

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36447

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

**VERIFIED REBUTTAL AND SUPPORTING VERIFIED STATEMENTS
IN SUPPORT OF 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, respectfully submits its verified rebuttal arguments and supporting statements to address and counter the pattern of false and misleading statements that have been made by Delta Southern Railroad (DSR) in its Response to the LPPC's Motion to Supplement its pending Feeder Line Application that LPPC filed March 24, 2022. Without question, the States of Louisiana and Arkansas, as well as the United States Department of Transportation, fully support the reopening of the entire Lake Providence Branch Line between McGehee, Arkansas and Tallulah, Louisiana and the development of the inland water ports along the Mississippi River. Therefore, it is crucial that the Board reach its decision herein based on accurate facts and not be misled by the false and misleading testimony that is contained in DSR's reply that seeks to cover up and avoid full scrutiny of actions taken by DSR's management to discourage interchange traffic with North Louisiana & Arkansas Railroad (NLA).

INTRODUCTION

In its Response, DSR questions LPPC's integrity by claiming that LPPC waited almost 16 months before it changed its mind and decided to acquire the remaining portion of the Lake Providence Branch.¹ According to DSR, LPPC has no "truly justifiable basis for a 16-month delay in seeking to take DSR's South Segment."² For the reasons that hereinafter set forth in detail, LPPC disagrees.

As Wyly Gilfoil, LPPC's Port Director, explained in his Verified Statement that was designated as Exhibit 6 in LPPC's Feeder Application that was filed on November 12, 2020, he informed the Board at ¶16 that:

To comply with the expressed goal of the Project, namely the redevelopment of the *entire* corridor, LPPC will do everything in its power to work with SEAEDD, the Madison Parish Port, NLA and all other parties, including DSR. That DSR lacks intent to spend the cash or allocate grant funds to rehabilitate the tracks in question must not allow the goals of the Project to be derailed. As demonstrated by the industry support the Partners have received while pursuing the INFRA Grant and this Feeder Application, the line will result in improved transportation for all shippers that wish to transport traffic over the line. I urge the Board to give this Application expedited consideration.

It was only after it became abundantly clear that John Marino and Jon Ryan would not agree to the cessation of car storage on the Line between MP 471.0 and 491.0 and would not agree to upgrade the track between those mileposts that LPPC decided to file its Feeder Application in November 2020. Since that time, LPPC has learned that John Marino and Jon Ryan, instead of

¹ Response at 1.

² *Id.* at 3.

working with NLA to attract new customers, had actually directed Craig Huff, DSR's former General Manager, to discourage new interchange business with NLA. That step was taken to maximize DSR's revenues from car storage that were generated by using the track for storage instead of expending funds to bring the track up to even FRA Class 1 status. Moreover, that step was taken despite the fact, which is demonstrated by evidence of record, that there were and are shippers that sought rates and even had cars placed in interchange that DSR refused to accept. Furthermore, it was taken despite the initial efforts taken by J. D. Ventreck and Mr. Huff to cancel preexisting storage contracts that William Wainwright had negotiated before he sold DSR to West Branch Intermediate Holdings, LLC.³

The Verified Statement of Craig Huff, which is submitted herewith, substantiates the foregoing. Unlike the Verified Statement of Jon Ryan, who assertedly determined through unnamed members of his staff that interchange with NLA has been open since May 1, 2016, Mr. Huff confirms the evidence of

³ After he finalized his efforts to abandon the portion of the Lake Providence Branch to the north of MP 471.0 that extends to McGehee, Arkansas in 2011, Mr. Wainwright was obviously aware that until LPPC, SEAEDD and NLA were able to restore deteriorated condition of the tracks that he abandoned, he could freely limit his holding out of service to traffic that would move between MP 491 and 498.6 where he interlined with KCS. Moreover, he could use the twenty miles of track to the north of MP 491 to store cars to increase his revenues without upgrading the track from its FRA excepted status. That situation abruptly changed in 2016 when the Line to the north of 471.0 was reopened for service after Wainwright sold his common stock to West Branch Intermediate Holdings, LLC (West Branch) in June of 2015.

record from shippers that DSR refused interchange long after May 1, 2016. As he has explained:

While we continued to interchange with NLA until August 2017 in order to serve Complex Chemical, which is DSR's largest customer, Matt Prince, another former employee of Continental Rail, and I were ultimately directed to advise NLA that interchange was closed in August 2017 due to track conditions on DSR's track, which was designated as excepted track pursuant to 49 CFR 213.4. As a result, NLA, which had placed multiple cars destined for Complex Chemical in interchange the previous day, had to retrieve the cars and reroute them around the horn to return them to Complex Chemical. I am not aware that DSR has taken any steps to rehabilitate the 20-mile segment above FRA excepted track status since that time.⁴

Mr. Huff's testimony also helps to explain why no shipments have been offered in interchange. It is respectfully submitted that Mr. Huff's testimony, when combined with the sworn testimony of shippers for whom DSR denied interchange service for several years, shows that LPPC is not a big bad Wolf "grasping at air"⁵ to "support its latest power grab."⁶ Rather, LPPC is properly responding to the new evidence that came to its attention after it filed its initial Feeder Line Application under the misconception that it would be possible to work with DSR without having to acquire the ownership and control of the entire Lake Providence Branch Line.

Mr. Huff's testimony also explains the control that Mr. Ryan exercised over the expenditure of funds and DSR's decision to focus on revenues to be

⁴ V.S. Huff at ¶ 14.

⁵ Response at 1.

⁶ *Id.* at 2.

earned from car storage instead of upgrading the track between MP 471 and MP 491. Of course, where there is a continuous blockage of storage cars that stretch for miles with no place to quickly move them, there is no way to claim that full service was available. Mr. Huff, who is a qualified railroad engineer and was on site to see what was happening, has testified that:

Another primary reason for the absence of current shippers is that several miles of the mainline track between MP 491 and MP 471 were clogged by hundreds of stored railcars. Because of the lack of sidetracks and the deteriorated condition of the mainline, it required up to four (4) days to clear the Line so that railcars originating at points beyond MP 471 that are destined to Madison Parish Port or to be placed in interchange service at Tallulah could be moved through to the point of interchange. The same is true of northbound trains that originate at the Madison Parish Port or that are received in interchange at Tallulah that are destined to move beyond MP 471 to reach sections of the Corridor that are served by NLA or to be interchanged by it with other railroads at McGehee.⁷

Given the foregoing, this proceeding involves a significant issue regarding the use of the feeder line development program by a government agency that, to fulfill the requirements of an INFRA Grant, must rebuild an entire rail corridor the United States Department of Transportation has found to be of national significance. The Line, which has long been known as the Lake Providence Branch, extends 89.7 miles between MP 408.9 near McGehee, Arkansas and MP 498.6 in Tallulah, Louisiana. Although LPPC and its partners are nearing completion of their efforts to rebuild the portion of the track between MP 408.9 and MP 471.0, their efforts will be wasted if the same quality of operations over

⁷ V.S. Huff at ¶ 15.

that portion of the track is not matched by the same quality of operations between MP 471 and 498.6. It is not enough to leave the track between MP 471 and MP 491 in either FRA excepted track status or FRA Class 1 status.

Since DSR was acquired by a private equity fund in June 2015, its owners have focused on what DSR has labeled “the “South Segment.” This is the portion of its track between MP 491.0, where it connects with the private track owned by the Madison Parish Port, and MP 498.6, where it connects with KCS in Tallulah. This segment “actively supports local traffic for customers located on it”.⁸

The same cannot be said of the track between MP 491 and MP 471. Until LPPC filed its Feeder Application, DSR had made no effort to improve that section of track, which remains in FRA excepted track status. The track was solely used to store rail cars. The deteriorated condition of the track and the car storage served to discourage shippers from tendering loads that could have been routed over this segment of the Line.

The disparity in maintenance was deliberate and is vividly reflected in Mr. Ryan’s proposed budget for 2020, which he dropped on members of the INFRA coalition in late November 2019 when the members of the Coalition were attempting to adjust priorities to comply with the INFRA Grant offered by DOT.

⁸ Although DSR says that “none of those customers have alleged that DSR’s ongoing provision of service is in any way inadequate,” DSR assertion is belied by the Jerry Melton, the owner of Complex Chemical, which is by far DSR’s largest customer. See V.S. Melton, filed April 5, 2021 (and subsequently verified on April 7, 2021).

His budget ignored “the intended rail rehabilitation scope of work that had been discussed the past two years and presented to the FRA as part of the grant applications.”⁹ As Mr. Ryan’s explained, it was DSR’s “plan to begin the rehabilitation at the KCS interchange and work north” for approximately 6 miles of track.¹⁰ When challenged, Mr. Ryan brushed aside criticism with the statement that “I am not privy to what was discussed the past two years so I can not speak to that.”¹¹ Given Mr. Ryan’s tight control of all expenditures, it is difficult to believe that he was unaware of what had been discussed during the past two years. It should be noted that his 2020 budget was later used by Mr. Marino when he made it crystal clear that DSR would not commit to the use of INFRA funds to rehabilitate the tracks between MP 471 and MP 491.¹²

Most importantly, as LPPC has learned months after it filed its Feeder Line Application on November 12, 2020, DSR’s management team, which was headed by John Marino, Jr. and Jon Ryan, had deliberately taken action during the previous five (5) years to discourage interchange with NLA at MP 471. As Mr. Huff has explained, both Mr. Marino and Jon Ryan made it clear to him that he should focus on the use the track between MP 491 and 471 “to

⁹ See Exhibit 1, which consists of emails exchanged between Jon Ryan and Doree Magiera, who is employed by HDR and was responsible for preparing the Coalition’s INFRA Application.

¹⁰ See email dated November 26, 2019 from Jon Ryan to Doree Magiera, HDR Engineering attached hereto as Exhibit 2.

¹¹ Ryan email, dated December 4, 2020 to Doree Magiera, et al.

¹² See LPPC’s Feeder Application, Ex. 3, V.S. Patrecia Hargrove at ¶¶ 11-14. Because copies of the emails referred to by Ms. Hargrove were not attached to her Verified Statement, they are attached hereto.

store railcars and actively discourage shipments of interchange rail traffic with NLA.”¹³

There is no avoiding the conclusion that their actions are responsible for the lack of interchange service. As the record reflects, there are numerous examples of instances when interchange was denied after DSR allegedly restored its track since May 1, 2016. Those instances cannot be reconciled with the statements of Jon Ryan in his Verified Statement.

The Board should also note that in 2017, Matt Prince, DSR’s Director of Administration informed NLA that it could not afford to spend less than \$20,000.00 to cover its share of an invoice for engineering services rendered by HDR to prepare an INFRA Grant Application. *See Exhibit 3.* As Mr. Huff noted, he and Mr. Prince, in August 2017, were “directed to Advise NLA that interchange was closed in August 2017 due to track conditions on DSR’s track, which was designated as excepted track pursuant to 49 CFR 213.4.”¹⁴ While Mr. Huff’s testimony corroborates Mr. Robbins’ testimony, it repudiates Mr. Ryan’s false testimony.

In its response, DSR seeks to evade its failure to restore the rest of its track to even FRA Class 1 status by arguing that LPPC may not force the sale of its Line when “the South Segment “actively supports local traffic for customers located on it, and none of those customers have alleged that DSR’s

¹³ *See* V.S. Craig Huff at ¶16.

¹⁴ *Id.* at ¶13.

ongoing provision of service is in any way inadequate.”¹⁵ The preceding statement ignores the complaints, which are already of record, that have been voiced by the owner of Complex Chemical, which is DSR’s largest customer.

DSR has also ignored the decision of the Eighth Circuit in *Caddo Antoine And Little Missouri R. Co.*, 95 F.3d 740 (8th Cir. 1996) (*Caddo Antoine*), and the Board’s precedents in *Caddo Antoine et al.--Feeder Line Acquisition -- Arkansas Midland RR*, 4 S.T.B. 326 (1999) (*CALM I*) and *Caddo Antoine et al.--Feeder Line Acquisition -- Arkansas Midland RR*, 4 S.T.B. 610 (2000) (*CALM II*). Those decisions condemn the “cherry-picking” practice that has consistently characterized DSR’s service since 2017 and allow the use of the PC&N standards to force the sale of an small segment of a Line that is adequately served when the remainder of the Line has been neglected.

As the Supreme Court has long recognized, when an industry, such as the railroad industry, is closely regulated, any person who chooses to enter such an industry must be aware of the full arsenal of government regulations with which it must comply and must accept the burdens as well as the benefits that follow from ownership. In effect, the businessman in a regulated industry “consents to the restrictions placed upon him.” *Marshall v. Barlow Inc*, 436 U.S. 307, 312 (1978) (quoting *Almeida-Sanchez v. United States*, 413 U.S. 266, 271 (1973).

¹⁵ DSR Response at 2.

