

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 36447

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

MOTION TO FILE A SUPPLEMENTAL
APPLICATION TO ACQUIRE THE
ENTIRE LAKE PROVIDENCE LINE
BETWEEN MP 471.0 AND MP 498.6

Lake Providence Port Commission (LPPC), by and through its counsel of record, requests that the Board issue an order that allows LPPC to supplement its Feeder Application filed on November 12, 2020. Its original Application sought to acquire only the twenty-mile segment of the Line between MP 471.0 and MP 491.0. In its Supplemental Application, LPPC will seek to acquire the segment of the Line between MP 471.0 and MP 498.4, where freight traffic is interchanged with the Kansas City Southern Railway Company (KCS).

Supplementation of LPPC's Feeder Line Application is consistent with Board precedent. The Board has previously taken the position that "[a]s the statute does not set a time limit for filing initial feeder line applications, there is no reason the agency should not allow supplements to initial applications."

Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL., STB

Finance Docket No. 34335, slip op. at 4 (STB served Sept. 26, 2003). LPPC also notes that Delta Southern Railroad (DSR), in its Motion to Strike, filed March 8, 2021, argued that if its opponents in this proceeding want to “supplement LPPC’s request for a Board-ordered taking, as they seem to, then the appropriate course would be for LPPC to seek leave to amend its Feeder Line Application”.¹

**LPPC’s Decision To Supplement Its Feeder Line Application
Is Based On Its Realization That A Failure To Complete The
Rehabilitation Of The Entire Track Will Jeopardize The Operator’s
Ability To Attract And Retain Rail Shippers And Will Forfeit The
Environmental Benefits That Will Follow The Diversion Of Traffic
From Trucking To Rail That Are Detailed In The INFRA
Grant Application.**

LPPC stresses that it is *not* seeking to supplement its Application to cure any deficiencies in its initial Application, which the Board has repeatedly found to be complete. Instead, LPPC has concluded that the needs of existing and new shippers will be best served if LPPC is authorized to purchase and rehabilitate the entire Line that runs between MP 471, near Lake Providence, to MP 498.4 in Tallulah, LA. That result is consistent with the uncontestable fact that the “statutes continue to mandate that the STB consider the best interests of the shippers, the work force, and most importantly the public.”²

¹ Motion to Strike at 3.

² Martin J. Oberman, Chairman, Surface Transportation Board, Remarks presented at the North American Rail Shippers Association Annual Meeting (September 8, 2021).

As the Department of Transportation recognized in the Scope of Work that was released on January 15, 2021:

The objective of the Project is to upgrade the Corridor and its connective branch lines to two ports to improve rail operations, and leverage recent rehabilitation investments and construction of new infrastructure to benefit a rural region and help catalyze greater opportunities for economic development. This will be accomplished through the rehabilitation of track and railroad bridges, and the construction of new track in certain areas.

Project benefits include:

Enhanced railroad transportation operating capacity, efficiency, and safety

Improved rail access/connectivity and capacity

Enhanced economic development through additional rail business opportunity throughout the entire corridor.³

In November 2020, LPPC filed its Feeder Application. At the time, it was aware that Delta Southern Railroad, Inc.(DSR), after participating in the unique public-private partnership to obtain funds that would be used to satisfy the foregoing objective, would not commit to use of those funds to rehabilitate a crucial segment of its track that would improve rail access and connectivity with both Union Pacific Railroad and KCS.

After the Board accepted LPPC's Application and established a procedural schedule, DSR, instead of complying with the requirements in the Board's order, filed a Motion to Dismiss LPPC's Application. In its Motion, DSR

³ A complete copy of the INFRA Grant Agreement is attached to NLA's Motion Seeking Entry of Protective Order Requested by North Louisiana & Arkansas Railroad, filed February 18, 2021. In particular, see Statement of Work at 58 of 76 in docket entry 301165.

announced that although it “has engaged in discussions concerning renovations of the Line, DSR thus far has concluded that the desired track renovations as to the long-dormant Line are unjustified and unwarranted.”⁴

In reality, DSR’s unwillingness to rehabilitate the segment of its track, which is located between the Port of Lake Providence and Madison Parish Port, is that the revenues it earns from railcar storage are likely to be greater than the revenues it is earning from freight operations. Without question, storage of railcars on a critical stretch of its mainline is wholly incompatible with the best interests of the shippers who will depend on efficient rail service after the entire Line is rehabilitated. Unless the entire Lake Providence Branch Line is fully restored in a manner that complies with the objectives of the NAFTA Grant that are set out above, those objectives, which have regional and national significance, will never be achieved.

