over the Segment. For all the foregoing reasons, DSR's transportation service has been inadequate for shippers who have shipped over the Line in the past and who have shown interest to do so in the future following the rehabilitation of the Line.

Respectfully submitted,

/s/Richard H. Streeter

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
(202) 363-2011
rhstreeter@gmail.com

Dated: May 11, 2021

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 11th day of May 2021, I served a true copy of the foregoing on Thomas J. Healey, counsel for Delta Southern at THealey@fletcher-sippel.com.

/s/Richard H. Streeter

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36447
LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN
EAST CARROLL AND MADISON PARISHES, LA.

STATEMENT OF SUPPORT OF DONALD BUSH

1. My name is Donald Bush. My address is 2115 North FM 2148, Texarkana, TX. My statements are based on facts of which I have personal knowledge and are true to the best of my knowledge. I am currently employed by Naw Customs LLC. Between November 2016 and December 2019, I managed and operated Bayou Bioenergy LLC, (Bayou), which was then located in Lake Providence, Louisiana.

2. Bayou opened its Lake Providence facility in 2016. I was the initial employee and had 4-6 contractors that I utilized actively. One lived in Monroe and the other 5 lived in Lake Providence. Bayou produced glycerin product and wet methanol, which is classified as a hazardous commodity. During Bayou's first year of operations, we were moving around 2 million gallons of product. When we were forced to shut down in December 2019, we had the potential to move an additional 2 million gallons per year with another customer. Had we been able to obtain

adequate rail service from Delta Southern Railroad, we could have potentially acquired additional customers to move an addition 5 to 10 million gallons per year. The possible potential for the facility would have been capped at around 20 million gallons per year without an investment in more tank storage capacity.

3. At the beginning, we were shipping by truck. However, we found some customers that could accept all of our 80% glycerin product by rail. Because we could have also shipped our hazardous byproduct (Wet Methanol) by rail, we did our research and found that Kansas City Southern (KCS) offered rates that were several hundred dollars less than its competitors. I believed that the rates offered by KCS would help us to get our logistics costs down, which would make us much more competitive.

4. I also found an existing rail spur within 1 mile of our facility that could be used for loading purposes. The spur is located at 1010 Hwy 134, in Lake Providence, LA. The spur is located on the mainline of the North Louisiana & Arkansas Railroad (NL&A). In late December 2016, I had several conversations with Danny Robbins, NL&A's Vice President, who explained that while his railroad would be pleased to handle our movements, it would be necessary to interchange with Delta Southern Railroad at a point just to the south of Lake Providence. Delta Southern would then move the loaded tank car to Tallulah, Louisiana where it would interchange the tank car with KCS.

5. Robbins and I then contacted Craig Huff who, at the time, was Delta Southern's General Manager. Although Mr. Huff initially expressed a willingness to work with Bayou, he later advised me that Delta Southern would not come to Lake Providence to interchange with NL&A. If we wanted to ship via rail, it would be necessary for us to truck our products to Delta Southern's transload facility at Tallulah.

6. Because Delta Southern would not come to the point of interchange with NLA, we had to truck the product 26 miles one way to the transloading location near Delta Southern's office in the Madison Parish Port. This created a one to two-day job for a truck and driver to transport and pump off enough product to fill the tank car. This compares with only a few hours if we were to truck the product one mile to the spur for transloading. The extra costs ultimately adversely impacted the fate of our business. Because our direct competitor had rail access within 1 mile of its facility, it had an increased profit margin with which we could not compete. We were forced to close in December of 2019.

7. Because of the added costs, the transload operation offered by Delta Southern was inadequate. If we had been given the efficient and economic rail service we needed, this would have given us a viable competitive position in our industry. We then would have been able to hire and train qualified individuals to be employees or make a reasonable offer to the contractors to possibly incentivize

them to become an employee. In addition, we could have expanded our facility. In the end, we just could not justify expanding the facility.

8. I urge the Surface Transportation Board to grant Lake Providence Port Commission's application to acquire the segment of track that will allow direct rail service to be provided over the existing line to Tallulah. Adequate rail service is required in this area in the near future to prevent other businesses from closing and to help create more jobs in this area. The fact that Delta Southern, which owns the portion of the line between Lake Providence and Tallulah that LPPC seeks to acquire, is only using it for storing railcars is truly a shame as it is killing the incentive of multiple businesses who require adequate rail service to locate in the area.