Although ICCTA and the Staggers Act have eased some of the regulations governing entry to the rail industry, the fact remains that the common carrier obligation is a basic “burden” that is shared by all railroads and by the private equity firms and others, which includes LPPC and SEAEDD, who choose to acquire ownership and control of regulated rail carriers. LPPC unquestionably accepts those burdens and, along with the Southeast Arkansas Economic Development District (SEAEDD), Madison Parish Port (MPP), and North Louisiana & Arkansas (NLA), is firmly committed to the reconstruction of the *entire* Lake Provident Branch Line. The same is not true of DSR’s owners.

LPPC is aware that DSR, in an obvious response to LPPC’s Feeder Line Application, has finally taken some steps to repair its tracks, albeit not even to FRA Class 1 status. As explained in Daniel Robbins’ Verified Statement that is attached hereto, on March 29, 2022, NLA’s duly accredited track inspector confirmed that DSR has recently taken some steps to address deficiencies in the track between MP 471.0 and MP 472.5 over which NLA holds trackage rights. However, his inspection report reveals at least 48 defects that would prevent the upgrading of the track’s FRA excepted track status.

Given the actions taken by DSR that have harmed shippers by depriving them of interchange service over the Line, the Board should permit LPPC to supplement its Feeder Application and force the sale of the entire Lake Providence Branch to LPPC. The Board should not reward DSR for its past refusals to use the track for freight service instead of car storage. Instead, the Board should find that DSR’s prolonged failure to maintain its track that is

located between MP 471.0 and MP 491.0 and its efforts to discourage interchange with NLA allow LPPC to force the sale of the entire segment of the Lake Provident Branch that is owned by DSR.

ARGUMENT

The Basic Facts In This Proceeding Are Virtually Indistinguishable From Those In *Caddo Antoine And Little Missouri Railroad Company-Feeder Line Acquisition-Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR.*

In its response, DSR insists that “no amount of review should have been needed to realize that even if LPPC were to somehow prevail on its acquisition of the North Segment (which it should not), the South Segment would remain with DSR.”¹⁶ DSR’s argument obviously ignores the decision of the Eighth Circuit in *Caddo Antoine* and the Board’s decisions in *CALM I* and *CALM II*. Because the situation in this proceeding cannot be distinguished from that in *Caddo Antoine*, the fact that DSR has been content to “cherry-pick” by providing some adequate local service for shippers into and out of the Madison Parish Port at or near Tallulah, the only real issue that must be resolved is the Constitutional minimum value of the Line. In this regard, the evidence of record also contains sworn testimony from the Complex Chemical, the largest shipper in Madison Parish Port, that DSR’s service over 75% of DSR’s track is inadequate. Realistically speaking, Complex Chemical’s testimony is incapable of being challenged.

¹⁶ DSR Response at 3.

The Lake Providence Branch Line has been operated as a single line of railroad since it was constructed in 1912.

DSR's position herein mirrors the argument made by Arkansas Midland Railroad Company (AKMD) in *Caddo Antoine*. Briefly stated, AKMD argued that when it enacted the feeder line program, Congress did not intend to give a carrier's adversaries a mechanism to wrest away a successful operation.¹⁷ Hence, the line should be divided into a northern segment and a southern segment for purposes of the feeder line proceeding. LPPC's position that it should be authorized to supplement its initial feeder application to acquire the final segment of the Lake Provident Branch is based on the arguments presented by Caddo Antoine and Little Missouri R. Co. (CALM).

The Interstate Commerce Commission (ICC) accepted AKMD's argument in its decision served April 18, 1995. Although the ICC found that AKMD's service on the northern segment was inadequate, it found that AKMD was apparently providing adequate service to International Paper Co. (IP), which was AKMD's principal shipper on the line. IP is located approximately 3 miles from Gurdon, near where the southern end of the line connects with UP's main line. The other shippers on the line were located on the extreme northern end of the line near Birds Mill. No shippers were located on the Line between the two end points. While the southern segment was well maintained, the ICC

¹⁷ AKMD's arguments before the ICC are set forth in the Board's reported decision at 4 S.T.B. 326 (1999), which reprints the entire ICC decision at Appendix C, which begins at 350. The arguments of the Parties and the ICC's conclusions are discussed at 353-354.

found that while the line had been operated as a single line until the year before, AKMD allowed the northern segment to deteriorate and, following a flood, embargoed the track.

In its decision, the ICC determined that because AKMD's service for IP was adequate, it would be impossible for CALM to satisfy the PC&N standards. However, it also concluded that "the feeder line statute does not authorize us to direct the forced sale of the entire Norman Branch under the PC&N standards under the circumstances of this case."¹⁸

On appeal, CALM and its fellow petitioners contended that the ICC erroneously and artificially bifurcated the Norman Branch into a "northern" and "southern" segment in an attempt to circumvent the otherwise logical conclusion that the entire Norman Branch is a "particular line" as that term is used in section 10910(b)(1)(A)(i).¹⁹ In reply, AKMD argued that "the feeder line development program was never intended to give an adversary carrier a mechanism by which to force a rail carrier to sell a profitable segment of line which is adjacent to a line being abandoned."²⁰ Following its review of the legislative history of the feeder line development program, the Eighth Circuit agreed with CALM and reversed the ICC's decision. In its decision, the Eighth Circuit noted that "[s]ince its completion in the early part of this century, the Norman Branch has been operated as a single line of railroad extending from

¹⁸. *Id.* at 354.

¹⁹ Now codified at 10907(b)(1)(A)(i).

²⁰ 95 F.3d at 744.

its point of interchange with what was formerly the Missouri Pacific Railroad ... at milepost 426.3 near Gurdon, Arkansas, to milepost 479.2 near Birds Bill, Arkansas.”²¹

In this case, the Lake Providence Branch Line was also completed in the early part of the 20th century and extended from McGehee to Tallulah where it joined the Vidalia branch that extended to Vidalia, Louisiana. In 1988, the Vidalia Branch was abandoned by MP.²² As the record reflects, the Lake Providence Branch was saved from abandonment by an OFA filed by Delta Southern Railroad Company (DSRR). In 1999, DSR acquired the Lake Providence Branch between MP 408.9 in or near McGehee, AR, and MP 489.44, in or near Tallulah pursuant to a Verified Notice of Exemption, FD No. 33802, *Delta Southern Railroad, Inc.-Acquisition and Operation Exemption-Delta Southern Railroad Company*. As its Verified Notice reflects, DSR also sought authority to operate over several operating assets, including operating rights at MP 472.8 at Lake Providence, LA owned by LPPC and DSRR’s operating rights over certain other rail assets located at MP 491 in Tallulah, LA, and owned by the Madison Parish Port Commission (“The Madison Line”). Although DSR *did not* seek or obtain authority from the Board to operate over the segment of the Line between MP 489.44 and MP 498.4, where the Line connects with KCS, DSR has operated over that segment of the Line since 1999.

²¹ 95 F.3d at 741.

²² *Missouri Pacific Railroad Company – Abandonment –Desha and Chicot, Counties, Arkansas and East Carroll, Madison, Tensas and Concordia Parishes, Louisiana (Lake Providence – Vidalia Branches)*.

The entire Lake Provident Branch Line was operated as a single line of railroad until 2004 when the Wainwrights initiated a series of abandonment proceedings to get rid of multiple segments of the Line. In order to preserve the Lake Providence Branch Line, the States of Arkansas and Louisiana, along with NLA, acquired the segments that the Wainwrights sought to abandon. In the meanwhile, West Branch acquired the segment of the Line from milepost 471 through milepost 498.6 in June 2015, when it acquired DSR's stock from William Wainwright and his wife.

Because the Lake Providence Branch was never intended to be used solely for local traffic for customers located on it near Tallulah, the question at issue is not limited or controlled by whether local service between Madison Parish Port and the KCS connection is adequate.

In the context of a feeder line case, DSR's pronouncement that "the South Segment actively supports local traffic for customers located on it"²³ is meaningless. As the Eighth Circuit recognized, when a rail carrier downgrades service by failing to maintain and repair its tracks over a portion of its line that it deems more expensive to operate, while maintaining service to a single shipper that is easier and more profitable to serve, it opens itself up to a feeder application. Given the recent history of the track, DSR is clearly guilty of "cherry-picking" the single, most easily served shipper on its segment of the Lake Providence Branch Line. Similar to the situation in *Caddo Antoine*, DSR is concentrating on only seven percent of the entire branch line. Thus, the

²³ Response at 2.

situation herein “presents the type of situation that the feeder line development program was designed to address.”²⁴

DSR also claims that none of its South Segment customers “have alleged that DSR’s ongoing provision of service is in any way inadequate.”²⁵ The only conclusion to be drawn from DSR’s remark is that it has obviously ignored the sworn testimony of Jerry Melton, who is the President of DSR’s largest customer. As Mr. Melton has testified, “DSR’s refusal to maintain its line between MP 471 and 491 has deprived Complex Chemical of its ability to reach UP directly.”²⁶ Furthermore, he has also stated, “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.”²⁷ Because Complex Chemical is DSR’s largest customer and accounts for over 90 percent of the railcars that annually move through Madison Parish Port, one must question whether DSR has read any of LPPC’s evidence.

**Various Comments in Jon Ryan’s Verified Statement
are False and Rebutted By Sworn Testimony of Record.**

To support its Response in opposition to LPPC’s motion and to rebut evidence of record, DSR has introduced a Verified Statement from Jon Ryan, DSR’s current CEO. Prior to January 5, 2021, when John Marino and Continental Rail were fired, Mr. Ryan “acted as the Vice President of Finance in

²⁴ *Id.* at 747.

²⁵ Response at 2.

²⁶ Verified Letter of Support in opposition to DSR’s Motion to Dismiss, filed March 5, 2021. The Verification was duly filed on March 8.

²⁷ *Id.*

a consulting role” for DSR. In his role as consultant for DSR, he was based in Florida along with other members of the Continental Rail management team that was hired by West Branch. As Mr. Huff has explained, while Mr. Ryan approved all expenditures from his office in Florida, he had no direct acquaintance with any of the shippers who contacted DSR regarding potential traffic that would be interchanged with NLA. However, when he was made aware of requests of interchange traffic with NLA, he actively discouraged the acceptance of new traffic that would disrupt the revenue flow attributed to storage of railcars on the mainline between MP 491.0 and MP 471.0.

At ¶ 2 of his statement, Mr. Ryan unequivocally states that “through my staff, I have determined that interchange with DSR “has been open for customers to request interchange service since May 1, 2016, after DSR completed track work to restore its connection to NLA.” In the first place, there would have been no need for Mr. Ryan to rely on his staff. He knew without asking that interchange with NLA had been discouraged in order to focus on car storage revenues. Moreover, assuming that he knew the difference between “excepted track” (which he described as “accepted track” in his December 4, 2020 email to Ms. Magiera) and FRA Class 1 track, he should have known that it was questionable whether track was capable of safely providing interchange traffic.

In any event, the false nature of Mr. Ryan’s assertions is demonstrated by Mr. Huff’s sworn testimony and by previously filed evidence of record that involves multiple instances *after May 1, 2016* when interchange was denied

because of track conditions on DSR's side of the interchange. In one of these instances, which occurred in June 2019, "DSR refused to accept a train composed of 43 cars from [NLA] because its tracks between [MP 471 and 491] could not accommodate the top-heavy loads that are generally handled in high-center-of-gravity cars. In declining the cars, DSR also claimed that [it] had approximately 200 cars stored on a portion of its Line between MP 481 and MP 491."²⁸

As Mr. Robbins has explained in his concurrently filed Rebuttal Verified Statement, although NLA was ready, willing and able to move the 43 cars that Epstein Gin was looking to ship via KCS, it was *Dino Trevino, who is DSR's current General Manager, personally refused interchange*. Given Mr. Trevino's responsibilities as DSR's General Manager in Tallulah, it must be assumed that Mr. Trevino would have been the first person that Mr. Ryan would have asked for information about whether customers have asked for interchange service and the condition of the tracks.

Furthermore, Mr. Ryan's statements should be compared with the Verified Responses that were filed on March 5, 2021 by Daniel Robbins, NLA's Vice President, and Jerry Melton, President of Complex Chemical, which is DSR's largest customer, along with the other evidence in LPPC's Feeder Line Application.²⁹ That evidence disproves Mr. Ryan's comments by specifically

²⁸ See Feeder App. Exhibit 9, Letter of Sam Angel, owner of Epstein Gin Co. and Epstein Transloading at 2.

