

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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ENTERED
Office of Proceedings
September 2, 2022
Part of
Public Record

THOMAS J. HEALEY

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thealey@fletcher-sippel.com

September 2, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: **FD 36447**
Lake Providence Port Commission – Feeder Line Application – Line of
Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana

Dear Ms. Brown:

As directed by order served in the above-referenced docket on August 23, 2022 (the “Order”), Delta Southern Railroad, Inc. (“DSR”) responds to the Surface Transportation Board’s (the “Board”) three enumerated information requests relating to DSR’s Lake Providence Branch, extending between Lake Providence, LA (at an interchange with the North Louisiana & Arkansas Railroad Company), and Tallulah, LA (at an interchange with The Kansas City Southern Railway Company (“KCSR”)).

Prior to responding to the three questions, DSR offers what it believes would serve as helpful informational background. In early 1988, Missouri Pacific Railroad Company (“MoPac”) sought to abandon a line of rail from McGehee, AR (milepost 408.9) south to Vidalia, LA (milepost 651.6), of which the Lake Providence Branch was a part. *Missouri Pacific Railroad Company – Abandonment – In Desha and Chicot Counties, AK, and East Carroll, Madison, Tensas and Concordia Parishes, LA*, AB-3 (Sub-No. 72) (“Mopac”). Later in 1988, however, Delta Southern Railroad Company (“DSRC,” a similarly named but unrelated entity) was “authorized to acquire and operate [MoPac’s] 89.5-mile line between milepost 408.9 near McGehee and milepost 498.4 at Tallulah.” *MoPac*, (ICC decided Oct. 11, 1988) *1.

In 1999, DSR filed a notice of exemption intended to cover the acquisition of DSRC’s rail assets, including, of course, the entire Lake Providence Branch. *Delta Southern Railroad, Inc. – Acquisition and Operation Exemption – Delta Southern Railroad Company*, FD 33802. A copy of the class exemption filing is attached as Exhibit A (“Filing”). The Filing references the southern milepost of the planned acquisition as “MP 489.44,” well north of the

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ATTORNEYS AT LAW

Ms. Cynthia T. Brown

September 2, 2022

p. 2

“milepost 498.4” southern limit of DSRC’s authority. Filing, 3. The 489.44 milepost is also reflected in the draft caption summary. *Id.*, 13. The Filing’s repeated reference to “MP 489.44,” is a drafting error, compounded by incorrect references elsewhere in the filing to total Lake Providence Branch route mileage stemming from the incorrect southern terminus milepost. The Filing was intended to cover the entire Lake Providence Branch, which terminates on its south end at milepost 498.44 at Tallulah, and a connection at that location to KCSR.

A careful reading of the Filing reflects DSR’s clear intent to acquire and commence operations to a southern main line terminus at Tallulah (hence, milepost 498.44).¹ First, the Filing states that DSR will purchase “all of [DSRC’s] assets.” *Id.*, 2. Second, the Filing correctly states that the line’s southern end is “in or near Tallulah, LA,” *Id.*, 3, a statement that would be inaccurate if DSR genuinely intended to obtain common carrier authorization only to milepost 489.44, some nine miles north of Tallulah. Third, the Filing (*Id.*, 3) references operating rights over Madison Parish Port Commission-owned trackage at MP 491, a point that DSR could not access if it truly intended for milepost 489.44 to be the southern limits of its common carrier authorization. Finally, the map appended to the Filing (*Id.*, 10) shows that the main line extended south, to the KCSR connection at Tallulah. Given the context, it is fairly easy to see that the Filing’s reference to “MP 489.44” is internally inconsistent with the balance of the Filing, and that, in all likelihood, a transcription error occurred in the drafting, reversing the “8” and the “9” in the southern milepost identification, an error that, it appears, neither DSR nor its legal counsel at the time had detected.

DSR provides the following information in response to the three specific issues raised in the Order:

(1) the mileposts that correspond to (i) the southern terminus of DSR’s Lake Providence line and (ii) DSR’s point of interchange with KCS;

Based on the facts laid out above, the southern terminus of DSR’s Lake Providence Branch is milepost 498.44, where DSR’s track connects to KCSR.² Interchange with KCSR is conducted on a KCSR-owned sidetrack located adjacent to KCSR’s main line proximate to DSR milepost 498.44.