After giving this matter further review, LPPC has concluded that it should seek authority from the Board to supplement its Feeder Application so that its operator can provide direct service for shippers between UP at McGehee, Arkansas and KCS at Tallulah, Louisiana. LPPC’s conclusion was reached after full consideration of the existing record; the history of the Lake Providence Branch Line (the Line); the failure of mediation; and DSR’s unwillingness to rehabilitate the Line to FRA Class 2 standards that is reflected in its comment that although it “has engaged in discussions concerning

⁴ Motion to Dismiss at 2.

renovations of the Line, DSR thus far has concluded that the desired track renovations as to the long-dormant Line are unjustified and unwarranted.”⁵

LPPC’s decision to supplement its Application is also based on the needs of the shipping public that comes from many years of transportation-related activities. Those needs cannot be well served when the existing track is predominately 85-pound rail with full toe angle bars and single shoulder tie plates. As evidenced by the ongoing reconstruction of the 27.4 miles of track at the north end of the Line that is owned by LPPC and North Louisiana & Arkansas Railroad (NLA), the low bid, which has already been exceeded, was \$4,163,507. That investment will be wasted if the entire Line is not rebuilt. As a result, the Southeast Arkansas Economic Development District (SEAEDD), the Madison Parish Port Commission (MPPC), (collectively referred to as the Project Participants) and, broadly speaking, the States of Louisiana and Arkansas support LPPC’s request to acquire the entire line. Unlike West Branch Intermediate Holdings, LLC and Golden Gate Capital which indirectly controls DSR, they all recognize that the upgrading of the Line is necessary to attract and satisfy shippers and thereby benefit the region by helping to catalyze greater opportunities of economic development.

By acquiring and restoring the full length of the track, LPPC’s operator will be able to provide shippers with single line service to and from KCS instead of having to interchange with DSR with less than eight miles to go to reach

⁵ DSR’s Motion to Dismiss Proceeding at 2.

KCS if LPPC were to acquire only the 20-mile segment that is involved in its initial Feeder Application. LPPC's efforts to increase network fluidity and service issues may not be the direct equivalent of the issues involved in Ex Parte No. 767. However, the instant proceeding vividly illustrates a prime example of a failure in the national rail network that requires immediate attention.

LPPC recognizes that the Board cannot ignore owners' rights to realize a reasonable and economic profit or return on their capital. It is nonsensical for LPPC, SEAEDD, NLA and MPP to rebuild the Lake Providence Branch Line to FRA Class 2 standards between MP 408.9 and 471.0, only to see their efforts undermined by DSR, and the multi-billion-dollar private equity firm that indirectly controls it, who wish to store railcars on the Line rather than provide freight rail service. While DSR may not receive all the compensation that it might demand, it will receive the constitutional minimum value consistent with the statutory requirements imposed by Congress.

As the record reflects, on December 2, 2020, DSR filed its Reply to LPPC's and SEAEDD's petition seeking expedited consideration. In its Reply, DSR states that during the "grant application process, [it] never committed to the FRA or to any of the other participants to provide any 'matching funds' for the INFRA grant; LPPC and Madison Parish Port committed to provide those funds

(including the shortfall between the \$25,000,000 requested and the \$10,000,000 awarded).”⁶

It is true that LPPC covered DSR’s share of the cost of preparing the INFRA Grant Application. That was done because DSR claimed that it lacked the funds to cover those costs. However, no one ever anticipated that DSR and its owners would only agree to use INFRA grant funds to upgrade a small fraction the Line to the south of MP 491.0 and would not rehabilitate any part of the crucial stretch of track between MP 471.0 and MP 491.0.