²⁹ Copies of their sworn Statements are attached hereto for the Board's convenience.

identifying customers by name that expressed an interest in moving product over the track *after* 2016 and within the past four years. *See also*, V.S. Wyly Gilfoil at ¶¶ 10 – 11 for prior instances after 2016 when DSR cited unsafe track conditions to support its refusal to accept interchange. Indeed, the Board in its Decision, served June 1, 2021, recognized that “[i]n their reply to the motion to dismiss, the Project Participants elaborated on this point by giving additional examples of shippers unable to move traffic over the Line because DSR has refused to maintain the Line or an active interchange.”³⁰

Response to John Ryan’s Exhibit C

LPPC readily admits that the Lake Providence Branch Line that links McGehee, Arkansas and Tallulah, Louisiana, which was constructed in 1912, was nearly destroyed by Missouri Pacific Railroad Company and by the former owners of the Delta Southern Railroad in the latter part of the 20th century and the early years of the 21st century. Since 2004, the States of Louisiana and Arkansas, along with NLA, have taken multiple steps to address the carnage that William Wainwright and his wife left behind. That carnage is reflected by the photos that DSR included in Exhibit C. The 24th and 25th photos clearly reflect some of the worst sections of the track over which NLA has been forced to operate since that stretch of the Line was jointly acquired by it and LPPC in 2011. Unfortunately, rehabilitation of this segment of the track was delayed by

³⁰ Slip op. at 5. Plainly, evidence of record demonstrates that LPPC is not “grasp[ing] at air” when it seeks to acquire the track in order to guarantee adequate rail service for all potential shippers that wish to move traffic over the entire line between LPPC and Tallulah.

several months due to DSR's refusal to commit to use the INFRA funds to rebuild the identical type of rotten track that they acquired from Mr. Wainwright in June 2015.

The photos that Mr. Ryan has submitted in Exhibit C were taken in February 2021. While the tracks are said to reflect spots along NLA's main line between Halley and Eudora, Arkansas, Mr. Ryan did not provide milepost numbers or other information that would allow NLA and LPPC to easily confirm their location.³¹ Given Mr. Ryan's comments, it is readily apparent that the photos were taken to create the illusion that the track had not been operated or maintained for several years. That position is repeated in DSR's Motion along with the comment that the "photos establish that one of the key reasons that there has been no DSR-NLA through traffic flows in years is because NLA operating track leading to the interchange has not been operable."³²

Both assumptions are rebutted by Mr. Robbins' Rebuttal Verified Statement that is filed herewith. It is true that Mr. Ryan's photos undeniably reflect the deplorable conditions under which NLA has been operating after it acquired the track from DSR. Indeed, they accurately fit Mr. Wainwright's descriptions in the abandonment proceedings that he filed to get rid of them. NLA invested over \$4,000,000 before the INFRA Grant Application was filed to

³¹ As DSR's response reflects, NLA, for administrative reasons, has modified the milepost numbers to reflect the current, actual mileage of the Lake Providence Branch, rather than the arcane mileage of the former MP track that extended to the north of McGehee.

³² DSR Response at 6-7.

address the defects that it inherited from Mr. Wainwright. That was not enough to cure all of the defects that have plagued NLA's operations.

As Mr. Robbins has explained in his Rebuttal Verified Statement, despite the track's condition, NLA has never embargoed the Line between McGehee and Lake Providence. However, after suffering the severe rollover derailments that are pictured at Figures A-9 and A-10 of the INFRA application, between May 2019 to March 2022, NLA had to restrict the use of plate F cars (which are very tall) between McGehee and Lake Village, a distance of 22.5 miles. That restriction was never applied to movements from Lake Village to the south. Furthermore, no other type of equipment was restricted. Boxcars and tank cars, which are plate C cars, were moved to and from the connection with UP until reconstruction.

Contrary to DSR's unfounded conclusion that the photos establish a key reason that there has been no DSR-NLA through traffic flows, NLA has never placed any restrictions on car types or service at any point after the reopening of the Line in 2016 that would have prevented interchange with DSR. It was only DSR's track that prevented the interchange. As Mr. Robbins has testified, "during the period that plate F equipment was restricted from the 22.5 miles north of Lake Village, NLA attempted to move plate F cars over the Lake Providence interchange." His statement is confirmed by Mr. Angel's statement that appears as Ex. 9 in the INFRA Grant Application.³³

³³ V.S. Robbins at ¶_.

In fact, the track segment owned by SEAEDD and LPPC, where no restrictions have been imposed, has been and is still the best segment of track between McGehee and Tallulah, LA on the entire Lake Providence Branch corridor. This will change when work is completed in the next few weeks on the segment of track between MP 0 and MP 22.5.

Attached to the Verified Statement submitted by Mr. Robbins that is attached here, are photographs, which Mr. Robbins took on March 28, 2022, of some of the same spots that were photographed by Mr. Ryan in the Spring of 2021.³⁴ These photographs reflect the improvements that have been made using the INFRA Grant funds and other funds spent by NLA and SEAEDD. As a result of the work that has been done (but not yet finalized) from McGehee to the Arkansas/Louisiana Border, NLA resumed non-restricted freight operations over the track from McGehee to MP 471 at Lake Providence on March 23, 2022. NLA's operations are confirmed by Robbins' photos reflecting a passing NLA train at MP 418.0. If the INFRA Grant funds had not been delayed by DSR's refusal to commit, it is possible that all of the tracks reflected in Mr. Ryan's photos would have already been completely repaired.

**THE IMPORTANCE OF THE INFRA GRANT CANNOT
BE OVERSTATED.**

For over a decade, LPPC, SEAEDD and NLA have been engaged in an exhausting effort to rebuild the Lake Provident Branch. Those efforts were

³⁴ Because Mr. Ryan did not provide any milepost numbers, Mr. Robbins was unable to determine several of the spots that Mr. Ryan photographed.

frustrated by the sheer size of the undertaking due to the prior owners' unwillingness and inability to adequately maintain the tracks. Most importantly, the individual efforts to attract funding were viewed with skepticism by even FRA, which pointedly denied NLA's requests for funding to rehabilitate its 24.1 miles of track. The reluctance to help fund the individual efforts was, in part, due to the readily apparent fact that it would take a joint effort to achieve success.

DSR's attorneys seek to brush aside their efforts by claiming that "neither LPPC nor NLA appear to have invested much, if anything, to support potential traffic movements to/from the Port or via the NLA-DSR interchange at Lake Providence." ³⁵ As Mr. Gilfoil has noted, "Table 3 in the INFRA Application reflects, SEAEDD, the ports and NLA had previously incurred project expenses that totaled \$12,133,608 *before they filed the INFRA Application*."³⁶ Their prior investments literally dwarf DSR's investments, particularly on the segment of the Line between MP 471.0 and MP 491.0.

Even so, it took two joint efforts by the Coalition to obtain the FY 19-20 INFRA Grant. From the moment that word was received that the INFRA Grant would not cover the cost of the needed rehabilitation, LPPC and the others, including John Marino on behalf of Delta Southern, resolved to accept the challenge of coming up with matching funds to cover the difference. Jon Ryan's 2020 budget suggested for the first time that the parties were not necessarily

³⁵ DSR Response at 6.

³⁶ Gilfoil Rebuttal Verified Statement at ¶ 7.

joined at the hip. That was later confirmed in August when John Marino made it clear that DSR would not commit to the use of the INFRA funds to rebuild the most crucial part of the entire corridor that allows interchange. Only then was the decision reached to use the INFRA funds to focus on other stretches of the Line. That decision was approved by DOT and FRA.

Even then, the members of the Coalition were not alerted to the full extent of DSR's true intent. It was only months after LPPC filed its Feeder Application in November 2020, that LPPC, SEAEDD, MPP and NLA finally realized the full extent of DSR's treacherous efforts to discourage interchange with NLA while DSR focused on storage revenues and its customers located on what DSR has designated as the South Segment.

In its Response, DSR claims that LPPC's decision to file a Supplemental Application is to acquire "profit-generating DSR assets at less than fair market value to leverage its capital improvement funding shortfall."³⁷ That assertion lacks merit. LPPC and the others are not focused on the "South Segment" at all. Unlike DSR, they have been solely focused on the entire Corridor from the first meeting of the Consortium that was held at DSR's office in Tallulah on September 26, 2016.³⁸

³⁷ DSR Response at 8.

³⁸ A photo of the bulletin board that outlined the project is attached hereto as Exhibit 4.

LOOKING AHEAD

Discovery has been served on DSR that will permit the Board to determine the Constitutional minimum value.

LPPC has served discovery on DSR that includes requests for documents that would reflect the expenditure of funds to address the defects in its track between MP 471.0 and 491.0. DSR says that discovery is premature and untimely “because there can be no service inadequacy warranting the extreme action of a forced taking where there is no service demand that is ongoing.”³⁹

LPPC respectfully suggests that the unique circumstances of this case encourage and permit the filing of discovery. As LPPC has advised the Board, it is aware that it must offer to pay the Constitutional minimum value. That can only be determined after reviewing data that is in DSR’s possession.

By filing its discovery on March 21, 2022, LPPC has provided DSR with ample time to respond and produce information that is needed to determine the constitutional minimum value of the particular line that is at issue herein.⁴⁰ LPPC has no interest in the Line over which DSR operates between Monroe and Sterlington.

LPPC recognizes that if the Board were to grant DSR’s motion to dismiss it would temporarily moot the need for the discovery. However, because DSR

³⁹ DSR Response at 8, n7.

⁴⁰ Given the peculiar circumstances of this proceeding, LPPC’s discovery requests are timely. Because the information is exclusively within DSR’s knowledge, this will ultimately facilitate the Board’s consideration of the appropriate matter.

did not comply with the Board's procedural schedule and did not file any sworn evidence to support its motion to dismiss or rebut the sworn testimony of multiple shippers and NLA that it refused to provide interchange with NLA since 2017, the Board should deny DSR's motion. Rather than further delaying the resolution of this matter, the Board should also establish a new schedule that will require DSR to timely respond to LPPC's discovery request. That, in turn, will allow LPPC to finalize the supplementation of its pending Application with the information that is exclusively within DSR's knowledge and possession.

Most importantly, this will ultimately facilitate the rehabilitation of the *entire* Lake Providence Branch consistent with the Eighth Circuit's decision in *Caddo Antoine And Little Missouri R. Co.*, 95 F.3d 740 (8th Cir. 1996)(*Caddo Antoine*), and the Board's precedents in *Caddo Antoine et al.--Feeder Line Acquisition -- Arkansas Midland RR*, 4 S.T.B. 326 (1999) (*CALM I*) and *Caddo Antoine et al.--Feeder Line Acquisition -- Arkansas Midland RR*, 4 S.T.B. 610 (2000) (*CALM II*). In any event, because the past cannot be ignored or changed, LPPC suggests that supplementing the Feeder Application is the most efficient and economical path to take for all concerned. DSR should be placed on a tight leash. There is no reason to allow it to further interfere with LPPC's ongoing efforts to rehabilitate the entire Lake Providence Branch.

CONCLUSION

For all of the above-stated reasons and based on all evidence of record, the Board should deny DSR's motion to dismiss. In addition, the Board should grant LPPC's Motion to file a Supplemental Application to Acquire The Entire Lake Providence Line between MP 471.0 and MP 498.6.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for Lake Providence Port
Commission

Dated: April 4, 2022

Certificate of Service

I, Richard H. Streeter, hereby certify that on this 4th day of April 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

Exhibit No. 1

Email exchanges between Doree Magiera and Jon Ryan
exchanged December 4, 2019

From: Jon Ryan <Jon.Ryan@continentalrail.us>

Sent: Wednesday, December 4, 2019 11:15 AM

To: Magiera, Doree <Doree.Magiera@hdrinc.com>; Wyly Gilfoil <Wyly_Gilfoil@msn.com>; Patrecia Hargrove (phargrove@southeastarkansas.org) <phargrove@southeastarkansas.org>

Cc: Frostestad, Eric <Eric.Frostestad@hdrinc.com>; John Marino <John.Marino@continentalrail.us>; Dino Trevino <Dino.Trevino@deltasouthernrr.com>

Subject: RE: SEAEDD Response

I am not privy to what was discussed the past two years so I can not speak to that. See my comments below in red:

I have a conflict this afternoon and have countered back at noon EST tomorrow to have the call to discuss.

-----Original Appointment-----

From: Magiera, Doree <Doree.Magiera@hdrinc.com>

Sent: Wednesday, December 04, 2019 11:35 AM

To: Jon Ryan; Wyly Gilfoil; Patrecia Hargrove (phargrove@southeastarkansas.org)

Cc: Frostestad, Eric

Subject: SEAEDD Response

When: Wednesday, December 04, 2019 3:00 PM-3:30 PM (UTC-06:00) Central Time (US & Canada).

Where: dial-in 866-583-7984, conference code 9025213#

Jon

The latest DSR spreadsheet does not follow the intended rail rehabilitation scope of work that has been discussed the past two years and presented to the FRA as part of the grant applications.

