

SERVICE DATE – OCTOBER 21, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

Digest:¹ The Board acknowledges the parties' reports that discovery issues have been resolved and orders Board-sponsored mediation in an effort to resolve disputes relating to the line at issue.

Decided: October 20, 2021

This case involves an application by a state entity under 49 U.S.C. § 10907 to acquire a rail line through a Board-ordered sale. As discussed below, the Board will direct the parties to participate in Board-sponsored mediation.

BACKGROUND

On November 12, 2020, Lake Providence Port Commission, a noncarrier political subdivision of the State of Louisiana (LPPC or Applicant), filed an application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire from Delta Southern Railroad, Inc. (DSR), a 20-mile rail line between milepost 471.0 and milepost 491.0, together with various ancillary tracks, in East Carroll and Madison Parishes, La. (the Line), for future operation by North Louisiana & Arkansas Railroad (NLA). (Appl. 1-3, 5.)² Concurrently, LPPC and SEAEDD filed a petition

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The application explains that the Line is one segment of the 91.3-mile McGehee-Tallulah Railroad Corridor (the Corridor), which runs from milepost 408.9 in McGehee, Ark., to milepost 500.2 in Tallulah, La. (Appl. 1.) According to the application, LPPC and NLA jointly own the northernmost segment extending from milepost 408.9 to milepost 433.0 at Lake Village, Ark. Southeast Arkansas Economic Development District (SEAEDD), a noncarrier, owns the segment between milepost 433.0 and milepost 454.8 at or near the Louisiana/Arkansas border. LPPC owns the segment between milepost 454.8 and milepost 471.0, at or near Lake Providence, East Carroll Parish, La. DSR owns the segment that extends from milepost 471.0 to approximately milepost 500 at Tallulah, La. (*Id.* at 6-7; but see, e.g., id. at 1 (stating that the end

seeking expedited consideration and acceptance of LPPC's application prior to submission of evidence regarding the Line's valuation. DSR filed a reply in opposition to the petition to expedite on December 2, 2020, and stated that it would respond to the application, if accepted, in accordance with the procedural schedule set by the Board. (DSR Reply 1, Dec. 2, 2020.)

By decision served December 11, 2020 (December 11, 2020 Decision), the Board found that the application was substantially complete, except for the absence of information pertaining to the net liquidation value (NLV) of the Line, and conditionally accepted the application subject to Applicant's submission of an NLV estimate and supporting information by December 28, 2020. Dec. 11, 2020 Decision, FD 36447, slip op. at 1-2. LPPC timely submitted an estimate of the NLV and supporting evidence, and, by decision served January 15, 2021, the application was accepted and a procedural schedule was adopted. Thereafter, a series of motions and other filings were made by NLA, DSR, and the Applicant, including a motion to dismiss filed by DSR. By decision served March 9, 2021, in light of the numerous recent filings and the impending March 16, 2021 deadline for submitting verified statements and comments addressing the application, the procedural schedule was suspended pending further Board order.³

On June 1, 2021, the Board issued a decision (June 1, 2021 Decision) resolving certain discovery issues and motions, other than DSR's motion to dismiss. See June 1, 2021 Decision, FD 36447, slip op. at 3-6. The Board also directed the parties to report the status of any remaining discovery issues and notify the agency whether they were amenable to mediation. Id. at 4, 6-7.

On June 15, 2021, counsel for LPPC, SEAEDD, MPPC, and NLA (collectively, the Project Participants) submitted supplemental discovery responses on behalf of NLA, provided a status report on outstanding discovery issues, and advised the Board that the Project Participants did not wish to engage in mediation with DSR.⁴ (Project Participants Letter 2, June 15, 2021.) Counsel for DSR reported that the parties had discussed discovery issues, that DSR would evaluate the supplemental discovery responses and advise the Board whether discovery has been

milepost for DSR's segment is 500.2).) NLA currently operates all segments of the Corridor not owned by DSR. (See id. at 3, 6.)

According to the application, an Infrastructure for Rebuilding America (INFRA) grant for restoration of the Corridor was awarded to SEAEDD on behalf of a public-private partnership composed of SEAEDD, LPPC, the Madison Parish Port Commission (MPPC), NLA, and DSR, (Appl. 2, 10-11), and grant funds are to be used to reopen the entire Corridor (the Project), including the Line at issue, which is currently impassable, (id. at 2). LPPC asserts that it filed the application because DSR has refused to commit the funds needed to restore the Line, and that the proposed acquisition is therefore necessary to realize the goal of reopening the entire Corridor. (Appl. 2, 4-5; id. Ex. 3, V.S. Hargrove ¶¶ 13-16; id. Ex. 6, V.S. Gilfoil ¶¶ 13-14.)