DSR’s efforts to compel LPPC to cover the cost of rehabilitating the track so that DSR can maximize its earning by storing railcars is unreasonable. In the first place, storage of railcars on a mainline is wholly incompatible with the best interests of the shippers who require timely and efficient rail service. In addition, DSR’s conclusion that the desired track renovations are unjustified and unwarranted violently clashes with DOT’s, FRA’s and the Project Participants’ conclusion that a complete rehabilitation of the Lake Providence Branch Line to FRA Class 2 standards is a “Nationally Significant Freight and Highway Project.”⁷ While DSR and its owners may suffer the loss of revenues for car storage if and when the Board approves LPPC’s Feeder Application, they

⁶ DSR Reply at 2, n4.

⁷ A complete copy of the INFRA Grant Agreement is attached to NLA’s Motion Seeking Entry of Protective Order Requested by North Louisiana & Arkansas Railroad, filed February 18, 2021. In particular, see Statement of Work at 58 of 76 in docket entry 301165. In essence, DSR’s position represents an unwarranted collateral attack on DOT’s INFRA Grant Agreement.

will receive the constitutional minimum value and avoid the costs of operating over the Line and the costs of rehabilitating the line.

Consistent with the public interest, LPPC's ownership will guarantee the rehabilitation of the entire Lake Providence Branch Line. Moreover, it will also improve overall freight operations by eliminating many of the operational and other problems that are created when multiple carriers are involved in moving traffic over short distances at the expense of the shipper. Simply stated, LPPC's acquisition of the DSR's tracks will restore the original through line that was built in 1912. That alone will facilitate tracking the location of rail cars that seemingly are buried on an intermediate carrier's storage track because of a breakdown in communications. As DSR is aware, this very problem repeatedly occurred when Complex Chemical cars were "lost" in UP's yard in McGehee.

At present, LPPC is the only party that can guarantee the full restoration the entire northern segment of the Lake Providence Branch Line that was constructed in 1912 between MP 498.4 in McGehee and MP 651.6 in Vidalia, Louisiana. Although the southern segment of the Line between MP 498.4 and MP 651.6 was abandoned in 1988, the northern segment between McGehee and Tallulah was saved from abandonment when the Interstate Commerce Commission (ICC) accepted an offer of assistance filed by Delta Southern Railroad Company (DSRC).⁸

⁸ See ICC Docket No. AB 3 (Sub No. 72), *Missouri Pacific Railroad Company – Abandonment – In Desha and Chicot Counties, Arkansas and East Carroll, Madison, Tensas and Concordia Parishes, Louisiana*.

DSRC operated the entire Line between McGehee and Tallulah until 1999. At which point, William Wainwright and his wife formed a non-carrier, which it named Delta Southern Railroad, Inc. (DSR), and acquired various rail lines and operating rights from DSRC.⁹ Because the Wainwrights lacked the financial means to sufficiently correct the extremely deteriorated track, beginning in 2004, they were compelled to file a series of notices of exemption and a petition to abandon most of the Line.¹⁰ As they admitted in pleadings filed with the Board, the line had deteriorated to the point that they had been forced to embargo segments of the line. As described its Petition for Exemption, filed December 6, 2010:

virtually every rail length in the Rail Line has excessive defective crossties in clusters and under joints, such that crosstie conditions do not comply with Minimum FRA Class 1 track safety standards. Track alignment, cross-level and gage are also out of compliance with FRA Class I standards at numerous locations.¹¹

In fact, service was so bad that in November 2006, it took DSR six (6) weeks to move some carloads of cottonseed 64 miles from Lake Providence to McGehee. Needless to say, that was the last train that DSR operated from Lake

⁹ *Delta Southern Railroad, Inc.-Acquisition and Operation Exemption—Delta Southern Railroad Company*, STB Finance Docket No. 33802, slip op. at 1-2 (STB served Oct. 1, 1999).

¹⁰ *See also* STB Docket No. AB-384 (Sub-No. 1X), *Delta Southern Railroad, Inc.-Abandonment Exemption – Between Lake Village, Ark. and Shelburn, LA.*; STB Docket No. AB-384 (Sub-No. 2X), *Delta Southern Railroad, Inc.-Abandonment Exemption – In East Carroll Parish, LA*; STB Docket No. AB-384 (Sub-No. 3X), *Delta Southern Railroad, Inc.-Abandonment Exemption –In Desha and Chicot Counties, ARK.*

¹¹ AB-384(3X), *Delta Southern Railroad, Inc. – Abandonment Exemption – In Desha and Chicot Counties, ARK*, at 6.

