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July 1, 2021

Ms. Cynthia Brown, Section Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: 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:

This letter responds to the latest personal attacks voiced by counsel for Delta Southern Railroad in the above-referenced proceeding. In his letter dated June 30, 2021, the counsel claims that I made a “unilateral decision not to comply fully with DSR’s privilege log request,” which disappointed DSR. I have attached a series of emails dated between June 8 and June 23 in which I fully and repeatedly explained that no document was withheld on the basis of attorney-client privilege or work product. See email June 9, 2021, 6:54 PM. I also explained that “[n]o issue ever came up regarding any issue of ‘attorney-client or work product privilege.’ As a result, nothing was ever withheld from production that was discovered by NLA, LPPC and SEAEDD when they dug through their files.” See email June 11, 2021, 4:13 PM. I also candidly explained that when I prepared the Motion Seeking Entry of Protective Order in February for NLA, “the only reason that I included the so-called privileges [was] that I copied a UP objection to discovery” in a similar case. As it turns out, that proved to be unnecessary. Given the foregoing emails and telephone conversations that had conveyed the same message, I tersely stated that “I have fully responded regarding the absence of any document being withheld for attorney-client or work product reasons and will not further respond.” See email dated June 23, 2021, 11:15 AM.

To further clarify my prior responses, I do not have in my possession any document that I have withheld from discovery based on the attorney client privilege or work product. The Board should also note that while I have long represented NLA, I have played no role in NLA’s marketing efforts. Furthermore, I did not assist any members of the Public Private Partnership in the preparation of the INFRA Grant Applications filed by SEAEDD. I was only

retained by LPPC to file the Feeder Application after DSR refused to commit to the use of INFRA Grant funds to rehabilitate the Segment.

The filing of this response is prompted by the fact that from the outset, I and my clients have been repeatedly accused of various transgressions and disregard for the Board's feeder line regulations; disrespect of agency processes; employing "prejudicial tactics;" submitting a "stunning misrepresentation;" "numerous efforts to confuse the record;" and impermissibly attempting "to introduce new allegations and argument into the record in a manner that is procedurally deficient." I must forcefully deny each and every one of the foregoing charges. Enough is enough!

As of September 15, 2021, I will have spent 50 years practicing before the ICC and the Board. From September 15, 1971, through August 15, 1975, I defended the agency as a member of the ICC's Office of General Counsel. After entering private practice, I have appeared in support of the ICC, the Board and numerous clients before Federal Courts throughout the United States. I have also contested a number of the ICC's and the Board's decisions before the courts. At no time have I ever attempted to mislead the agency or disrespect its processes. While reserving the right to vigorously represent my clients to the best of my ability, I have no intention to change course.

In closing, the Board is urged to establish a new procedural schedule that will allow the proceeding to be finalized based on the evidence of record. It is respectfully submitted that nothing is to be gained from further delay.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for Lake Providence Port
Commission, Southeast Arkansas
Economic Development District,
Madison Parish Port Commission; and
North Louisiana & Arkansas Railroad

RHS:rs

cc: Thomas J. Healey, Counsel for Delta Southern Railroad
All parties of record

Attachment to Letter

Please note that the initial email from Richard Streeter to Thomas Healey dated June 09, 2021 6:54 PM responds to multiple inquiries that appear on pp. 2-4 in the email from Thomas Healey to Richard Streeter dated June 09, 2021, 4:39 PM.

Thereafter, the email from Richard Streeter to Thomas Healey dated June 11, 2021 4:13 PM responds to the inquiries that appear on pp 1-2 in the email from Thomas Healey dated June 11, 2021, 3:15 PM.

Richard Streeter

From: Richard Streeter <rhstreeter@gmail.com>
Sent: Wednesday, June 09, 2021 6:54 PM
To: 'Thomas J. Healey'
Subject: RE: Discovery

Tom, I apologize for not alerting you that I would not be able to forward anything. Danny is out of the office and wants to double check to make sure that he is in total agreement.

In quick response to your email of today, I will answer as follows:

1. I am not aware of any document that would be withheld on the basis of attorney-client privilege or work product. As best I can recall, I was never involved in any of the matters covered by the discovery.

