

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
April 27, 2022
Part of
Public Record

Finance Docket No. 36447

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

REPLY TO MOTION TO STRIKE

Lake Providence Port Commission (LPPC), by and through its counsel, respectfully requests the Board to deny the Motion to Strike filed by Delta Southern Railroad, Inc. (DSR). As the Board has long recognized, although a reply to a reply is generally prohibited by 49 C.F.R. § 1104.13(c), the Board's rules are construed liberally to ensure a just determination of the issues presented. 49 C.F.R. § 1100.3.

In its Motion to Strike, DSR once again accuses LPPC of abusing the Board's offices and flaunting established feeder line procedures. Nothing could be further from the truth. LPPC's sole purpose in filing its Verified Rebuttal is to provide the Board with reliable sworn testimony regarding actions taken by DSR that were not disclosed to LPPC until months after LPPC filed its feeder line application. Indeed, by the time that this new evidence was disclosed, the Board had suspended the procedural schedule. LPPC's new evidence provides crucial information regarding DSR's activities that adversely affected the flow of

rail traffic over the 20-mile segment of track between MP 471 and MP 491 between 2016 and November 12, 2022. Plainly, this new evidence is highly relevant to the core issues that must be resolved by the Board.¹ Because this new evidence will assist the Board in reaching a fully informed decision regarding the five statutory requirements that Congress imposed when it enacted the feeder development line provisions, it cannot be ignored.

LPPC and its counsel are mindful of the Board's directive that the parties refrain from submitting any further filings relating to the merits of their respective positions. As a result, when LPPC filed its motion to supplement its feeder application, no attempt was made to detail the underlying evidence that it had discovered well after the original application was filed.

However, after DSR submitted a Verified Statement from DSR's current CEO that contains misleading and false testimony relating to a key issue in this case, LPPC was compelled to respond to prevent the Board from being misled. As its Motion to Strike reveals, DSR realizes that LPPC's new evidence destroys the credibility of its witness's testimony. Hence, it is desperately seeking to suppress it rather than address the merits.

While LPPC strongly opposes DSR's Motion to Strike, it fully agrees with DSR's position that the Board should reach a decision that will resolve the

¹ As the record herein reflects, the underlying situation in this proceeding unquestionably involves several of the urgent issues in freight rail service that the Board is actively considering in Ex Parte Docket No. 770, *Urgent Issues in Freight Rail Service*.

issues that were first raised over a year ago. However, LPPC disagrees with DSR's suggestion that granting LPPC's Motion to Supplement would require "a restart of the entire proceeding."² Because a restart would involve virtually identical evidence and arguments, it would result in wasted public funds that would be better spent on rehabilitation of the tracks and opening the entire line for the benefit of shippers.

By authorizing LPPC to supplement its feeder line application, DSR, which has never filed a single verified statement or comment addressing the substantive merits of LPPC's original application, will have a full opportunity to file a substantive response. Finally, while DSR once again asks for additional time to "respond substantively to the Rebuttal,"³ the better approach would be to require DSR to comply with a new procedural schedule that will permit the Board to reach a final decision on the merits.

Respectfully submitted,

/s/ Richard H. Streeter

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² Motion at 5.

³ *Id.* DSR proposed an identical "deferred" response in its Motion to Strike filed May 28, 2021.

CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that on this 27th day of April 2022, I served a true copy of the foregoing on Thomas J. Healey, counsel for Delta Southern Railroad, Inc. at THealey@fletcher-sippel.com.

/s/ Richard H. Streeter