¹ DSRC has determined that the more accurate designation for the southern terminus of the Lake Providence Branch line (and connection there to KCSR) is milepost 498.44, rather than the truncated milepost 498.4 location given in DSRC’s earlier class exemption proceeding.

² DSR also owns roughly 1.5 miles of ancillary track located south of the KCSR main line connection at milepost 498.44. Despite being non-regulated track, this track appears to be the basis for the inaccurate statement on DSR’s website that DSR operates “29.2 miles of main line track, plus another mile of sidings and right of way...”. DSR is in the process of correcting the website error, as the Lake Providence Branch is comprised of 27.44 miles of main line track.

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Ms. Cynthia T. Brown

September 2, 2022

p. 3

(2) if the southern terminus of DSR's Lake Providence line is a point beyond milepost 489.44, the basis of DSR's authority to own and operate the segment between milepost 489.44 and the southern terminus;

DSR owns the track located south of milepost 489.44 through quitclaim deeds received from DSRC in the 1999 asset acquisition. To DSR's knowledge, the company has always operated the track between milepost 471.0 (the northern terminus of DSR's Lake Providence Branch) and the connection with KCSR at milepost 498.44 consistent with an understanding (albeit mistaken, given the filing errors and inconsistencies in the Filing) that such operations were fully authorized pursuant to the FD 33802 class exemption.

(3) if no such authority exists, the action DSR intends to take to rectify the failure to seek and obtain such authority.

DSR intends rectify the errors contained in the aforementioned Filing to account for the correct and full length of the Lake Providence Branch to milepost 498.44 by way of a motion to modify the FD 33802 exemption in keeping with similar corrective actions taken in cases such as *Kiski Junction Railroad – Acquisition Exemption – Berkman Rail Services*, FD 34681 (STB served May 24, 2021) (inadvertent milepost error corrected more than 16 years after acquisition authority became effective).

Please let me know if you have any questions.

Respectfully submitted,

/s/*Thomas J. Healey*

James D. Helenhouse
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

cc: All Parties of Record

Exhibit A

EXHIBIT A

STB

FD

33802

10-01-99

A

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LAW OFFICES

REA, CROSS & AUCHINCLOSS

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THOMAS M. AUCHINCLOSS, JR.

LEO C. FRANEY

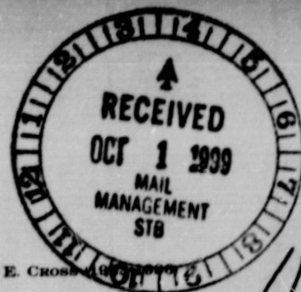
JOHN D. HEFFNER

KEITH G. O'BRIEN

BRUCE REA, JR.

BRIAN L. TROIANO

ROBERT A. WIMBISH



DONALD E. CROSS

BY HAND

ENTERED
Office of the Secretary

October 1, 1999

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

OCT 04 1999

Part of
Public Record

RE: FD No. 33802, Delta Southern Railroad, Inc. -- Acquisition
And Operation Exemption -- Delta Southern Railroad Company

Dear Mr. Williams:

On behalf of Delta Southern Railroad, Inc., and pursuant to the Board's regulations at 49 CFR 1150.31, I am filing an original and ten copies of a verified notice of exemption for the acquisition and operation of the Delta Southern Railroad Company by Delta Southern Railroad, Inc.

I am also enclosing a check payable to the Board for \$1200 to cover the applicable filing fee and a computer disk formatted in MS DOS WordPerfect 6.0 containing the filing.

Please date stamp and return the additional two copies of this filing for our records.

Sincerely yours,

John D. Heffner

Enclosures

cc: Mr. William P. Wainright
Richard F. Loritz, Esq.

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TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

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ENTERED
Office of the Secretary

OCT 04 1999

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33802

DELTA SOUTHERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DELTA SOUTHERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1150.31

NOTICE OF OPERATION OF RAIL LINE
INFORMATION REQUIRED BY 49 CFR 1150.31

FILED

OCT 01 1999

SURFACE
TRANSPORTATION BOARD

FILED

~~OCT 04 1999~~

John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 570
1707 "L" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for
Delta Southern Railroad, Inc.