2. I will be providing a long document that consists of copies of emails involving marketing efforts. Because many of them provide highly confidential business information provided by potential customers regarding locations, products, etc., I am going to file them as Attachments to the written responses. While I will file the written responses, the attachments will be filed separately under seal and will be subject to a request for protective order. Do you have any objection to this approach?

3. I do not believe that NLA self-limited the time frame. As I have learned, due to the deplorable condition of the track caused by Wainwright, which is well documented in the various abandonment cases in which I, Fletcher & Sippel, and Eric Hockey were involved, it took a lot of time to restore the track to the point where any operations could be conducted. And as we previously discussed, NLA's computer system could only come up with relevant data concerning loaded and empty movements to 2016.

4. As best I know, what we have is what you are going to get. Danny spent a considerable amount of time looking for documents on multiple occasions.

5. As suggested by the response to 3 above, 11 is being answered fully. Because it contains a lot of highly confidential shipper information, I cannot release it today. Otherwise, I would. The response to 24 is a bit harder to answer. A lot of the HDR material was provided by SEAEDD and is incorporated by reference. As I understand the situation, very little was provided to HDR by NLA and DSR.

Assuming that I am not too overwhelmed with everything else, I am trying to get everything to you as soon as Danny and I can finish it. With any luck, you should get it this weekend.

6. I cannot answer this inquiry as I do not know.

7. I believe that LPPC and SEAEDD have provided everything that they have in their possession. I did not hold back anything they provided. Given that they provided over 90 MG of documents, and spent several days scanning their computers, I do not think that they have held back anything that you have sought. I will note, however, that if everyone had thought that things would have turned out the way they did, many conversations would have been carefully documented so that every conversation could be retrieved for purposes of discovery. This is particularly true with respect to NLA.

As for the February 25, 2021 response, the attorney who filed the document did not notice the error until well after it was filed. If you wish, I will file an errata. NLA played no part in that filing, even though its name is prominently mentioned on the first page.

As for questions 2 and 3, I will have to ask them. They never mentioned any privilege or confidentiality concerns regarding the documents they provided.

As for NLA's Supplemental Responses to 1 through 6, I have spent several hours breaking them down to clarify the difference between them.

Tom, because I am an hour ahead of you, I must close my office. I would like to continue the conversation that was paused some 50 minutes ago early in the morning or later this evening.

Regards, Richard

From: Thomas J. Healey <THealey@fletcher-sippel.com>
Sent: Wednesday, June 09, 2021 4:39 PM
To: Richard Streeter <rhstreeter@gmail.com>
Subject: Re: Discovery

Hi Richard:

Thanks for the note below. Although you indicate in it that you will begin sending materials to me yesterday afternoon, I have not received any such emails from you. I am clearly well versed in how the limited hours of the day can get away from all of us, so I raise the issue not by way of complaint, but simply to make sure that emails were not sent yet, and if they were, to begin looking for them if they wound up in a spam filter, were rejected because of size, etc. on our end.

I've looked through the various materials that I think collectively comprise the discovery responses of LPPC, NLA and SEAEDD. I'd like to raise the following issues with you.

To answer your question posed in your email of June 3, Delta Southern does not expect each of the three parties responding to discovery to separately produce the same documents or information. One copy of each document provided to Delta Southern is sufficient, regardless of which of the three entities produced it. That said, Delta Southern does expect that any responsive documents or information held by any of the parties will be produced. So, for example, Delta Southern does not believe that SEAEDD may refrain from providing information or responsive documents simply because NLA provided some subset of those documents as the extent of its response. In other words, each entity needs to provide all of the responsive documents and information in its possession, but duplication of documents and information is not required. If that's not clear, we can discuss further.

As for specific issues in NLA's February 18, 2021 motion seeking entry of a protective order:

1. In the General Objections, were any documents withheld on the basis of attorney-client privilege or work product (General Objection 2)? If so, will NLA be providing a privilege log, as requested in Delta Southern's discovery (Instruction M, p. 8)?
2. Were any documents withheld on confidentiality (General Objection 4; see also your February 18th cover letter referencing "highly confidential and proprietary information")), and if so, will NLA be seeking entry of a protective order to establish confidentiality for the provision of such responsive materials?
3. With respect to General Objection 6, did NLA self-limit the time frame for its review of responsive information, and if so, what alternative date frame was used?
4. As to all of its discovery responses, can you identify what additional information or documents NLA has in its possession that has either been withheld or not searched for by NLA on the bases of relevance, breadth or burden, or some combination thereof? In other words, where a substantive response has been provided by NLA, can you confirm that the response is complete after a reasonable investigation and not limited by the relevance, breadth and/or burden objections?
5. NLA objected to, but did not answer, Interrogatories 11 and 24 (SEAEDD's production of the various iterations of the Consortium Agreement will suffice for NLA's production in response to Interrogatory 27). Will NLA be answering these two Interrogatories, and if so, when?
6. With respect to NLA's response to Interrogatory 9, does it need to be supplemented, or is it complete as stated? As an example, the offline origin/destination is not identified for the two referenced movements. Is that information not known?
7. Portions of this motion reference the production of documents, but no specific response was made to the production request. Can you confirm that NLA is providing all responsive documents, except as otherwise objected to? More generally, as to the production requests, can you confirm when NLA, SEAEDD, and LPPC will produce all responsive documents?

As for the February 25, 2021 response of NLA, SEAEDD and LPPC:

1. NLA is referenced in the caption but not in the introductory paragraph. Is this document filed on behalf of NLA (in addition to LPPC and SEAEDD) or not?
2. As in the February 18 motion, General Objections are raised with respect to privileges (General Objection 1), confidentiality (General Objection 4), and time frame (General Objection 6). Please let me know whether my questions posed with respect to these issues above will be addressed by the parties filing this document.
3. Similar to the issue raised in point 4 above, can the parties filing this document confirm whether information and/or documents were withheld, or not looked for, on the basis of objections to relevance, breadth and/or burden?

As for NLA's Supplemental Responses to Interrogatories 1-6 (attached to the March 5, 2021 reply to Delta Southern's motion to dismiss):

1. Can the information be broken down so as to indicate which of the 6 interrogatories are being responded to with what information?
2. As mentioned on p. 1 of that document, do you have plans to seek a protective order and file responses under seal with the Board?

Thanks for your consideration of these issues. I will be out of the office all morning tomorrow for my son's high school physical, then returning to work in the afternoon.

Tom Healey

Cell 708.209.9599

From: Richard Streeter <rhstreeter@gmail.com>
Sent: Tuesday, June 8, 2021 1:19 PM
To: Thomas J. Healey
Subject: Discovery

Tom, I hereby acknowledge your email advising me that you were unable to respond this morning regarding discovery. In order to comply with the Board's directive, I will start sending additional responses this afternoon rather than further delay production. Because Mr. Robbins is out of the office, he will verify all of my responses after he returns later this week. Regards, Richard

Richard H. Streeter
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Richard Streeter

From: Thomas J. Healey <THealey@fletcher-sippel.com>
Sent: Friday, June 11, 2021 10:01 AM
To: Richard Streeter
Subject: DSR Discovery

Good Morning Richard:

Thanks for your time yesterday. I believe we closed out a number of my remaining questions. And, as we discussed, I'll be sending you an email with thoughts on where things stand, based on those discussions.

The one significant issue that I recall from our conversation was the assertion that no documents have been withheld on the bases of either attorney-client or work product privilege. Obviously, I cannot be privy to your communications with your clients, but I'm struggling to understand how that can be. Are you saying that after a reasonably diligent search, neither you nor LPPC, SEAEDD or NLA have identified any documents (including emails) that discuss any of the matters inquired of in the interrogatories, and that reflect either their requests for your legal thoughts or your actual legal thoughts?

Tom Healey
Cell 708.209.9599

Richard Streeter

From: Richard Streeter <rhstreeter@gmail.com>
Sent: Friday, June 11, 2021 4:13 PM
To: 'Thomas J. Healey'
Subject: RE: Discovery

Tom, My responses follow:

1. No issue ever came up regarding any issue of "attorney-client or work product privilege." As a result, nothing was ever withheld from production that was discovered by NLA, LPPC and SEAEDD when they dug through their files. To go further, the only reason that I included the so-called privileges is that I copied a UP objection to discovery. Everything that was discovered that responds to your interrogatories has been or will be produced. My principal problem has involved the structure to be used to prevent an inadvertent violation of 10904, which has nothing to do with the General Objections. There is nothing more that I can add.

3. and 4. They have advised me that you have everything that they could locate.

