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Office of Proceedings
September 23, 2022
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September 23, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: **FD 33802**
Delta Southern Railroad, Inc. – Acquisition and
Operation Exemption – Delta Southern Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is **Delta Southern Railroad, Inc.’s Petition to Reopen and Correct Notice**, dated September 23, 2022.

If you have any questions regarding this filing, please feel free to contact me.

Thank you for your assistance on this matter.

Respectfully submitted,

FILED
September 23, 2022
SURFACE
TRANSPORTATION BOARD

/s/Thomas J. Healey
Thomas J. Healey
Attorney for Delta Southern Railroad, Inc.

TJH:th

Attachment

FEE RECEIVED
September 23, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33802

**DELTA SOUTHERN RAILROAD, INC.
— ACQUISITION AND OPERATION EXEMPTION —
DELTA SOUTHERN RAILROAD COMPANY**

**DELTA SOUTHERN RAILROAD, INC.'S
PETITION TO REOPEN AND CORRECT NOTICE**

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

**ATTORNEYS FOR DELTA SOUTHERN
RAILROAD, INC.**

Dated: September 23, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33802

**DELTA SOUTHERN RAILROAD, INC.
— ACQUISITION AND OPERATION EXEMPTION —
DELTA SOUTHERN RAILROAD COMPANY**

**DELTA SOUTHERN RAILROAD, INC.’S
PETITION TO CORRECT NOTICE OF EXEMPTION**

Pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1117.1 and in keeping with past agency practice, Delta Southern Railroad, Inc. (“DSR”) hereby requests that the Surface Transportation Board (the “Board”) reopen the above-referenced docket to correct, *nunc pro tunc*, a milepost error in DSR’s original notice of exemption filing in this proceeding that resulted in a significant, but unintentional, understatement of the scope of DSR’s longstanding common carrier operations. This petition stems from the Board’s inquiry about the correct scope of DSR’s common carrier operations in *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Located in East Carroll and Madison Parishes, Louisiana*, FD 36447 (STB served Aug. 23, 2022), in which order the Board also signaled its expectation that, if DSR’s original common carrier authorization understated the full scope of DSR’s operations (as appeared to be the case), then DSR should take appropriate corrective action.

BACKGROUND

On October 1, 1999, DSR filed a verified notice of exemption (the “Filing”) pursuant to 49 C.F.R. Part 1150, subpart D to authorize its purchase and operation of the assets of Delta Southern Railroad Company, including a line segment known as the Lake Providence Branch.¹ The Filing and the caption summary appended thereto referred to the southern milepost of the Lake Providence Branch as “MP 489.44 in or near Tallulah, LA.” Milepost 489.44, however, is roughly nine miles north of the actual southern end of the Lake Providence Branch, at milepost 498.44 at Tallulah, and DSR’s connection there to The Kansas City Southern Railway Company’s (“KCSR”) “Meridian Speedway.”

A careful examination of the Filing reflects DSR’s clear intent to acquire and commence operations to Tallulah (milepost 498.44). The Filing correctly states that DSR will purchase “all of [DSR’s] assets.” Id., 2.² The Filing also correctly states that the line’s southern end is “in or near Tallulah, LA,” (Id., 3), a statement that would have been inaccurate if DSR genuinely intended to acquire and operate the line only to milepost 489.44. Additionally, 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 operations. Finally, the map appended to the Filing (Id., 10) shows that the main line extended south to the KCSR connection at Tallulah. Given the full context, it is easy to grasp that the Filing’s erroneous reference to “MP 489.44” was a transcription error in which the “8” and the “9” in the southern milepost were reversed, an error

¹ *Delta Southern Railroad, Inc. – Acquisition and Operation Exemption – Delta Southern Railroad Company*, FD 33802 (filed Oct. 1, 1999), attached as Exhibit A.

² Indeed, the sale agreement between DSR and Delta Southern Railroad Company specifically provided for the sale of the entire Lake Providence Branch, and DSR, at the time of closing on that transaction, acquired the entire line.

that, evidently, neither DSR nor its legal counsel at the time detected then or until identified by the Board in the aforementioned FD 36447 proceeding.