- The current INFRA Build grant request includes approximately \$7,561,250 for Rail Infrastructure Rehabilitation to bring the existing main line track from Tallulah to Lake Providence Port to 25 mph Class 2 track. **The spreadsheet that was transmitted does follow the rail rehabilitation scope of upgrading to Class 2 track in order to accommodate 25 MPH. It will be necessary to replace ties, ballast, track and OTM over the entire corridor.**
- There was also \$200,000 for bridge upgrades to 286K. **My understanding is this is correct the bridges have been upgrade to 286k. But there are still some defects that will need to be corrected.**
- It is our understanding the bridge upgrades were completed and that the existing main line track has been rehabilitated from Tallulah to Madison Port under separate funding. **– No we have not completed the rehabilitation of mainline track from Tallulah to Madison Parish port for Class 2 track with the ability to run 25MPH.**
- The awarded INFRA Build grant has provided \$2.5 million for Rail Infrastructure Rehabilitation in Segment D. We are looking for the DSR's priorities or task breakdown for rehabbing the existing main line track between Madison Port and Lake Providence Port to 25 mph Class 2 track. The original estimate was calculated with 50%

tie replacement and approximately 6-in of ballast across 25 miles of track. Therefore with approximately 1/3 of the requested funding, would the ties or the ballast be the priority? Or does the required rehabilitation vary through different sections of this line? Please utilize the main line track rehabilitation cost estimate and reduce to match the \$2.5 million in funding. **My understanding is that this will require ballast, ties, rail and OTM to accomplish the goal of upgrading the track to class II. The \$2.5 million is a good start but is nowhere near the amount required to achieve the ultimate goal. The railroad currently operates on 85lbs rail under accepted track conditions.**

This meeting invite for a call at 3pm today is to discuss DSR rehab priorities and to finalize the Segment D rail rehab cost estimate for submittal to FRA.

Thank you

From: Jon Ryan [<mailto:Jon.Ryan@continentalrail.us>]
Sent: Tuesday, December 3, 2019 2:44 PM
To: Magiera, Doree <Doree.Magiera@hdrinc.com>
Cc: Frostestad, Eric <Eric.Frostestad@hdrinc.com>
Subject: RE: SEAEDD Response

Doree,

I hope all is well. Wanted to follow up on the information sent last week. Do you have any questions? I'm available tomorrow to discuss further.

Jon

From: Magiera, Doree <Doree.Magiera@hdrinc.com>
Sent: Wednesday, November 27, 2019 8:21 AM
To: Jon Ryan <Jon.Ryan@continentalrail.us>
Cc: Frostestad, Eric <Eric.Frostestad@hdrinc.com>
Subject: RE: SEAEDD Response

Jon

Sorry I missed your call yesterday; I am on PTO this week. Thank you for sending the spreadsheet.

I am not sure how to incorporate the KCS interchange as this has not been previously reported to FRA. From an engineering standpoint, formal PS&E would be required for bidding/construction and again, I am not sure how this would be accomplished if KCS is providing material and Continental is providing labor. We will likely have to discuss before we incorporate this in the overall budget.

I have not compared your priority project cost against the project budget; we need to look at that also.

I am sending to Eric for his review and comment also. I am available for a call today and the best way to reach me is my cell phone.

Doree Magiera
HDR Engineering, Inc.
D 504.218.1227 **M** 504.229.8317

hdrinc.com/follow-us

Exhibit No. 2

Email from Jon Ryan outlining DSR
Budget for upgrading approximately 6 miles of track
(highlighted the attached).

From: Jon Ryan [<mailto:Jon.Ryan@continentalrail.us>]
Sent: Tuesday, November 26, 2019 2:28 PM
To: Magiera, Doree <Doree.Magiera@hdrinc.com>
Subject: SEAEDD Response

Doree,

I hope all is well. I left you a message to discuss this as well.

Attached please find the construction costs to upgrade the existing rail per the grant specifications. Based upon the attached budget, we plan to begin the rehabilitation at the KCS interchange and work north which based upon the current grant amount and our match would upgrade approximately 6 miles of track (highlighted yellow in the attached). As part of the track upgrades we plan to incorporate an existing agreement with the KCS to install a new interchange track and lead of approximately 1,700 feet of track. Under this agreement the KCS is to provide the rail, rock, ties and OTM and we are to provide the labor. We believe incorporating this project into the grant specs will help serve our existing customers and attract new customers. As part of this agreement, we plan to extend this new lead an additional three quarters of a mile north as indicated in the attached budget. This new interchange track will require surveying costs.

As we move forward with the project we believe there are other areas we have identified that we believe it would be cost beneficial to create a new line rather than upgrade the existing line. We would like the grant description to include the flexibility to incorporate this into the construction plan. These areas are currently past the limits of the priority 6 miles but could be incorporated into the grant based upon cost savings.

If you have any questions or would like to discuss further please give me a call.

Jon D. Ryan



2929 E. Commercial Boulevard, Suite PH-D
Fort Lauderdale, Florida 33308
904-553-7431

DSRR
SEAEDD Infra Grant
Budget

MP	Tie Cost Plus Installation	Bridge Material Costs	Ballast Cost	Rail Cost	Miscellaneous - OTM etc.	Tamping	Labor	Engineering/Surveying Cost	Total Cost	Notes	Priority
500 New Interchange										KCS to supply ties, ballast, rail, OTM for 1,700 ft. DSRR to provide remaining 2/3 of mile. Would require surveying. There is an existing agreement with in place with the KCS for a new interchange track.	
Track	\$ 226,275		\$ 139,500	\$ 128,625	\$ 4,000	\$ 11,000	\$ 204,094	\$ 40,000	\$ 753,494		1
500	301,700		186,000	171,500	4,000	11,000	271,125		945,325		2
499	301,700		186,000	171,500	4,000	11,000	271,125		945,325		3
498	301,700		186,000	171,500	4,000	11,000	271,125		945,325		4
497	301,700		186,000	171,500	4,000	11,000	271,125		945,325		5
496	301,700		186,000	171,500	4,000	11,000	271,125		945,325		6
495	301,700		186,000	171,500	4,000	11,000	271,125		945,325		7
494	301,700		186,000	171,500	4,000	11,000	271,125	20,000	945,325		8
493	301,700		186,000	171,500	4,000	11,000	271,125	20,000	945,325		9
492	301,700		186,000	171,500	4,000	11,000	271,125	20,000	945,325		10
491	301,700		186,000	171,500	4,000	11,000	271,125		945,325		11
490	301,700		186,000	171,500	4,000	11,000	271,125		945,325		12
489.30 Bridge		1,500			2,000		30,000		33,500	Bridge needs upgrades on bents and posts to accommodate heavier rail.	13
489	301,700		186,000	171,500	4,000	11,000	271,125		945,325		14
488	301,700		186,000	171,500	4,000	11,000	271,125		945,325		15
487.30 Bridge		3,690			2,000		28,000		33,690	Bridge needs upgrades on bents and posts to accommodate heavier rail.	16
487	301,700		186,000	171,500	4,000	11,000	271,125		945,325		17
486	301,700		186,000	171,500	4,000	11,000	271,125		945,325		18
485.7 Bridge		600					42,000		42,600	Bridge needs upgrades on bents and posts to accommodate heavier rail.	19
485	301,700		186,000	171,500	4,000	11,000	271,125		945,325		20
484	301,700		186,000	171,500	4,000	11,000	271,125		945,325		21
483.70 Bridge		2,250					35,000		37,250	Bridge needs upgrades on bents and posts to accommodate heavier rail.	22
483	301,700		186,000	171,500	4,000	11,000	271,125		945,325		23
482	301,700		186,000	171,500	4,000	11,000	271,125		945,325		24
481	301,700		186,000	171,500	4,000	11,000	271,125		945,325		25
480	301,700		186,000	171,500	4,000	11,000	271,125		945,325		26
479	301,700		186,000	171,500	4,000	11,000	271,125		945,325		27
478	301,700		186,000	171,500	4,000	11,000	271,125		945,325		28
477	301,700		186,000	171,500	4,000	11,000	271,125		945,325		29
476	301,700		186,000	171,500	4,000	11,000	271,125		945,325		30
475	301,700		186,000	171,500	4,000	11,000	271,125		945,325		31
474	301,700		186,000	171,500	4,000	11,000	271,125		945,325		32
473	301,700		186,000	171,500	4,000	11,000	271,125		945,325		33
472	301,700		186,000	171,500	4,000	11,000	271,125		945,325		34
471	\$ 301,700		\$ 186,000	\$ 171,500	\$ 4,000	\$ 11,000	\$ 271,125		\$ 945,325		35

Total \$ 9,277,275 \$ 8,040 \$ 5,719,500 \$ 5,273,625 \$ 128,000 \$ 341,000 \$ 8,472,844 \$ 29,260,284

Grant Budget \$ 2,503,596.00
DSRR Match \$ 1,689,064.00
\$ 4,172,660.00 Approximately 6 miles

60%
40%

Ties per mile:	Replace all	Cost per tie Installed	Cost per mile	Total Miles 25
3,017	3,017	\$ 100	\$ 301,700	\$ 7,542,500
Rock Tons per mile	Delivered Cost	Cost per mile	Installation per mile	Total Cost per mile
6,000	\$ 31.00	\$ 186,000	\$ 5,000	\$ 191,000
Total 25 miles				\$ 4,775,000
Tamping, straightening, lining	Per mile Cost	# of passes	Cost per mile	Total 25 miles
	\$ 5,500	2	\$ 11,000	\$ 275,000
Miscellaneous (knots, spikes, plates)				
\$4,000 per mile				\$ 100,000
Rail 115 lbs	Cost per Ton	Tons per mile	Cost per mile	
	\$ 700.00	\$ 245.00	\$ 171,500.00	
Total Cost				\$ 12,692,500
11,000				

Bridge Ties Per Tie \$ 118.00
Bridge Post Per Post \$ 150.00
Bridge Bents Per Bent \$ 185.00

COSTS OF A RAIL SIDING			
Rule of thumb for new track construction is between \$1 Million - \$2 Million per mile, depending on who is constructing the track. Some rail clients need alot of track space to handle unit trains over a mile long. Below is a basic cost estimate for a mile long siding.			
	Price per Unit [1]	# Units [1]	Total Cost [1]
No 10 Degree Switches	\$25,000 per switch	2 switches	\$50,000
No 10 Switch Timbers	\$6,200 per timber	2 timbers	\$12,400
No 2 Rebar 130/136 lb rail	\$700 per ton	245 tons	\$171,500
7"x9" Ties on 21" Centers	\$55.22 per tie	3,017 ties	\$166,596.74
Ballast (Rock)	\$27.00 per ton	6,000 tons	\$162,000.00
Spikes 65 Kips	\$65.00 per keg	68 kegs	\$4,000
Labor			Varies by Contractor
Grading			Varies by Contractor/Topography/Soil
Drainage Pipes			Varies by Amt of Water Runoff
Road Crossings			Varies

Exhibit No. 3

Email to Danny Robbins from Matt Prince
announcing that DSR could not afford to spend
the cash for original INFRA Grant Application

From: Matt Prince [mailto:matt.prince@continentalrail.us]
Sent: Thursday, September 21, 2017 3:33 PM
To: Danny Robbins
Subject: RE: NLA-DSRR corridor rebuild.xlsx

Danny,

We bowed out of the grant application for the time being as we simply cannot afford to spend the cash right now. I did not forward your spreadsheet to anyone so you may want to share that information with HDR. Thanks.

Matt Prince
Director of Operations
Continental Rail



2929 E. Commercial Boulevard, Suite PH-D
Fort Lauderdale, Florida 33308
Email: matt.prince@continentalrail.us
Mobile: (931)309-8721
Web: www.continentalrail.us

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Exhibit No. 4

Photo dated September 26, 2016 that was
taken at DSR office at the Madison Parish Port
reflecting objective of reconstructing the Interchange
Tracks (Tallulah + Lake Providence)

Rail - \$16M

1. Interchange Tracks
(Tallulah + Lake Providence)
2. Cross-ties (Tallulah to McGhee)
3. Ballast and Surfacing
(Tallulah to McGhee)
4. Replacement of short broken rails.

5. Rail to Yellow Bend

MAKETT

Muskom Pavilion - \$5M
District Big River \$4M

Port
Tallulah - \$3M

1. Widen Entire Port Rd. 4 lane
2. Concrete and Widen off loading ramp on river bank next to concrete dock
3. Build intermodal dock on river with Rail Gauntlet.

4. Double Port lead - \$2M
Capacity.

5. Turning lane Hwy 65-\$1
DOTD.

\$9,000 tie (ballast)
\$100/tie
\$450
55 x 10,000
\$4.9M

Port
Lake Providence - \$1M

1. Add track cap.
2. Big River Extension - \$1M
3. Rehab Existing Rail

TOTAL - \$20M²
8M²
< 1 > DOTD
\$1M²
5M

\$2M
5 District
1.5 MPP
1.0 L.P.
\$5M

9/26/2016
2:13 p.m.

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.