DATED: October 1, 1999

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33802

DELTA SOUTHERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DELTA SOUTHERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1150.31

NOTICE OF OPERATION OF RAIL LINE
INFORMATION REQUIRED BY 49 CFR 1150.31

Name and Address of Applicant 49 CFR 1150.33(a)

Delta Southern Railroad, Inc.
P.O. Box 1709
Madison Parish Port
Tallulah, LA 71282
(318) 574-5420

Applicant's Representative 49 CFR 1150.33(b)

John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 570
1707 "L" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Statement of Agreement 49 CFR 1150.33(c)

Delta Southern Railroad, Inc. ("Delta") anticipates
signing an agreement with Lawrence Beal, 100% of owner of the
this line left blank

Delta Southern Railroad Company ("DSRR"),¹ for Delta to purchase all of DSRR's assets. The parties intend to consummate the transaction on or about October 18, 1999, more than seven days from the date of this notice.

Total Route Miles

49 CFR 1150.33(c)(4)

The lines to be acquired and operated by Delta consist of approximately 132.78 route miles of railroad as well as 11.76 miles of operating rights over other railroad lines.

Operator of the Property

49 CFR 1150.33(d)

In all cases anticipated by this Notice, and as described in the transaction summary provided below, Delta will provide common carrier rail freight service over the subject rail lines.

Brief Summary of Transaction

49 CFR 1150.33(e)

On August 4, 1999, William and Linda Wainright² signed a letter of intent with DSRR's owner Lawrence Beal for the parties to negotiate and execute a purchase and sale agreement for acquisition of the subject rail properties. Mr. and Mrs.

¹ The address for Lawrence Beal and DSRR is as follows:

14400 S. Robey St.
P.O. Box 2270
Dixmoor, IL 60426

² Mr. Wainright has managed DSRR for the past ten years since it was established as a short line railroad in 1989.

Wainright have established Delta as a new corporation and noncarrier to acquire and operate these rail assets. The practical effect of this transaction will be for Mr. Beal to transfer rail properties owned and operated by DSRR to the new company established and solely owned by the Wainrights. There will be no effect on day to day operations, railroad competition, or employees as a result of this ownership change. Railroad operating assets being transferred include:

- (1) a rail line owned and operated by DSRR and extending from MP 408.9 in or near McGehee, AR, to MP 489.44 in or near Tallulah, LA ("The Owned Property");
- (2) a rail spur owned and operated by DSRR and extending from MP 445.53 (where it connects with the Warren Line identified below) for 3 miles ("The Spur");³
- (3) DSRR's leasehold interest in a rail line owned by the Union Pacific Railroad ("UP") and currently operated by DSRR which extends from MP 422.32 at Dermott, AR, to MP 461.74 at Warren, AR ("The Warren Line");
- (4) DSRR's leasehold interest in a rail line owned by UP and currently operated by DSRR which extends from MP 566 at Monroe to MP 556.18 at Sterlington ("The Sterlington Line");
- (5) 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"); and
- (6) certain overhead rights over UP's line between MP 415.26 at Dermott, AR, and MP 409.7 at McGehee, AR, ("overhead rights");
- (7) certain overhead rights over UP's line and yard facilities from MP 566 and MP 500.3 to MP 504 at Monroe, LA;
- (8) certain operating rights at MP 472.8 at Lake Providence, LA, owned by the Lake Providence Port Commission.

³ Delta takes no position on whether this line is a spur for the purpose of the spur exemption of 49 U.S.C. 10906.

As noted above, the parties propose to consummate the subject transaction on or about October 18, 1999.

This transaction qualifies for a class exemption under 49 CFR 1150.31, et seq., because it involves the acquisition and operation by a noncarrier and newly-created class III short line rail carrier of an active line of railroad. See, 49 CFR 1150.31 et seq., and Class Exemption - Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985). Issuance of a class exemption under 49 CFR 1150.31 will permit Delta to consummate this transaction promptly.

Map

49 CFR 1150.33(f)

A Map depicting the area to be served is attached as Exhibit A.