This transcription error was carried forward in the representation of the overall DSR route miles, which were stated as 132.78 (*Id.*, 2), but (if the correct southern milepost had been applied) should have reflected a total of 141.78 miles.

To the best of DSR's knowledge, it has always held itself out as providing common carrier service over the entire Lake Providence Branch, including to its southern terminus at milepost 498.44,³ the Filing error notwithstanding. In fact, the vast majority of the traffic moved by DSR since current ownership took over⁴ has been between the Madison Parish Port at approximately milepost 491.0 and KCSR at Tallulah, all of which is located south of the misstated 489.44 milepost.

ARGUMENT

DSR respectfully requests that the Board reopen this docket to modify, *nunc pro tunc*, the original, Board-served notice to reflect that the southern milepost of DSR's Lake Providence Branch is located at milepost 498.44, and that the total number of route miles acquired and operated by DSR in 1999 pursuant to this proceeding is 141.78 miles. Read as a whole, the contents of the Filing leave little doubt that the intent of the Filing was to authorize

³ DSR also acknowledges the minor discrepancy between the southern terminus of the Lake Providence Branch as given in the FD 36447 proceeding (milepost 498.4) and here (milepost 498.44). DSR has investigated the matter, and has determined that milepost 498.44 at Tallulah, LA, more accurately identifies the southern terminal of this line.

⁴ Recently, DSR received a request for service to move an oversized "Schnabel" car over the northern portion of the Lake Providence Branch (the 20 miles between mileposts 471.0 and 491.0 that were the subject of a feeder line application in FD 36447). DSR moved the 115-foot long car over the 20-mile segment – which a DSR critic has incorrectly claimed was impassable – in slightly over two hours (close to the maximum authorized track speed of 10 mph), without incident.

DSR's operation of the entire Lake Providence Branch, south to milepost 498.44. Issuing a corrected notice retroactively will confirm what has been both the assumption and the practices of DSR and its customers for several decades.

Furthermore, the relief DSR seeks here is consistent with the Board's handling of a similar filing error in *Kiski Junction Railroad – Acquisition Exemption – Berkman Rail Services*, FD 34681 (STB served May 24, 2021) ("*Kiski*"). In *Kiski*, the acquiring entity realized some 16 years after acquiring its railroad line, while in the process of preparing an abandonment filing, that one of the terminal mileposts in its original exemption was incorrect due to a scrivener's error. There, the railroad rationally explained the error, pointing out that a Board correction of the original notice in that proceeding would prejudice no one and would facilitate subsequent Board proceedings. The Board promptly issued a corrected notice *nunc pro tunc*.

The same Board action is warranted here, and for the same reasons. DSR had no reason to seek an exemption for less than all of the regulated mainline track it intended to acquire and operate, and the transcription error in the original filing, where the nine and eight in "498.44" were inadvertently transposed, resulting in a similarly understated route mileage is easily understood. DSR's conduct over the past few decades has confirmed that it considered itself fully authorized to operate the entire Lake Providence Branch. No party can claim prejudice through the requested correction of the underlying notice of the transaction. Indeed, prompt correction of the notice of exemption *nunc pro tunc* to accurately reflect the southern terminus of the Lake Providence Branch will aid in other proceedings before the Board involving this line segment.

WHEREFORE, DSR respectfully requests that the notice issued by the Board in this docket be corrected *nunc pro tunc*, consistent with *Kiski*, to reflect the southern milepost of

the Lake Providence Branch at milepost 498.44, and to state that the overall route mileage acquired by DSR in this proceeding to be 141.78 miles.

/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

**ATTORNEYS FOR DELTA SOUTHERN
RAILROAD, INC.**

EXHIBIT A

EXHIBIT A

STB

FD

33802

10-01-99

A

195796

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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

BRYCE 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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FILED

OCT 01 1999

TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

EXHIBIT A

195796

FILED RECEIVED

OCT 01 1999

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33802

ENTERED
Office of the Secretary

OCT 04 1999

Part of
Public Record

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

EXHIBIT A

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.

9.