Rebuttal Verified Statement of Wyly Gilfoil

1. My name is Wyly Gilfoil. I am the Port Director for the Lake Providence Port Commission (LPPC), the Applicant herein. My address is 409 Port Road, Lake Providence, LA 71254. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of LPPC to rebut various statements that were made by Delta Southern Railroad, Inc. (DSR) in response to the LPPC's motion to file a Supplemental Application to acquire the entire Lake Providence Line between MP 471.0 and MP 498.6. I also want to make it crystal clear that I reject DSR's counsel's argument at page 8 of DSR's response that my decision to file a Supplemental Application reflects a selfish intent to acquire "profit-generating DSR assets at less than fair market value to leverage [LPPC's] capital improvement funding shortfall." My intent is to benefit shippers by restoring the entire Lake Providence Branch. As I belatedly learned months after the original Feeder Application was filed, DSR does not share that goal. As the record conclusively

demonstrates, DSR has taken multiple steps over several years to discourage interchange service with NLA.

2. I must also challenge DSR's comments that "LPPC offers no newly-discovered evidence, intervening facts, or changes in the law to explain its abrupt decision to target the South Segment in addition to the North Segment" (Response at 3) and that this move is "LPPC's latest grab attempt." (Response at 2). Please note that LPPC has paid a heavy price to save the Lake Providence Branch Line and serve the public interest. LPPC's counsel will address the legal standards while I will respond to DSR's other comments.

3. In my earlier Verified Statement, which is designated as Exhibit 6 in LPPC's Feeder Application that was filed on November 12, 2020, I informed the Board at ¶ 16 that:

To comply with the expressed goal of the Project, namely the redevelopment of the *entire* corridor, LPPC will do everything in its power to work with SEAEDD, the Madison Parish Port, NLA and all other parties, including DSR. That DSR lacks intent to spend the cash or allocate grant funds to rehabilitate the tracks in question must not allow the goals of the Project to be derailed. As demonstrated by the industry support the Partners have received while pursuing the INFRA Grant and this Feeder Application, the line will result in improved transportation for all shippers that wish to transport traffic over the line. I urge the Board to give this Application expedited consideration.

4. The "cognizable bases" for my decision to ask the Board for permission to supplement LPPC's Feeder Application and acquire the entire Lake Providence Branch are set out below. In addition, they are confirmed by supporting Verified Statements that are being filed concurrently that provide

information that was unknown to me in November 2020 but has become known to me during the course of this proceeding that demonstrate that DSR and its owners cannot be trusted.

5. At the time LPPC's Feeder Application was filed, I anticipated that DSR would oppose it, which DSR did. I also believed that DSR would comply with the Verified Commitment, signed by John Marino, Jr., that DSR "will submit its response to the LPPC Feeder Line Application ... if the Board accepts the Application, and in accordance with the procedural schedule that would be established by the Board at that time." As the Board is aware, DSR did not abide by its commitment. Instead of filing verified comments and evidence to support its claims that it should not be forced to sell a portion of its track, DSR's newest attorney filed a series of pleadings in which he candidly provided information that revealed DSR's motives in pretending to support the Public Private Partners' INFRA Grant Application. These comments included the astounding admission in DSR's Motion to Dismiss that "Although DSR has engaged in discussions concerning renovation of the Line, DSR thus far has concluded that the desired track renovations as to the long-dormant Line are unjustified and unwarranted."

6. That statement has removed any doubt in my mind that DSR, while being content to use grant funds to rebuild some of the track between Madison Parish Port, would not invest sufficient funds to give shippers the confidence to resume shipping over the 20-mile segment. Instead, they would set up LPPC and the taxpayers of Louisiana to do the dirty work to cover the

cost of rehabilitating DSR's Line to FRA Class 2 standards consistent with the Statement of Work that had been approved by U.S. DOT and FRA, while DSR would reap the benefits. In fact, that process had started years ago when LPPC agreed to pay DSR's share of HDR's Final Invoice, which was only \$19,092.00. LPPC's payment was made after Matt Prince, Continental Rail's Director of Operations, on September 21, 2017, sent an email to Danny Robbins informing him that "We bowed out of the grant application for the time being as we simply cannot afford to spend the cash right now."¹ Rather ironically, twenty-six days later, Mr. Prince sent the letter, which is reproduced as Exhibit 5 in LPPC's Feeder Application, to Elaine Chao, Secretary of Transportation, that detailed the unquestioned need to "modernize and improve rail safety infrastructure along an important freight corridor and improve the regional connectivity to three inland waterway ports."

7. My change of direction was primarily launched by information that was offered by Craig Huff, DSR's former General Manager, in March of 2021. As he has explained in his Verified Statement that is being concurrently filed, he was upset by statements made in some of DSR's pleadings in this proceeding and wanted to help set the record straight. In particular, he has explained that John Marino and Jon Ryan discouraged him from working with Danny Robbins to develop new interchange business because DSR could make more money by using the track to store rail cars.

¹ See Attachment 1, Email from Matt Prince, Director of Operations, Continental Rail to Danny Robbins, dated September 21, 2017 3:33 PM.

8. At page 6 of DSR's Response, counsel claims that "neither LPPC nor NLA appear to have invested much, if anything, to support potential traffic movements to/from the Port or via the NLA-DSR interchange at Lake Providence. As Table 3 in the INFRA Application reflects, SEAEDD, the ports and NLA had Previously Incurred Project Expenses that totaled \$12,133,608 before they filed the INFRA Application. Additional funds that have not been totaled were expended after the application was approved before the first dollar of Grant funds were released. Moreover, the ongoing rebuilding of the tracks in Arkansas involves the expenditure of more than \$6,270,029. It is absurd for counsel to suggest that we have not invested much in the never-ending effort to rehabilitate and later maintain the tracks that we saved from abandonment. After mediation failed, I determined that given DSR's dreadful track record, it would be necessary to acquire ownership of the entire Corridor and not wait for DSR to spend its own funds to refurbish the track.

9. I will also respond to several comments made by DSR's attorneys and Mr. Ryan's photos that were taken on December 20, 2020. Incidentally, he did not bother to meet me at that time. In fact, after being named CEO, it took Mr. Ryan eleven months to find his way to the port at Lake Providence to make his first marketing effort.

10. The photos show what they show, namely that the dirt must be brushed off the tracks, which are otherwise in good order. Now that the worst part of the Line has been corrected, the private tracks inside of the Port will be cleared in a matter of days and rail service will be restarted. What is most

important about Mr. Ryan's photos and commentary is that *they do not address the undeniable fact that the tracks that run through LPPC's facilities could not have impacted the movement of any traffic that would have moved in interchange service between 2016 and the current date had he and Mr. Marino encouraged interchange traffic instead of directing Mr. Huff and others to discourage it.* No one can estimate the number cars that could have been handled in interchange service had DSR complied with the statutory provisions governing interchange that date back to 1887. Those provisions are discussed in LPPC's *Supplementary New Evidence and Legal Argument*, filed May 11, 2021.

11. LPPC's Feeder Application and Mr. Huff's Verified Statement reflect the fact that DSR, on several occasions after May 1, 2016, refused interchange because of problems with its track contrary to the "fake news" in Mr. Ryan's Verified Statement that interchange has been open since May 1, 2016. As explained in the Supplemental Verified Statement of Daniel B. Robbins, executed on May 10, 2011, on August 22, 2017, NLA notified DSR that it had placed 8 cars in interchange. On August 23, 2017, NLA received word from Inteletrans that the interchange was closed. On August 24, 2017, "Craig Huff and Matt Prince confirmed that the interchange was closed *based upon track issues on the DSR side.*" I will also suggest that Mr. Ryan apparently failed to consider the testimony of Sam Angel which is laid out in Exhibit 9 of LPPC's Feeder Application filed November 12, 2020. As Mr. Epstein has stated, "In June 2019, DSR refused to accept a train composed of 43 cars from North

Louisiana Railroad (NLA) because its tracks between [MP 471 and 491] could not accommodate the top-heavy loads that are generally handled in high-center-of-gravity cars.”

12. In his “position as CEO with DSR and given the sensitivity to DSR of the pending feeder line application,” it seems to me that Mr. Ryan would be well advised to read the evidence that LPPC and others have presented rather than relying on DSR’s recently hired attorneys who are accusing LPPC of continuing “to grasp at air in an effort to find any cognizable basis to force the sale of all or any portion of DSR’s Lake Providence Branch.”

13. Based on Mr. Ryan’s false “sworn” testimony, which somehow overlooked DSR’s current General Manager’s personal role in refusing interchange a lengthy train with NLA in June of 2019, due to track conditions and railcar storage, it appears to me that DSR and its second set of attorneys lack any knowledge of what was actually going on in Tallulah and do not want to read the sworn testimony of record that sets out the truth. I will also note that while I was acquainted with Mr. Ryan’s name during the years that I spent working on the INFRA Grant Applications, I never met him in person until October 13, 2021.

14. I also find it to be rather odd that no DSR employee ever informed me or NLA that the line had been reopened. The first hint that interchange is open is found in counsel’s unverified comment released on March 8, 2021, that emphasized that “*DSR is currently willing and able to accommodate DSR-NLA*

interchange if so requested.” Assuming that interchange is now open, why did it take a Feeder Line application to cause DSR to start the process of improving its tracks? Furthermore, have the track improvements allowed DSR to upgrade the track to FRA Class 1 status?

15. After completing the majority of the work in Arkansas that was needed to address the severe deterioration of the tracks that is attributable to decades of neglect by MoPac, DSRR and DSR, NLA has reopened the line from McGehee to MP 471. DSR, on the other hand, has *never* restored the interchange track between MP 471.0 and 472.25 from excepted track status to FRA Class 1 status pursuant to the terms of the Trackage Rights Agreement that it reached with LPPC in 2011.

16. In its Response, DSR’s counsel states that “LPPC’s assertion that car storage is ‘incompatible’ with DSR satisfying its common carrier obligation is mere self-serving nonsense.”² When it takes multiple days to clear the track because there is no place to move long blocks of stored cars,³ there is no avoiding the conclusion that by clogging its mainline track to increase its revenues, DSR is clearly acting in its own self-interest. As future traffic develops following the rehabilitation of the rest of the Lake Providence Branch, storage will plainly interfere with NLA’s efforts to provide uninterrupted, efficient rail service over the Line and undermine the efforts that have been made to attract new business ever since the Line was acquired from DSR.

² Response at 5, n3.

³ See V.S. Huff at ¶ 15.

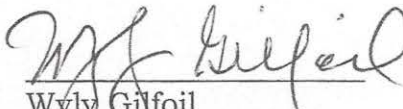
Because most shippers are not stupid, they will follow the example of the unnamed customer mentioned in Mr. Ryan's statement, and avoid tendering traffic because they know that their traffic will likely be delayed by a rail carrier that will not upgrade its tracks to FRA Class 2 status and will clear the track of stored cars at its own convenience. While the Lake Providence Branch has fallen on hard times that opened the door to DSR and its owners to store cars on excepted track, the rehabilitation of the entire Corridor will slam that door closed.

17. In summary, the foregoing matters have convinced me that the best interests of the shipping public will be served by LPPC's acquisition of ownership of the entire Lake Providence Branch in Louisiana. Not only will they be assured of local management, but they will be able to deal with a single short line railroad when requesting rates and tracking shipments instead of having to deal with two short lines and the Class 1 rail carriers who will handle the major part of their movements. The same is true of the Ports in Louisiana and Arkansas that are seeking to take trucks off the highways, returning freight to more efficient and environmentally friendly rail service, and promoting coordination with barge transportation that moves on the Mississippi River. In any event, until major shippers can be assured of reliable, safe, and efficient rail service, they, similar to the unnamed shipper in Mr. Ryan's statement, will hesitate to move their traffic over the Line. The stigma associated with MoPac's and DSR's subsequent efforts to dismantle the track will not be easily overcome.

In closing, I respectfully request the Board to authorize LPPC to supplement its pending Feeder Application and compel full compliance with the procedural schedule that it establishes.

VERIFICATION

I, Wyly Gilfoil, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 4th day of April 2022.


Wyly Gilfoil

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.

Verified Statement of Craig Huff
in Support of
Feeder Line Application filed by
Lake Providence Port Commission

1. My name is Craig Huff. My address is 130 Cedar Street, Delhi, Louisiana, 71232. I am filing this Statement in support of the Feeder Line Application filed by Lake Providence Port Commission (LPPC). I am not, and never have been, an employee of LPPC, the Madison Parish Port Commission (MPPC), Southeast Arkansas Economic Development District (SEAEDD), or North Louisiana & Arkansas Railroad (NLA) or any of its affiliates. This Statement is based on facts of which I have personal knowledge and are true to the best of my knowledge.

2. I have been involved in the railroad industry for over eighteen years. Between June 6, 2015, and August 20, 2018, I was the General Manager of Delta Southern Railroad, Inc. (DSR). In my capacity as the General Manager, I managed DSR's daily short line rail operations over its two lines of railroad.