Providence. Given that level of service, it is no wonder that the demand for rail service over the Line completely vanished.¹²

By June 7, 2011, they had sold all of the Line between MP 408.9 and 471 to LPPC, SEAEDD and NLA. Although the Wainwrights continued to own the segment of the track to the south of MP 471.0 to MP 498.4, which LPPC seeks to acquire and rehabilitate, they did not do anything to address the deteriorated condition of that track. Instead, they took full advantage of the temporary pause in freight operations related to ongoing efforts being made by LPPC, SEAEDD and NLA to rehabilitate the track they had acquired, to enter into contracts to store railcars on the segment of the track between MPs 471.0 and 491.0. Because this practice allowed Wainwright DSR to realize more revenue from railcar storage than he could from freight service, they had no incentive to upgrade the track. Instead, they focused on the traffic that moved been the Madison Parish Port and the interchange with KCS until they were able to get rid of everything by selling the entire track to West Branch in June 2015 for a purported \$3.5 million dollars.

West Branch And Golden Gate Capital

When the Wainwrights sold their stock to West Branch, it was a newly formed non-carrier. As a result, it did not have to acquire the Board's prior

¹² It is noted that LPPC's offer to purchase the segment of the Lake Providence Branch Line from MP 463.0 to MP 471.0 contained the cautionary statement that it did not "intend to commence operations under the trackage rights until after the OFA line and adjacent lines to the north are rehabilitated. This will not occur until well after this notice becomes effective on July 10, 2011." See LPPC Notice of Exemption, filed June 10, 2011, in FD 35531, at ¶(a)(1)(ii).

approval to acquire ownership and control of DSR. The same is true of its West Branch's management team, Continental Rail, LLC.¹³ Nor was West Branch required to mention that it was affiliated with Golden Gate Capital, a private equity investment firm based in San Francisco, with over \$15 billion in invested capital.

West Branch's acquisition was initially viewed as a positive step as financial investments and improvements to the rail were impressive. However, the "several veterans of the short line industry" who were unnamed in the letter of intent referenced in note 13 did not last long. Their departures were viewed by Madison Parish Port officials as a troubling response to deteriorating support for professional business development and service to the customer base. Instead of working with NLA to develop new business, DSR's management once again favored the more lucrative storage of railcars. In January 2021, John Marino Jr. and Continental Rail were fired.

¹³ West Branch's background was later revealed to the Board in a redacted version of a letter of intent, filed on January 31, 2017, in FD 36084, *West Branch Intermediate Holdings, LLC, and Continental Rail LLC-Acquisition of Control Exemption-Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., Wyoming And Colorado Railroad Company, Inc.* That letter explains that West Branch was formed by [redacted in original] in 2015 with a mandate to acquire and grow short line rail and rail-related assets. In June of 2015, West Branch successfully acquired the Monroe, LA-based Delta Southern Railroad, where it has committed over \$1M to infrastructure upgrades to support the growth of the business and has begun to expand the line's scope of services. West Branch Holdings is led by a deeply experienced management team from Continental Railways ("Continental"). Continental was formed by John Marino SR [deceased] and John Marino Jr., who were joined by several veterans of the short line industry.

LPPC's conclusion to acquire the entire Line is ultimately based on concerns regarding DSR's current owners and their unwillingness to eliminate railcar storage which is clearly incompatible with efficient rail service and contrary to LPPC's, SEAEDD's, MPPC's and NLA's joint efforts to satisfy the public interest objectives that are set out in the INFRA Grant. Rail shippers and the Ports cannot be held hostage by DSR's unwillingness to cease using the track for storage.

Because LPPC's Ownership Of The Entire Line Is Wholly Consistent With The Public Interest And Will Be Responsive To The Needs Of Shippers While Fostering Coordination Between Rail Carriers And Other Modes, Including the Barge Industry On The Mississippi, The Situation Clearly Warrants A Supplemental Application.

Given the undeniable need to rehabilitate the entire Line in order to provide reliable rail service to all future shippers, the Board should authorize LPPC's submission of a full supplemental Feeder Application that would once again consolidate efficient rail service operations over the Lake Providence Branch Line under one rail carrier. The Board must reach a decision that is in the best interest of the shippers who will use the line in the future. Only by doing so, will the Board fulfill the goals of the National Rail Transportation Policy that seek "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carrier and with other modes, to meet the needs of the public and the national defense; [and] to foster sound economic conditions in transportation and to ensure effective

competition and coordination between rail carriers and other modes.”¹⁴

Without question, the use a line of railroad to store railcars at the expense of publicly owned ports that are vital to the public and national defense is contrary to the National Rail Transportation Policy and cannot be tolerated.