49 CFR 1150.33(f)

49 CTR 1150.32, 33 (g)

49 CFR 1150.34

CTK 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

DO NOT
A

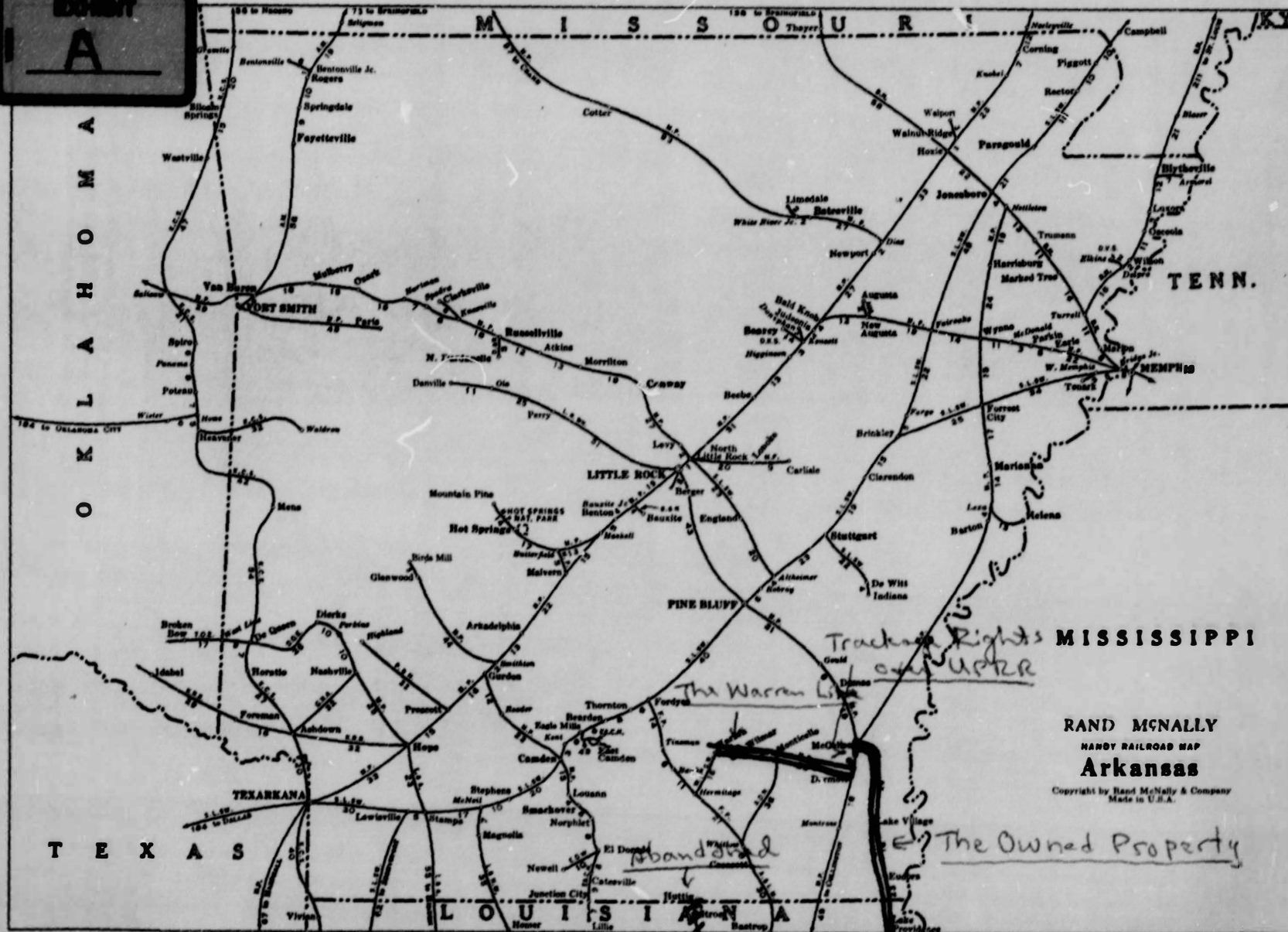


EXHIBIT A

FD 33802

EXHIBIT