One line extends from MP 471.0 near the Lake Providence Port to Milepost 500.2 in Tallulah, Louisiana. DSR connects with Kansas City Southern Railway Company (KCS) at MP 498.6 in Tallulah, Louisiana. The other line extends between MP 566 at Monroe to MP 556.18 at Sterlington, LA. Because I was physically located at DSR's headquarters in Tallulah, I oversaw Customer Relations/Marketing.

3. It is my understanding that shortly before I was hired to be DSR's General Manager, the common shares of DSR were sold by its owners, William Wainwright and Linda Wainwright, to West Branch Intermediate Holdings, LLC (West Branch), whose headquarters were located in San Francisco, California. I was hired by J. D. Ventrcek, who was then employed by Continental Rail, LLC (Continental). It is my further understanding that Continental was a noncarrier that had been formed for the purpose of managing the short line railroads that were to be acquired by West Branch.

4. After Mr. Ventrcek left the company, I reported to John Marino, who was Continental's CEO. Because Continental was headquartered in Fort Lauderdale, Florida, Mr. Marino had minimal contact with the Ports and with shippers that sought rail service over DSR's line between Lake Providence and Tallulah. I also had extensive contacts with Jon Ryan, who approved or disapproved all expenditures on a weekly basis. Mr. Ryan, who was physically located in Florida, did not have an office in the State of Louisiana. To the best of my knowledge, he did not have any personal contact with DSR's customers or prospective customers. However, he and John Marino were aware of my

efforts to attract new business and strongly disapproved of such efforts because they interfered with the storage of railcars. In addition, they opposed using funds to rehabilitate the track that was used for storage.

5. In addition to my regular duties, I represented DSR at various meetings of the Consortium that initially joined together in September 2016 to discuss the possibility of jointly seeking INFRA Grants from the United States Department of Transportation (USDOT) to rebuild the entire rail corridor between McGehee and Tallulah . Members of the Consortium included SEAEDD, LPPC, MPPC, NLA and DSR. DSR initially supported the goal of rebuilding the entire corridor. As I learned in March 2021, after DSR refused to commit to the rehabilitation of the 20-mile-Segment of the Corridor between MP 471 and MP 491, LPPC filed its Feeder Application to acquire the 20-mile segment of DSR's track located between MP 471 and MP 491. I have recently learned that LPPC filed a motion to file a supplemental application to acquire the entire segment of the former Lake Providence Line between MP 471 and 498.4 at Tallulah. Because this would result in more efficient service of all shippers who wish to use rail services over the entire corridor between McGehee, Arkansas and Tallulah, Louisiana, I urge the Board to allow LPPC to supplement its original Feeder Application.

6. I have read several of DSR's pleadings, including its Motion to Dismiss Proceeding, filed March 2, 2021; its Motion to Strike the Reply to its Motion to Dismiss filed by LPPC, SEAEDD and NLA; and its Response to Lake Providence Port Commission's Motion to File a Supplemental Application to

acquire the Entire Lake Providence Line Between MP 471.0 and MP 498.6. Based on my personal knowledge, I will address certain comments made by counsel for DSR in opposition to LPPC's Feeder Line Application and by Jon Ryan in his Verified Statement, executed March 24, 2022, that I believe are misleading and erroneous.

7. At p. 3 of its Motion to Dismiss, DSR claimed as follows:

The entire 20-miles of the Line that is the subject of LPPC's Feeder Line Application has no active customers. Indeed, there have been none on the Line for more than three years. DSR is not aware of, and has not been approached by, any prospective customers seeking to originate or terminate traffic from any point along the Line.

8. I strongly disagree with DSR's unsworn comments at page 3 of its Motion to Dismiss that "DSR is not aware of, and has not been approached by, any prospective customers seeking to originate or terminate traffic from any point along the Line." That statement is misleading. While I was involved in Customer Relations and Marketing, I worked closely with Mr. Daniel Robbins, NLA's Vice President, in attempting to develop additional new business for both DSR and NLA. As a result, I was made aware of several prospective customers that wished to move traffic over the corridor to reach KCS or UP, which is the only meaningful way to view the situation.

9. In 2016, I worked for several months with Arkansas Midland Railroad and NLA to route paper commodities from points north of McGehee to Tallulah to be moved to multiple points in the southern part of the United States. The

effort did not result in any movements after DSR put out word in early April 2017 that it had ceased serving the NLA interchange.

10. Later in the year, Mr. Robbins and I traveled to Overland Park, Kansas to meet with Lansing Trade Group. Although Lansing had several potential moves from the Lake Providence area that would have involved DSR, Continental was unwilling to fund the repairs that were needed to provide safe and adequate rail service over the 20-mile-Segment to reach the point of interchange with NLA. The bottom line is that my efforts to attract new customers were actively discouraged by DSR's managers.

11. I must also take issue with Mr. Ryan's statement in his Verified Statement that he has "determined that the records of the Association of American Railroad show that the interchange between DSR and North Louisiana & Arkansas Railroad ("NLA") at Lake Providence, Louisiana has been open for customers to request interchange service since May 1, 2016, after DSR completed track work to restore its connection to NLA." DSR did not come anywhere near the track work that was required to provide safe and efficient rail service for active shippers.

12. Based on my experience as a locomotive engineer, and my knowledge of the track as it existed when I left DSR in 2018, I would not feel safe operating over that line until it is properly rebuilt, especially if the train consist included excessive height boxcars or tall gondola rail cars that are

typically used to transport cotton seed in this area. The same is true of cars that were loaded with hazardous materials.

13. Even if the tracks were not entirely impassible, they were in such poor condition in 2018 that a train could not be safely operated at speeds greater than 5 miles per hour. As noted above, I participated in the preparation of the initial FY 17-18 INFRA Grant Application that was denied by the US Department of Transportation. At that time, we determined that \$11,448,000 would be required to bring the track up to FRA Class 2 status from its excepted track status. At that time, problems with track gage, elevation, alignment, ballast, defective crossties, and rail needed to be addressed. Those problems remained when work began on the 19-20 INFRA Grant Application and could not possibly be addressed by inserting a limited number of used crossties. Until extensive repairs are made, the track will likely remain in FRA excepted status.

14. While we continued to interchange with NLA until August 2017 in order to serve Complex Chemical, which is DSR's largest customer, Matt Prince, another former employee of Continental Rail, and I were ultimately directed to advise NLA that interchange was closed in August 2017 due to track conditions on DSR's track, which was designated as excepted track pursuant to 49 CFR 213.4. As a result, NLA, which had placed multiple cars destined for Complex Chemical in interchange the previous day, had to retrieve the cars and reroute them around the horn to return them to Complex

Chemical. I am not aware that DSR has taken any steps to rehabilitate the 20-mile segment above FRA excepted track status since that time.

15. Another primary reason for the absence of current shippers is that several miles of the mainline track between MP 491 and MP 471 were clogged by hundreds of stored railcars. Because of the lack of sidetracks and the deteriorated condition of the mainline, it required up to four (4) days to clear the Line so that railcars originating at points beyond MP 471 that are destined to Madison Parish Port or to be placed in interchange service at Tallulah could be moved through to the point of interchange. The same is true of northbound trains that originate at the Madison Parish Port or that are received in interchange at Tallulah that are destined to move beyond MP 471 to reach sections of the Corridor that are served by NLA or to be interchanged by it with other railroads at McGehee.

16. When Continental Rail took over the management of DSR in 2015, a substantial percentage of DSR's monthly revenues was derived from the long-term storage of over 400 railcars on that portion of its mainline located between MP 491 and Lake Providence. The new management team, which included J.D. Ventrcek, John Marino and me, decided to cancel an existing storage contract and actively focus on the movement of freight northbound from Tallulah. During this period, DSR began the process of rehabilitating the bridges and some of the rail. However, after Mr. Ventrcek resigned, John Marino made it clear that we were to use the track to store railcars and actively discourage shipments of interchange rail traffic with NLA. That policy was based on the

conclusion that the cost of restoring the track north of MP 491 was greater than the revenues to be earned from interchanging traffic with NLA. In addition, the cost of constantly having to shuffle long strings of stored cars to allow individual freight cars to move over the Line would reduce profits.

17. As a result, when I brought prospective new business to Marino's attention, I was repeatedly told that the new business did not fit DSR's strategic objective, which was to maximize profits by once again focusing on storage of rail cars. The same message was conveyed by Jon Ryan. This put me in the uncomfortable position of having to tell shippers, to whom I had held out the possibility of moving their shipments by rail, that it would not be possible due to conditions beyond my control. This ultimately caused me to resign from DSR.

18. DSR actively sought to discourage interchange by other tactics. By way of example, in late 2016, Danny Robbins alerted me to Bayou Bioenergy (BBE), which was a new customer that had recently opened a facility in Lake Providence and wanted to move to rail service to expand its business. BBE was planning on transloading its product from tank trucks to rail cars at a spur located at MP 462.7, which was about a mile from its new facility. Its goal at that time was to ship about 78 cars per year. Even if the track between MP 491 and MP 471 had been rehabilitated, given the number of cars that were being stored, clearing the track more than once a week would have created an operational nightmare. Although DSR wanted the traffic, it refused to accept the loaded cars from NLA at the interchange point. Instead, DSR demanded

that BBE truck its product to Tallulah to be transloaded into railcars for further movement by rail. It is my understanding that the additional costs associated with trucking to DSR's transload facility in the Madison Parish Port forced BBE to raise the cost of its product, which put it at a substantial competitive disadvantage. This caused the owner of BBE to close the facility and layoff the entire workforce in December 2019.

19. When I resigned from DSR in August of 2018, nothing had been done to rehabilitate the track north of MP 491; interchange had not been reopened; and only the storage of railcars continued. Because I believe that the rebuilding of the entire 91.3-mile rail corridor between McGehee, Arkansas and Tallulah, Louisiana is essential to attracting new rail freight business and spur economic development and growth in this region, I support LPPC's acquisition of the entire line.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Craig Huff, declare under penalty of perjury that the foregoing is based on my personal knowledge and is true and correct to the best of my knowledge and belief.

Executed on March 28, 2022

A handwritten signature in black ink, appearing to read 'C. Huff', is written over a horizontal line.

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.

REBUTTAL VERIFIED STATEMENT OF
DANIEL B. ROBBINS

1. My name is Daniel B. Robbins. I am the Vice-President of the North Louisiana and Arkansas Railroad (NLA). As the record reflects, I have previously filed several Verified Statements in this proceeding and will not repeat matters that I have discussed in detail. Instead, I will focus on comments made by Craig Huff, who was previously employed by DSR as its General Manager. In addition, I will respond to comments made by DSR's current CEO, Jon Ryan, in his Verified Statement that was filed on March 24, 2022.

2. In the Spring of 2015, I met with William Wainwright, who owned DSR. I was aware at the time of an unmistakable decline in DSR's operations and facilities and was interested in acquiring DSR's tracks. During our conversation, he told me that he had recently received an offer of \$3.5 million but would sell to me if I could match that offer within thirty days. Before I

could arrange my financing, Mr. Wainwright consummated the sale to the private equity firm.

3. Immediately following the sale, I met with J.D. Ventrcek, with whom I had previously met when he was in charge of Weyerhaeuser's Arkansas and Oklahoma railroad operations. He later became an officer of Patriot Rail. We were joined in the meeting by John Marino. They told me that John Marino and his father had recently set up Continental Rail, LLC and that it had been hired by a California-based private equity firm to manage DSR's operations. They assured me that they were fully committed to the task of rebuilding DSR and were going to improve DSR's facilities and operations. Furthermore, they intended to expand the business. Mr. Ventrcek even asked if I would do joint marketing initiatives with Craig Huff.

4. They initially honored those commitments. Craig Huff and I started looking for new business, which included joint marketing efforts that took us to Overland Park, Kansas, Kansas City, Missouri, Vicksburg, Mississippi and other places. At the same time, they began repairing some of DSR's bridges and some of its track. Even then, they focused on the track located between Madison Parish Port, where they relocated DSR's headquarters, and the interchange with KCS. For a while, they reduced the miles of stored cars that Wainwright had welcomed. Everything began to change when Mr. Ventrcek left Continental Rail.

5. Before he left, DSR and NLA began interchange operations for Complex Chemical, which was and still is the largest rail shipper on DSR's system. While some cars were moved, problems developed that are attributed to UP's EDI computer system not recognizing that AKMD and NLA needed notification of car movements for DSR interchange in Lake Providence, Louisiana. That caused UP to fail to alert AKMD and NLA when Complex Chemical's cars arrived in McGehee. That caused cars to be lost in AKMD's yard in McGehee and severely impacted NLA's ability to timely deliver cars to Complex Chemical. I will admit that this generated a series of irate emails from Complex Chemical and Jerry Melton. Although those problems were finally resolved in early 2017, DSR closed interchange due to the deteriorated condition of its tracks. As the statement that Mr. Melton filed on March 5 reflects, he has specifically charged that DSR's failure to maintain its track has caused DSR's service to be inadequate. Because Complex Chemical is located in what DSR has named the "South Segment," I cannot understand how DSR can claim that none of its customers in that location "have alleged that DSR's ongoing provision of service is in any way inadequate."