³ Further background on filings made in this proceeding is available in the Board's June 1, 2021 decision.

⁴ Separately, on June 15, 2021, NLA moved for entry of a protective order to safeguard discovery information designated as confidential from public disclosure. NLA filed a corrected motion for entry of a protective order on June 22, 2021, which was granted on June 23, 2021.

completed satisfactorily, and that DSR is amenable to participating in Board-sponsored mediation. (DSR Letter 1-2, June 15, 2021.) DSR thereafter advised the Board on June 30, 2021, that it would not pursue a motion to compel and that it deemed discovery concluded. (DSR Letter 2, June 30, 2021.)

The Project Participants filed a motion on September 7, 2021, requesting that the Board expeditiously issue a procedural schedule to replace the original procedural schedule suspended earlier this year. DSR filed a reply on September 20, 2021, noting that favorable action on DSR's motion to dismiss would obviate the need for further action in this docket, (DSR Reply 1, Sept. 20, 2021), and urging the Board to prescribe mediation because DSR remains interested in finding an acceptable means of making the Line a thriving link in a viable through route, (*id.* at 2). On October 12, 2021, a letter in support of the Project Participants' motion was filed by U.S. Representatives Eric A. Crawford and Julia Letlow and U.S. Senators John Boozman, Bill Cassidy, Tom Cotton, and John Kennedy.

DISCUSSION AND CONCLUSIONS

The Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible. 49 C.F.R. § 1109.1; see generally BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry., FD 32760 (Sub-No. 46) (STB served July 3, 2019); Nat'l R.R. Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd., NOR 42141 (STB served Apr. 7, 2015). The Board may order the parties to a proceeding to engage in Board-sponsored mediation at the written request of one or more parties, or by its own order. See 49 C.F.R. § 1109.2(a)(1)-(2).

Here, the parties were requested to advise the Board of their interest in mediation. DSR responded that it is amenable to participating in Board-sponsored mediation and will participate if mediation is ordered. (DSR Letter 1, June 15, 2021.) The Project Participants responded that “[g]iven DSR’s refusal to commit to the rehabilitation of the 20-mile Segment between MP 471 and MP 491 with INFRA funds, they do not wish to engage in mediation with DSR” regarding the application. (Project Participants Letter 2, June 15, 2021.) At the same time, however, the application indicates that LPPC remains committed to working with DSR to achieve the goal of reopening the Corridor. (Appl., Ex. 6, V.S. Gilfoil ¶ 15 (LPPC “will do everything in its power” to work with the parties, including DSR, to accomplish this goal).) Similarly, the application indicates that DSR expressed interest in working with LPPC to try to “come up with a creative solution to sell a portion of the right of way to the port” in August 2020, to which LPPC appears not to have replied. (Appl. 17; *id.* Ex. 6, V.S. Gilfoil ¶ 10.) DSR reiterates its interest in seeking to resolve the issues underlying the application through mediation in its September 20, 2021 reply. (DSR Reply 2, Sept. 20, 2021.)

In these circumstances, the Board believes that mediation could be productive and, consistent with the Board’s preference for resolution of disputes through mediation, will order Board-sponsored mediation pursuant to 49 C.F.R. § 1109.2(a)(2). The Chairman will soon appoint one or more mediators pursuant to 49 C.F.R. § 1109.3(a). Once appointed, the mediator or mediators will contact the parties to discuss the timing and logistics for conducting the

mediation, and other matters.⁵ At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present.

The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The Board may extend mediation pursuant to mutual written requests of all parties to the mediation proceeding. Id. The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

Under 49 C.F.R. § 1109.3(e), where at least one party to the mediation does not voluntarily consent to mediation, the Board will not hold the underlying proceeding in abeyance and statutory deadlines will not be tolled. Because the Project Participants have not voluntarily consented to mediation here, the proceeding will not be held in abeyance at this time. However, for the sake of administrative efficiency, the Board will address the pending motions after the completion of mediation, if the parties are unable to fully resolve their disputes. Accordingly, the Board's March 9, 2021 decision suspending the procedural schedule will remain in effect pending further order of the Board. Nevertheless, the Board recognizes the concerns expressed in this docket that pending matters be addressed in an expedited fashion. The Board therefore expects the parties to proceed to mediation promptly and will expeditiously address the pending motions, if necessary, upon conclusion of the mediation.

It is ordered:

1. Mediation will be initiated as discussed above.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

⁵ While the parties are encouraged to work out as many issues as possible, the scope of the mediation will not encompass any grant, denial, stay, or revocation of regulatory authority. 49 C.F.R. § 1109.1.