**What Is The Constitutional Minimum Value
Of The Track Between MP 471 and MP 498.4?**

LPPC recognizes and agrees that it must offer to pay the constitutional minimum value of the Lake Providence Line, which “shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.” As stated in Mr. Gilfoil’s Verified Statement, in August 2020, Mr. Marino “suggested that LPPC buy the track owned by DSR in East Carroll Parish to below Tallulah.”¹⁵ That mileage roughly corresponds to the section of the Lake Providence Branch that LPPC will purchase if the Board grants its Supplemented Application. Mr. Marino also suggested “a price tag of between \$13 and \$16 million”¹⁶

Marino never provided any data that would support that price tag. Moreover, DSR has subsequently declined to provide any financial data that would allow a determination of the going concern value for the entire Line pursuant to 49 U.S.C. § 10907(b)(2).

¹⁴ 49 U.S.C. § 10101(4) and (5).

¹⁵ Application, Ex. 6, at 5, ¶6.

¹⁶ *Id.*

In 2015, Mr. Wainwright told Danny Robbins, NLA's Vice President, that he had been offered \$3.5 million for the DSR's shares and that Robbins would have to pay more than that to acquire DSR's tracks. What has happened that would cause the price tag to jump from \$3.5 million to over \$13 or \$16 million? The only word that jumps to mind is "greed."

The fact of the matter is that DSR has not provided any rail common carrier service over the twenty-mile segment between mileposts 471.0 and 491.0 of the Line since 2017. Hence, the going concern value (GCV) of that segment in terms of freight rail service is \$0.00. Because railcar storage of hundreds of railcars on the track is incompatible with rail common carrier service over the Line, the Board should find that storage revenues must be disregarded in determining GCV. Simply stated, inclusion of railcar storage revenues cannot be squared with the intent of Congress when it enacted the Feeder Line provisions.

DSR's efforts to suppress interchange traffic in order to increase revenues unquestionably raises a red flag. If DSR is dependent upon storage revenues to break even, it seems obvious that it cannot cover its operating and maintenance costs with revenues earned by its limited legitimate freight operations.

Furthermore, because DSR failed to maintain the line, both before and after it was sold to West Branch, it will require several million dollars to rehabilitate the track. Those costs would substantially reduce, if not wipe out,

any profits that DSR realized from freight operations. In its final decision in *Caddo Antoine and Little Missouri Railroad Company – Feeder Line Acquisition-Arkansas Midland Railroad Company Line Between Gurdon and Bird’s Mill, AR*, 4 STB 611, 622-623 (2000), the Board clearly recognized that the projected cost of rehabilitation must be considered in determining the minimum constitutional value. The bids that were submitted to rebuild the 24.1-mile segment between MP 433.0 and MP 408.9 ranged from \$5,308,279 to \$4,163,507. The low bid has already failed to cover the full costs.

In order to facilitate the Board’s handling of this matter, LPPC requests the Board require DSR to provide LPPC verified data that will allow LPPC to prepare its valuation of the Line. Such data should be limited to the Line that is the subject of this proceeding and should *not* include information related to DSR’s leasehold interests in a rail line owed by Union Pacific Railroad and operated by DSR that extends from Monroe to Sterlington, Louisiana (The Sterlington Line). Should the Board allow LPPC to supplement its Feeder Application, LPPC will immediately provide DSR’s counsel with a detailed list of the data that should be produced.

Given both DSR’s positions and the positive benefits that will be realized by the elimination of an additional interchange on movements between McGehee and the Port of Madison Parish, the Board should grant LPPC’s request to supplement its pending Application to include the entire segment of the Line that is owned by DSR.

Respectfully submitted,

/s/ Richard H. Streeter

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CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that on this 4th day of March 2022,
I served a true copy of the foregoing on Thomas J. Healey, counsel for the Delta
Southern Railroad, Inc. at THealey@fletcher-sippel.com.

/s/ Richard H. Streeter