VERIFICATION

I, Donald Bush, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to submit this Statement of Support.

Executed on May 3, 2021 .



Donald Bush

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36447
LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN
EAST CARROLL AND MADISON PARISHES, LA.

SUPPLEMENTAL VERIFIED STATEMENT OF DANIEL B. ROBBINS

1. My name is Daniel Robbins. I am the Vice-President of North Louisiana & Arkansas Railroad (NLA). By way of background, I have been engaged in the railroad industry for 30 years and have 29 years of experience as a railroad engineer. This statement supplements my prior testimony in this proceeding regarding joint marketing efforts with Delta Southern Railroad (DSR) employees to increase shipments over the Segment of track between MP 471 and 491 between Lake Providence and Tallulah, Louisiana that is the subject of the Feeder Line Application filed by Lake Providence Port Commission (LPPC). Moreover, it confirms statements of Donald Bush that have been made in his Verified Statement in support of LPPC's feeder application.

2. In December 2016, I was contacted by Donald Bush, who introduced himself as the manager of Bayou Bioenergy (Bayou). He advised me that Bayou had recently opened a facility in Lake Providence and was currently moving all of

its product by truck. However, he was attempting to expand Bayou's business to include shipments by rail of glycerin product and wet methanol to some new customers. He also wanted to know whether his company could use a NLA spur line located in Lake Providence for purposes of transloading product from Bayou's facility that was located within a mile of the spur. We had several conversations about potential movements and the need to work jointly with DSR to move product over the Kansas City Southern Railroad (KCS), which offered lower rates to certain locations than Union Pacific, which could be reached directly from Lake Providence.

3. I explained that to reach KCS, NLA would spot tank cars on the spur at MP 469.0 for loading and then move them to the point of interchange that had been established with DSR between MP 472.2 and 472.5 just to the south of Lake Providence, a distance of only 3.5 miles. DSR would then move the loaded tank cars directly to KCS at Tallulah. At that time, we were interchanging freight with one another at the above-mentioned location.

4. Mr. Bush and I then contacted Craig Huff who, at the time, was Delta Southern's General Manager. During our conversations, Huff expressed a willingness to work with NLA and Bayou to handle the shipments consistent with the established interchange between DSR and NLA. After the initial conversations with Mr. Bush, I did not hear further from Bayou and assumed, based on

occasional sightings of trucks entering and leaving Bayou's facility in Lake Providence, that it had not yet reached the point where rail service was needed. It was only in March of this year that I learned that Craig Huff, without speaking further with me, had refused to interchange with NLA in Lake Providence and forced Bayou to truck its product to DSR's transload facility at Madison Parish Port for placement in tank cars. Had I learned what was happening in 2017, I would have likely filed a complaint against DSR. I have subsequently learned from Mr. Huff that after we spoke about the Bayou project that he had been directed to refuse interchange with NLA and to tell Bayou that it would only work if it trucked its product to the Madison Parish Port.

5. Based on my experience as a railroad engineer, I must question the truthfulness and basis of the statement's in DSR's counsel's letters dated March 22, 2021 and March 26, 2021. The final page of the March 22 letter reflects counsel's statement that "the Lake Providence interchange with NLA is open, and DSR will interchange freight traffic with NLA if called upon to do so." at p. 2 of his March 26 letter, counsel further states that overhead "service is available upon reasonable request, ongoing car storage notwithstanding." These are the first indications of which I am aware that "the Lake Providence interchange with NLA is open. DSR has never before advised me that interchange was reopened since DSR unilaterally closed the Lake Providence interchange in 2017.

6. On Tuesday, August 22, 2017, NLA notified DSR that it had cars for them. After NLA interchanged 8 cars on Wednesday, August 23, NLA received word from Inteletrans that DSR said that the interchange was closed. This caused me on August 24 to call Craig Huff, who was DSR's General Manager to find out why the interchange was closed. During the call, Craig Huff and Matt Prince confirmed that the interchange was closed *based upon track issues on the DSR side*. I contemporaneous advised SEAEDD of this issue.¹ Since that date, DSR has refused to interchange a single car.