Certificate of Carrier Classification 49 CFR 1150.32, 33(g)

Delta hereby certifies that its projected annual revenues will be less than \$5,000,000, within the Board's ceiling for classification as a class III railroad. A copy of Delta's Certification is attached hereto as Exhibit B.

Caption Summary

49 CFR 1150.34

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data 49 CFR 1105

Pursuant to 49 CFR 1105.6(c)(2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c)(2)(1), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b)(1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 570
1707 "L" Street, NW
Washington, DC 20036
(202) 785-3700

Counsel for
Delta Southern Railroad, Inc.

Dated: October 1, 1999

FD 33802

EXHIBIT
A

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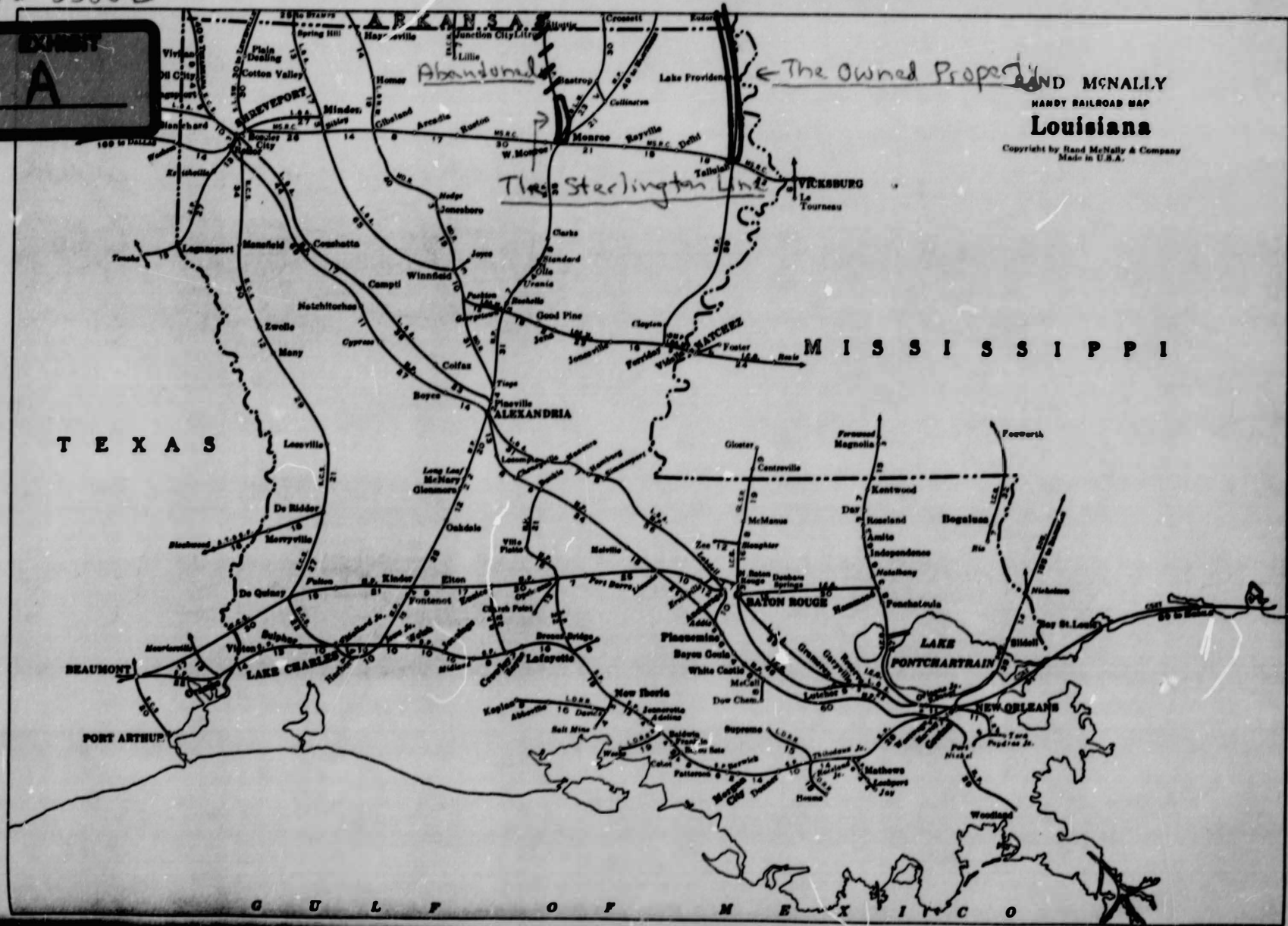


EXHIBIT A

VERIFICATION

STATE OF Louisiana)
COUNTY OF Madison) ss:

William P. Wainright, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

William P. Wainright
William P. Wainright

Subscribed and sworn to before me this 23rd day of September, 1999.
Notary Public of Madison Parish, La.