6. Since then, no interchange occurred even though Mr. Huff and I unquestionably discovered that potential new interchange traffic was available from multiple shippers, in addition to that of Complex Chemical. Based on my personal knowledge, I hereby corroborate Mr. Huff's statements regarding our joint efforts to attract and expand interchange traffic that terminated in 2018 when he left DSR. Until I was contacted by Mr. Huff in March of 2021, when he

told me that Bayou Bioenergy (Bayou) should be contacted, I was unaware of the pressure that was placed on Mr. Huff to undermine our joint efforts to expand interchange traffic and deprive NLA of carload movements. Because DSR's actions diverted revenue from NLA, I would have complained at length about its actions.

7. I am aware from conversations with Jerry Melton, who owns Complex Chemical, that he wants to be able to route traffic directly to UP from his facility in the Madison Parish Port once the track is rehabilitated. On March 22, 2022, the day before I announced that the Line between McGehee and MP 471.0 was reopened for full service, I informed him that I had one of his cars and would place it in interchange with DSR. In response, Mr. Melton told me that he "has no confidence that DSR can get to and from Lake Providence over their bad track no matter what they were saying." I have been authorized by Mr. Melton to state that he told me not to place the car in interchange at MP 471, but to interchange it with UP at McGehee. I thanked Mr. Melton and told him we would await billing instructions for his car to send it back to UP in McGehee, where it would be forwarded to Monroe, and then moved over KCS and DSRR to his facility. I have no way to know whether that is the same car to which Mr. Ryan has referred.

8. I can understand Mr. Melton's concerns and DSR's unwillingness to commit to the rehabilitation of its track when DSR has calculated that it would require \$11,448,000 to rehabilitate its track to FRA Class 2 status. Because the section of track that NLA acquired from DSR is 24.1 miles in length as

compared with DSR's section is 27.6 miles in length, I must question DSR's estimate. The highest bid to reconstruct NLA's track was \$5,308,297, while the lowest bid of \$4,163,507. This required NLA and SEAEDD to fund some of the materials due to the recent inflation that has driven up the cost of materials. In his Verified Statement, Mr. Ryan suggests that DSR has used storage revenues "to maintain both the North Segment and the segment of the track located between mileposts 491.0 and 498.6 (the 'South Segment'). The Board should note that DSR's estimate, which covers 27.6 miles of track, is \$1,448,392 more than the combined estimate for the 62.1 miles of track between mileposts 408.9 and 471.0. This obvious discrepancy demonstrates that DSR has done very little to repair its share of the Lake Providence Branch.

9. I fully appreciate that track can be lawfully operated in excepted track status. I also appreciate the fact that shippers and their customers will be reluctant to return to rail service when they would have to rely on tracks that DSR has characterized as being "inactive," "long-out-of-service," and "long dormant." In this instance, the deterioration can be tracked back to MoPac's and Mr. Wainwright's uncontested assertions that the deteriorated condition of the entire Lake Providence Branch Line supported their right to abandon the tracks. However, based on the problems that NLA has encountered, excepted track will multiply the costs of maintaining the line and lead to continuous derailed railcars. The earlier photograph that reflects the derailment on January 19, 2021 of multiple stored cars vividly reflects my position.

10. After my conversation with Mr. Melton, I instructed NLA's track inspector, who is duly qualified consistent with F.R.A. regulations, to inspect the Joint Trackage track between MP 471.0 and 472.25. Under SECTION 4 – MAINTENANCE of the Trackage Rights Agreement that NLA assumed from LPPC, DSR agreed that it shall "at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track conditions. Thereafter, DSR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs." Because Mr. Wainwright never bothered to rehabilitate the "Joint Trackage," which is defined as "DSR's tracks between Milepost Nos. 471 and 472.25, to FRA Class 1 status, the provisions of Section 3 have never been applied.¹

11. On March 29, 2022, NLA's track inspector spent most of the day inspecting the track. His Track Inspection Report is attached hereto. As he discovered, DSR has recently taken some steps to address the tracks condition. However, the tracks remain in FRA excepted track status. Between Milepost 471.0 and MP 472.2, he identified 45 defects that include tie defects, gauge defects, cross level defects, broken rail defects, joint bar defects and even a vegetation defect involving a tree down across the track. If the Joint Tracks had been classified as FRA Class 1, DSR would potentially face several thousand dollars of fines following an FRA Track Inspector's visit. In fact, the potential of incurring huge fines is preventing NLA from upgrading its track to FRA Class 2

¹ Relevant provisions of the Trackage Rights Agreement are attached hereto.

status until all work is completed. Until that is done, all operations will move at the highest speed allowed by FRA regulations.

12. While focusing on Complex Chemical, I must respond to DSR's claim at page 3 of its Response that "there is not the slightest hint of a service inadequacy on the South Segment." While DSR points to a statement made by Terry Patrick Murphy, who is the Executive Director of the Madison Parish Port Commission, it fails to acknowledge that Mr. Melton has filed a verified statement in which he has criticized the inadequacy of DSR's service when he criticized "DSR's self-imposed refusal to maintain its own line". Mr. Melton's Letter was entered of record on March 5, 2021.

13. I have carefully reviewed Mr. Ryan's Verified Statement and the photos that he took in the Spring of 2021. It is my understanding that Mr. Ryan is an experienced Certified Public Accountant. I have no idea whether he has ever tried to operate a locomotive over DSR's tracks between MP 491.0 and MP 471.0. For various reasons, I must question whether he has any experience to qualify him as an expert who is capable of determining whether NLA's "track has been operated, or maintained, for several years."

14. The photos he took that I could verify as being NLA's track accurately reflect the conditions that NLA was forced to contend with even after it had already spent over \$4,000,000 to repair the tracks that it acquired from DSR in 2011. While he generally states that the tracks were located between Halley and Eudora, Arkansas, he did not use NLA's mileposts to pinpoint the

actual location of the road crossings. Had he inquired, I would have explained that NLA has scrapped the obsolete mileage designations that reflected the MoPac system and instead uses a common-sense approach that starts at the beginning of the Lake Providence Line that begins in McGehee. I have attached several photographs of what I believe may be identical to the locations that Mr. Ryan photographed. Although the rehabilitation of the track has not yet been completed, my photos show that the track is nearing the point when I can apply an FRA Class 2 designation to it. Each photograph reflects NLA's and MoPac's milepost numbers and a reference to Mr. Ryan's photos. I must stress that my photos do not reflect the final ballasting, tamping or brush cutting that will soon be completed.

15. I will also suggest that Mr. Ryan's focus on dirt crossing reflects his lack of any practical expertise in assessing whether an experienced locomotive engineer, such as myself or Mr. Huff, can safely operate over the flat dirt road over which the track crosses. Not one of the dirt road crossings that are pictured in Exhibit 3 ever stopped me and my other locomotive engineers from operating over them. By sheer coincidence, Mr. Ryan happened to take photos shortly after a paving crew, hired by the city, had accidentally filled the gap between the track and the street with asphalt. That issue was corrected by the city shortly thereafter.

16. The other tracks that Mr. Ryan has photographed that appear to resemble a snake's back have been navigated by NLA's experienced locomotive engineers. The key elements involve the speed of the train, the cars that are

being pulled, broken rails, defective cross ties and cross level defects. All of the defects were cited by Mr. Wainwright when he filed for abandonment of the segment of the Line that Mr. Ryan photographed. When NLA finishes its rehabilitation of the Lake Providence Branch in the next few weeks, the only part of the Branch that will present safety issues will be the excepted tracks that are owned by DSR.

17. Despite Mr. Ryan's conclusions regarding the track's condition that he has drawn from his photos, NLA has never embargoed the Line between McGehee and Lake Providence. Instead, after suffering the severe rollover derailments on February 4, 2019, that are pictured at Figures A-9 and A-10 of the INFRA application, NLA between May 2019 to March 2022, NLA restricted the use of plate F cars (which are very tall) between McGehee and Lake Village, a distance of 22.5 miles. Nevertheless, after the February derailment, NLA continued to transport Epstein Gin's cottonseed from its storage facility at Lake Village to McGehee at great cost to itself. All shipments moved over the same segment of track that was scene of the February derailment until May.

18. That restriction was never applied to movements from Lake Village to the south. Nor was any other type of equipment restricted. Boxcars and tank cars, which are plate C cars, were moved to and from the connection with UP until reconstruction of the Line between McGehee and the Arkansas/Louisiana boundary was begun in 2021 using INFRA Grant Funds along with private NLA funds and other grants that SEAEDD have obtained. Moreover, NLA was ready,

willing and able to use all of those cars for movement to the south of Lake Village.

19. In June of 2019, Epstein Gin requested NLA to ship the remaining 40+ cars of cottonseed in its Lake Village facility to KCS. These cars would have moved in interchange service with DSR. Although NLA was ready, willing and able to move the 43 cars that Epstein Gin was looking to ship via KCS, Dino Trevino, who is DSR's current General Manager, personally refused interchange because, as Epstein's owner has previously stated, DSR's tracks between mileposts 471 and 491 could not accommodate the top-heavy loads that are generally handled in high-center-of-gravity cars. Mr. Trevino also claimed that DSR had approximately 200 cars stored on a portion of that track. As a result, Epstein Gin, at a great cost to itself, had to use trucks to move 43-rail car's worth of cottonseed that NLA was ready to move. I must presume that Mr. Trevino is one of the unnamed staff members with whom Mr. Ryan would have consulted to support the comment at paragraph 2 of his Verified Statement that DSR has been open to interchange since May 1, 2016, after DSR completed track work to restore its connection to NLA.

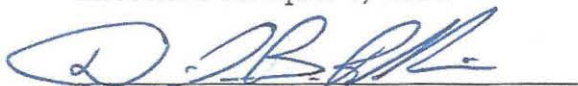
20. Although DSR downplays the deterioration of its track between MP 471.0 and 491.0, it must admit that in 2017, Craig Huff arranged for NLA to push cars past the interchange track at Lake Providence to a point that is several miles to the south of MP 472.5. This was done because DSR had so many cars in storage that Mr. Huff could not get to the point of interchange to accept the cars. As a result, DSR refused to dispatch a DSR locomotive to the

interchange point. Instead, Mr. Huff drove his car to Lake Providence and personally accompanied NLA crews on multiple occasions they shoved empty cars to the South where they were stored. When it was time to retrieve the cars, NLA was asked to pull them back north to McGehee. Once again, Mr. Huff hitched rides with NLA's crews.

VERIFICATION

I, Daniel B. Robbins, declare under penalty of perjury that the foregoing is based on my personal knowledge and is true and correct to the best of my knowledge and belief.

Executed on April 4, 2022



Daniel B. Robbins

ATTACHMENT TO REBUTTAL VERIFIED STATEMENT
DANIEL B. ROBBINS

TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT (TRA) is made and entered into as of this 26th day of , May, 2011, between DELTA SOUTHERN RAILROAD, INC. (DSR) and LAKE PROVIDENCE PORT COMMISSION (the Port).

WITNESSETH:

WHEREAS, DSR has agreed to sell to the Port DSR's rail lines between Milepost No. 471.0, at or near a certain highway barn in East Carroll Parish, Louisiana, and Milepost No. 454.8 at the Louisiana-Arkansas State Line, and between Milepost No. 433.0 at or near Lake Village, Arkansas, and Milepost No. 408.9 at or near McGehee, Arkansas, a total distance of approximately 40.3 miles ("the purchased rail line"); and

WHEREAS, a sidetrack and a lead track that are used to provide rail service to warehouses and a dock owned by the Port ("the sidetrack and lead track"), extend from DSR's rail line between Milepost Nos. 471 and 472.25, a short distance south of the purchased rail line; and

WHEREAS, the Port desires to operate over DSR's tracks between Milepost Nos. 471 and 472.25 ("the Joint Trackage"), for the purposes of accessing, switching and servicing the Port's sidetrack and lead track; and

WHEREAS, DSR is agreeable to permit the Port to operate over the Joint Trackage, but only in accordance with the terms and conditions of this TRA, including a condition that DSR be permitted to continue to operate over the sidetrack and lead track to place loaded cars and to pick up empty cars at the Port's warehouses.

NOW, THEREFORE, DSR and the Port agree as follows:

SECTION 1 - GRANT OF TRACKAGE RIGHTS

1.1 Subject to all terms and conditions of this TRA and subject to the Port obtaining any necessary regulatory authority or exemption, DSR hereby grants to the Port the non-exclusive right to operate over the Joint Trackage on an overhead rather than local basis, for the purpose of accessing the sidetrack and lead track to or from the purchased rail lines, and for no other purpose whatsoever.