5. NLA's Response has been extensively modified and is complete.

6. As of this moment, no decision has been made regarding Interrogatory 9.

1. Glad you understand.

2. See above.

3. See above.

1. In my humble opinion, I believe that the responses clearly point to the Interrogatory that is the subject of the responses.

2. Again, I am copying a UP request for protective order that was accepted by the Board. Being that a lot of the material is already in DSR's possession, I am treating it as Confidential so you can share it with them.

Regards, Richard

From: Thomas J. Healey <THealey@fletcher-sippel.com>
Sent: Friday, June 11, 2021 3:15 PM
To: Richard Streeter <rhstreeter@gmail.com>
Subject: Re: Discovery

Good Afternoon Richard:

Based on our discussion of yesterday, here's where I think we stand on discovery, coordinated with the numbering from mm original email:

1. See my email of earlier today regarding privilege issues.
2. As we discussed, Delta Southern does not object to the process you propose (i.e., securing an appropriate protective order from the Board and producing the materials pursuant to that order).
3. You were going to check to see if NLA, SEAEDD or LPPC limited the scope of their review of responsive materials to a time frame less than the 1-1-15 date suggested in Delta Southern's discovery.
4. Similar to point 3 above, can you check with your three clients to see if they used any of these objections to limit the scope of their review or production?
5. As I understand it, Interrogatory 11 will be fully answered (with documents, produced under the anticipated protective order), and you were following up with SEAEDD on the production of materials exchanged with HDR.
6. I think you agreed to ask NLA if the answer is complete.
7. My understanding is that production is complete on this issue, but please correct me if I'm incorrect.

1. Understood on the "NLA in the header" issue.
2. Again, a follow up issue between you and your client.
3. Same.

1. You were working on a segregation of the information to identify the appropriate Interrogatory(ies) to which they apply.
2. See above re the protective order.

I plan to spend a portion of the weekend reviewing the discovery and responses one more time, and if I see any other issues (I don't anticipate any), I'll let you know.

Have a good weekend.

Tom Healey

Cell 708.209.9599

Richard Streeter

From: Richard Streeter <rhstreeter@gmail.com>
Sent: Wednesday, June 23, 2021 11:15 AM
To: 'Thomas J. Healey'
Subject: RE: Discovery Follow Up

Tom, I have fully responded regarding the absence of any document being withheld for attorney-client or work product reasons and will not further respond. I will send Attachments 1 through 4 in separate emails. I will have to redo one of them that consists of two volumes. When I split it into two volumes, one was over 20 MB. I will get that to you. I am assuming that signed copies of the Undertakings will be properly forwarded before you distribute anything further.

The decision was that Interrogatory 9 was answered in a straight forward manner and did not require further elucidation. Regards, Richard

From: Thomas J. Healey <THealey@fletcher-sippel.com>
Sent: Wednesday, June 23, 2021 10:57 AM
To: Richard Streeter <rhstreeter@gmail.com>
Subject: Discovery Follow Up

Hi Richard:

Thanks for forwarding the revised motion for protective order. I'm going to look it over and let you know if I have any concerns, but I don't anticipate any.

That leaves us with just a few issues:

1. Were the six attachments that you sent to me on June 15th all of the materials you filed that day? I ask because of your reference in that email to perhaps needing to break the materials into several emails so as not to be rejected for the size of the attachments.
2. I assume you were awaiting the Board's entry of your requested protective order before providing the responsive materials for Attachments 1 through 4 of your June 15th email. Is that correct? As it is now entered, can you forward those materials please?
3. I'm still puzzled by the absence of a single document withheld for attorney-client or work product reasons. For that to be true, it means that you would never had had any communication with any of the clients regarding any of the subject matters of DSR's discovery, a circumstance that seems far-fetched. In reviewing our exchanges on this issue, I note that you phrase your explanation in terms of what the client produced. But it is your obligation to reference such materials if they are in your possession as well, not simply if they were provided back to you by a client. Do you acknowledge that obligation?
4. It does not appear that I ever got a response on Interrogatory No. 9. In your email of June 11, you indicated that "As of this moment, no decision has been made with respect to Interrogatory 9." Can you advise what decision was made please?

I think that's it, but I'm looking through the file one more time to make sure we're all covered. I look forward to closing these areas out with you.

Tom Healey

Cell 708.209.9599