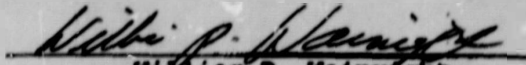
My Commission expires: Lifetim

EXHIBIT B

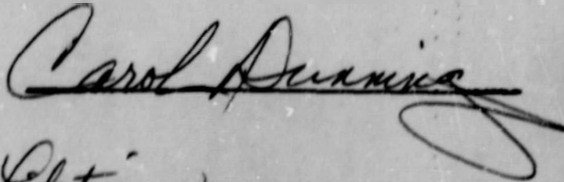
CERTIFICATION

City of Tallulah)
) ss.
State of Louisiana)

I, William P. Wainright, President of the Delta Southern Railroad, Inc. ("Delta Southern") hereby certifies under penalty of perjury that the projected annual revenues of Delta Southern in the aggregate, will not exceed \$5,000,000.00, and, based upon those revenues, that Delta Southern will be a Class III rail carrier as set forth at 49 CFR 1201 (1-1) (a). Further, I certify that I am qualified and authorized to make this certification on behalf of Delta Southern.


William P. Wainright

Subscribed and sworn to before me, a Notary Public, in
and for the State of LA, this 22nd day of Sept, 1999.



My Commission Expires:

Lifetime

EXHIBIT C

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33802

DELTA SOUTHERN RAILROAD, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DELTA SOUTHERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1150.31

NOTICE OF OPERATION OF RAIL LINE

Delta Southern Railroad, Inc. ("Delta"), a newly-created class III short line railroad, has filed a Verified Notice of Exemption under 49 CFR 1150.31 to acquire and operate the following rail properties currently owned or leased and operated by Delta Southern Railroad Company ("DSRR"):

- (1) a rail line owned and operated by DSRR and extending from MP 408.9 in or near McGehee, AR, to MP 489.44 in or near Tallulah, LA ("The Owned Property");
- (2) a rail spur owned and operated by DSRR and extending from MP 445.53 (where it connects with the Warren Line identified below) for 3 miles ("The Spur");
- (3) DSRR's leasehold interest in a rail line owned by the Union Pacific Railroad ("UP") and currently operated by DSRR which extends from MP 422.32 at Dermott, AR, to MP 461.74 at Warren, AR ("The Warren Line");
- (4) DSRR's leasehold interest in a rail line owned by UP and currently operated by DSRR which extends from MP 566 at Monroe to MP 556.18 at Sterlington ("The Sterlington Line");
- (5) 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"); and

(6) certain overhead rights over UP's line between MP 415.26 at Dermott, AR, and MP 409.7 at McGehee, AR, ("overhead rights");

(7) certain overhead rights over UP's line and yard facilities from MP 566 and MP 500.3 to MP 504 at Monroe, LA;

(8) certain operating rights at MP 472.8 at Lake Providence, LA, owned by the Lake Providence Port Commission.

The trackage to be acquired and operated or operated under lease totals approximately 132.78 route miles in length. In addition, Delta will acquire approximately 11.76 miles of operating rights over other railroad lines.

The parties propose to consummate this transaction on or about October 18, 1998.

This notice is filed under 49 C.F.R. 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33802, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on:

John D. Heffner, Esq.
REA, CROSS & AUCHINCLOSS
Suite 570, 1707 L Street, N.W.,
Washington, D.C., 20036
Telephone: (202) 785-3700

and

Richard F. Loritz, Esq.
1100 Ravinia Place
Ravinia Place Office Park
Orland Park, IL 60462
Telephone: (708) 403-2555

(seal)

Vernon A. Williams
Secretary