1.2 The Joint Trackage is shaded in yellow, and the sidetrack and lead track are shaded in blue, on a drawing that is attached to this TRA as Appendix 1.

1.3 Under no circumstances may the Port permit any third party to use any or all of the Joint Trackage without DSR's permission, except as set forth in Section 18.

1.4 DSR shall continue to have the right to use the sidetrack and/or the lead track to place loaded cars and to pick up empty cars at the Port's warehouses-

SECTION 2 - TERM

2.1 This TRA shall become effective on the date when it has been signed by both parties and shall continue in effect for a term of 20 years from that date, provided, however, that DSR may elect to terminate this TRA if the Port has breached a material provision of this TRA and has failed to cure such breach within 60 days of receipt of a written request by DSR to cure such breach. So long as the Port is not in default, the Port may renew this TRA for an additional term of 20 years by giving written notice to DSR at least 90 days prior to the expiration of the initial term.

2.2 Upon termination of this TRA by means of expiration or as a result of an uncured breach, the Port agrees to discontinue operations over the Joint Trackage and to seek any necessary regulatory authority or exemption for such discontinuance.

SECTION 3 - COMPENSATION

3.1 In lieu of a trackage rights fee, the Port hereby agrees to pay to DSR a proportionate share of the actual, reasonable, verifiable costs incurred by DSR to maintain FRA Class I track standards on the Joint Trackage. DSR and the Port hereby agree that their respective proportionate share of maintenance costs will be based on relative usage of the Joint Trackage in each calendar year provided, however, the annual amount of maintenance shall be pro rated for the first and last year of this TRA. As an illustration, if in a calendar year the Port were to have transported 90 percent of the loaded and empty cars that were transported over the Joint Trackage, the Port would pay 90 percent of the actual maintenance costs incurred by DSR during such calendar year. DSR shall provide the Port a detailed schedule of the costs incurred, including the dates, descriptions of the work done, costs incurred and applicable back-up invoices by no later than each January 20 during the term of this TRA. The Port shall be entitled to audit the records of DSR related to the maintenance of the Joint Trackage within one year after the date that the schedule is provided to the Port.

3.2 By not later than each January 20 during the term of this TRA, DSR and Port shall each certify to the other the number of loaded and empty cars moved by each during the calendar year then ending. The Port shall make its payment of the proportionate share of maintenance cost to DSR on or before January 31st. DSR and the Port shall each be entitled to audit the records of the other within one year after the date of their respective certifications; any necessary payments or refunds after the audit shall be paid by the responsible party within 20 days after the results are provided.

3.3 Reserved.

3.4 Notwithstanding the foregoing, until DSR rehabilitates the Joint Trackage into Class 1 track condition as provided in Section 4.1 below, no compensation shall be due for use of the Joint Trackage by the Port.

SECTION 4 – MAINTENANCE

4.1 The Port shall provide DSR with a notice of its intent to use the Joint Trackage not later than ninety (90) prior to its intended date of use (the "Notice of Intent to Use Joint Trackage"). Upon receipt thereof, DSR shall then, at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track condition. Thereafter, DSR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs.

4.2 DSR shall maintain, repair and renew the Joint Trackage with its own supervision, labor and materials. DSR shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use reasonable efforts to avoid such interruptions.

4.3 If DSR does not rehabilitate or thereafter maintain the Joint Trackage in FRA Class 1 track condition, then Port may, at its option but without any obligation to do so, after giving DSR 30 days advance notice, perform work on the Joint Trackage to bring the Joint Trackage into FRA Class 1 track condition. Any costs incurred by Port in doing so may be deducted from future trackage rights payments.

SECTION 5 - TRAIN DISPATCHING

5.1 DSR shall have the right to dispatch trains over the Joint Trackage in a manner that ensures safe operations. If DSR does not have dispatchers available at the time that the Port wishes to operate over the Joint Trackage, then the Port may do so as permitted under the General Code of Operating Rules.

5.2 All rules, regulations, and orders for dispatching trains over the Joint Trackage shall be reasonable, fair, and just between DSR and the Port, and shall not unjustly discriminate against either of them.

5.3 With respect to the operation of trains, locomotives, and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations, and orders promulgated by any governmental body or agency having jurisdiction.

SECTION 6 - LIABILITY AND INDEMNIFICATION

6.1 General.

(a) The provision of this Section 6 shall apply only as between the parties hereto and their affiliated persons and entities, and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than such parties. It is the explicit intention of the parties hereto that no person or entity other than such parties is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, such parties hereto.

ATTACHMENT TO REBUTTAL VERIFIED STATEMENT
DANIEL B. ROBBINS

INSPECTION REPORT

Page: 1/4

**NORTH LOUISIANA & ARKANSAS RAILROAD
TRADING EDITIONS INCORPORATED**

DATE OF INSPECTION 3/29/22

THACKER INSPECTORS: RABBIT HOUSE THEATRE MP 472.0 TWD MP 472.25

OTHER THINGS WORTHY 1.1000

QUOTED INSTEAD Pet lead Switch

DEVIATIONS FROM REQUIREMENTS

LOCATION	DESCRIPTION	REMEDIAL ACTION TAKEN
	See Attached	

8:45 AM

THE Rock Inspector

MP 471.0

Joint Tie Defect- No effective tie within 24 in. 109B3

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B2

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B2

Cross level Defect- Greater than allowable 3 in. 3 1/4 in. 0063A3

Cross level Defect- Greater than allowable 3 in. 3 1/4 in. 0063A3

Joint Bar Defect- Insufficient number of bolts. Only one bolt present. 0121D2

Joint Tie Defect- No effective tie within 24 in. 109B3

Joint Bar Defect- Insufficient number of bolts. 0121D2

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 471.1

Gauge Defect- Gauge less than 56 in. 55 5/6 in. 0053B2

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B2

Joint Tie Defect- No effective tie within 24 in. 109B3

Joint Tie Defect- No effective tie within 24 in. 109B3

Joint Bar Defect- Center Cracked joint bar. 0121C1

Broken Rail Defect- Broken rail, ordinary break. Inside of Joint Bar 0113D12

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B3

MP 471.2

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B3

MP 471.3

Gauge Defect- Gauge less than 56 in. 55 5/8 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 3/8 in. 0053B3

Broken Rail Defect- Broken Rail, ordinary break. Inside of Joint Bar 0113D12

MP 471.3

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 471.4

Gauge Defect- Gauge less than 56 in. 55 7/8 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 5/8 in. 0053B3

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Cross level Defect- Cross level greater than 3 in. 3 1/4 in. 0063A3

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B3

MP 471.5

Cross level Defect- Cross level greater than 3 in. 3 1/8 in. 0063A3

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 5/8 in. 0053B3

MP 476.7

Cross level Defect- Cross level greater than 3 in. 3 1/8 in. 0063A3

Gauge Defect- Gauge less than 56 in. 55 11/16 in. 0053B3

Cross level Defect- Cross level greater than 3 in. 4 1/4 in. 0063A3

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

MP 471.9

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 472.0

Gauge Defect- Gauge less than 56 in. 55 7/8 in. 0053B3

MP 472.1

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Joint Bar Defect- Center Cracked joint bar. 0121C1

Joint Bar Defect- Insufficient number of bolts. 0121D2

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 472.2

Vegetation Defect- Tree down across the tracks. 0037C1

Gauge Defect- Gauge less than 56 in. 55 7/8 in. 0053B3

ATTACHMENT TO REBUTTAL VERIFIED STATEMENT
OF DANIEL B. ROBBINS

Photographs taken on March 28, 2022 of various track and crossing on the North Louisiana & Arkansas Railroad between Halley and Eudora, Arkansas that are currently being reconstructed. The final ballasting, tamping or brush cutting will be finalized in a matter of weeks. The photos reflect the same tracks and crossing that are reflected in Exhibit C that is attached to the Verified Statement Jon Ryan.

Photo 1 reflects the Line at NLA MP 7.75 (formerly MoPac MP 416.65) and corresponds to the first two photos in Exhibit C.

Photo 2 (looking north) and 3 (looking south) reflect the Line at NLA MP 9.1 (formerly MoPac MP 418.0) and corresponds with the 3rd photo in Exhibit C.

Photo 4 reflects the crossing at Lewis Road NLA MP 12.5 (formerly MoPac MP 421.4). Cannot confirm that this corresponds with the 4th photo in Exhibit C.

Photo 5 reflects the Line at NLA MP. 18.4 (formerly MoPac MP 427.3) and corresponds with the 5th photo in Exhibit C.

Photos 6 and 7 reflect the Line at NLA MP 23.08 (formerly MoPac MP 438.98) and corresponds with the 6th photo in Exhibit C.

Photo 8 reflects a road crossing believed to be located at NLA MP 34.6 (formerly MoPac MP 443.5) and corresponds with the 7th photo in Exhibit C.

Mr. Robbins was unable to determine the location of the 8th photo in Exhibit C.

Photo 9 reflects a road crossing at NLA MP 37.0 (formerly MoPac MP 445.9). The crossing has presented no problems for NLA maintenance of way equipment and its locomotives. This photo corresponds with the 9th photo, which is the final photo in Exhibit C.



#1





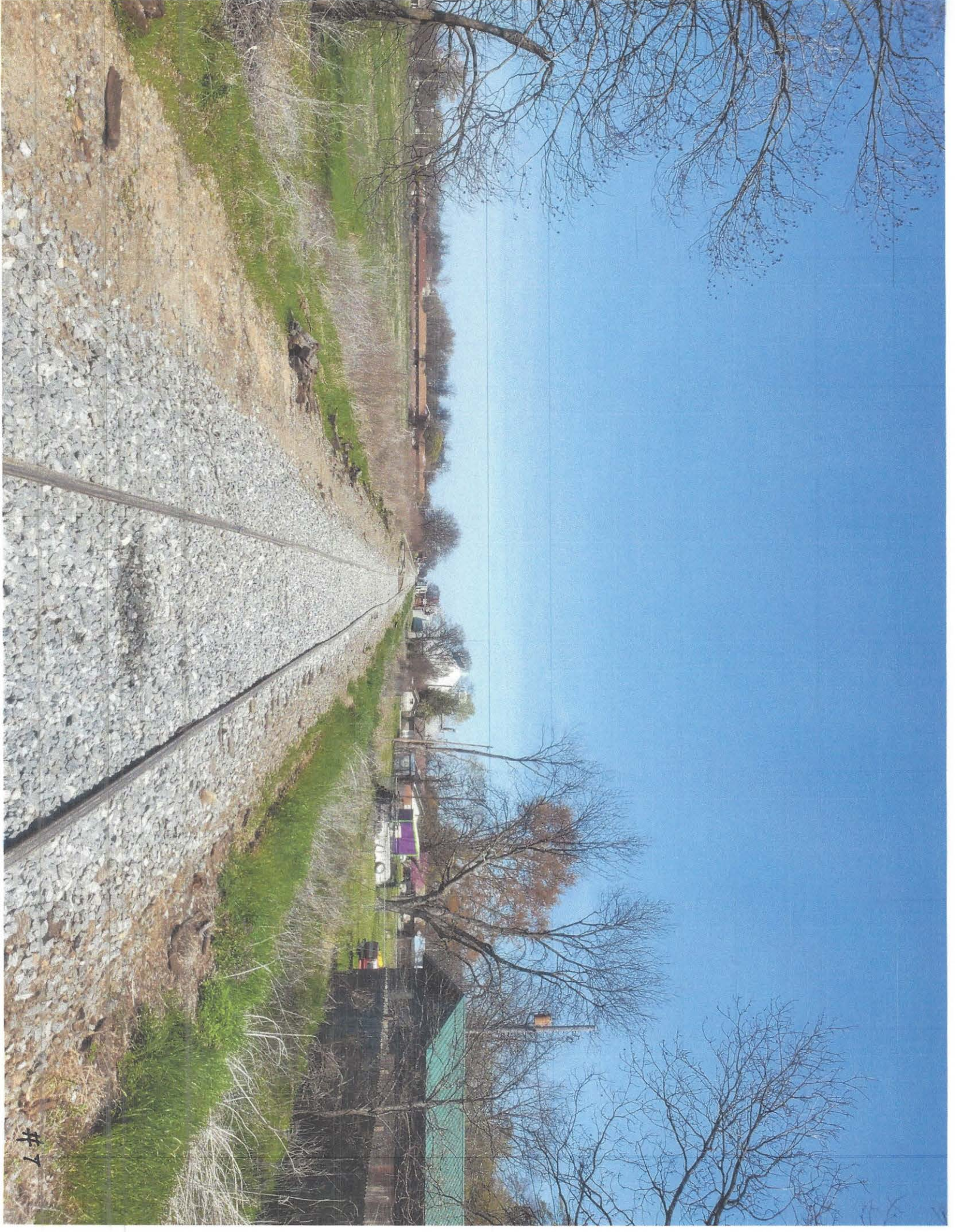


#4





#6







49