7. As noted above, I am a licensed locomotive engineer. I have personally operated locomotives over a northernmost portion of the Segment between MP 491 and MP 471 pursuant to trackage rights granted to NLA by LPPC and approved by the Board in FD 35610. It is my opinion that the track is in such bad condition that one cannot operate safely over that tracks at a speed that is much greater than one can walk along it.

8. Given that interchange was closed in August 2017 "based upon track issues on the DSR side," what steps has DSR taken to make the tracks safe that would allow it to reopen interchange. Because DSR's track is plainly visible from U.S. Highway 65, any heavy reconstruction of the track would have been easily observed. In this regard, I am aware that DSR has strengthened some of the bridges. I am not aware that DSR has performed any substantial track work on the track since August 2017. I am aware from my own

¹ See email from Daniel Robbins to Gene Higginbotham, dated Aug. 24, 2017, at 2:47 PM.

inspection of cross ties on the portion of the Line over which NLA has trackage rights and the tracks that LPPC, SEAEDD and NLA have rehabilitated over the past few years that cross ties along the corridor were in and are in poor condition when they were acquired from DSR when it decided to abandon the track because of its deplorable condition. Nathan Kovalchick's valuation report, which was entered into the record in December 2020, also confirms my inspections.

9. I am also aware that DSR, in preparing its request for INFRA funds, estimated the cost of Rail Infrastructure Rehabilitation to FRA Class 2 status to be \$11,448,000.² This amount does not include bridge upgrades. This figure clearly indicates that the track needs a significant amount of work before full service can be safely provided. While the track may be adequate to handle the movement of empty cars that have been placed in storage,³ that does not mean that shippers are willing to tender loaded cars to a carrier when they are aware that shipments have been declined due to hazardous track conditions. In this regard, I request the Board to note the support statement of Sam Angel in which he notes that "in June 2019, DSR refused to accept a train composed of 43 cars from North Louisiana & Arkansas Railroad (NLA) because its tracks between between [mileposts 471 and 491] could not accommodate the top-

² FY 19-20 INFRA Application at p. 15.

³ The failure of crossties is a frequent cause of derailments. It should be noted that on January 15, 2021, DSR suffered a major derailment of multiple rail cars that were being stored. See attached photograph.

heavy loads that are generally handled in high-center-of-gravity cars.”⁴ In the absence of verifiable evidence that conclusively demonstrates that DSR has already taken substantive steps to rehabilitate the track between MP 491 and MP 471, the unverified statements of counsel that suggest that the track is now open for receipt of interchange at Lake Providence cannot be accepted at face value. Furthermore, because of past comments made by DSR employees regarding track conditions, shippers are unwilling to rely on unsubstantiated remarks of counsel. It is my opinion based on attempts to market rail service over the corridor, until the track is rehabilitated, that attitude will not change.

10. On April 23, 2021, I counted at least 471 cars that DSR had in storage between MP 491 and 480.6. Even if DSR were to temporarily relocate the stored cars to the south of MP 491, it is doubtful that this could be done in less than 3 days. Assuming for the sake of argument that the track is passable, which I must challenge based on conversations with DSR employees and my own experience in operating over multiple segments of the corridor following their acquisition from the prior owner, I believe operations involving the movement of railcars must be limited to speeds less than three miles an hour. And as noted above, my personal experience also involves operating over the dilapidated interchange track at Lake Providence, which DSR is contractually obligated to maintain, but which it has failed to do.

⁴ Feeder Application Exhibit 9, at p. 2.

11. It will of course be necessary to clear the entire corridor between MP 471 and MP 491 before dispatching the locomotive to MP 472.25 to pick up any cars that have been placed in interchange by NLA. That in turn raises logistical issues due to the lack of tracks that can accommodate hundreds of stored cars without interfering with DSR's' movements to and from shippers located within Madison Parish Port. Based on my personal observations, the practice to date for moving storage cars from between MP 471 and MP 491 is to move them south of MP 491 to MP 500 to allow the cars to be cleared from the area north of MP 491. This causes operational issues for the Port of Madison Parish and the customers of the Port with traffic congestion from blocking road crossings leading to the Port and of course blocks the outlet to the KCS until the cars can be restored north of MP 491. Having resisted multiple opportunities to interchange traffic for over four years, I must question the timing and viability of DSR's statement that they are offering interchange service over the Segment.

VERIFICATION

I, Daniel B. Robbins, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to submit this Statement of Support.

Executed on May 10, 2021


Daniel B. Robbins