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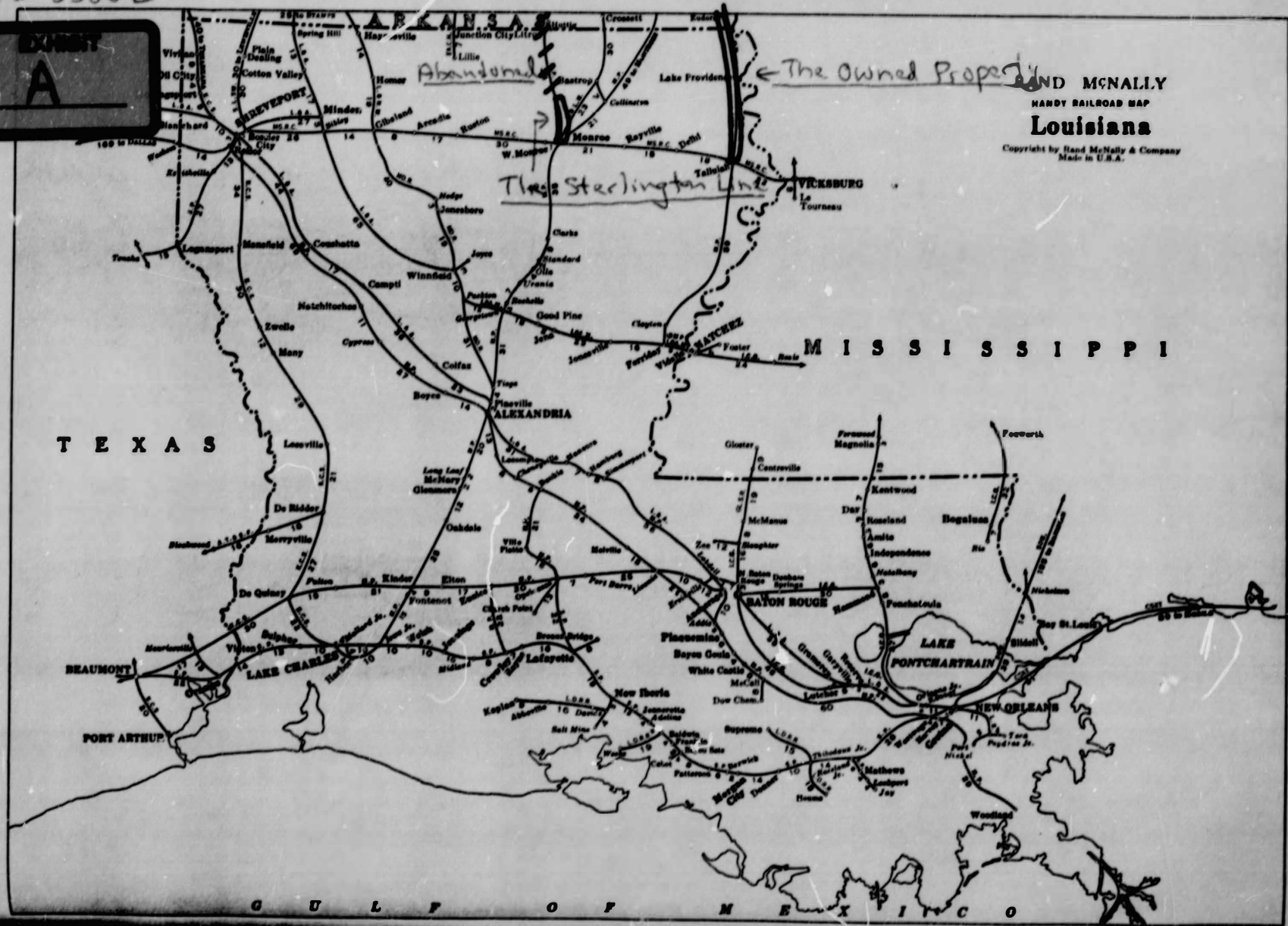


EXHIBIT A

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.

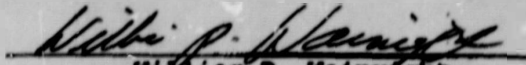
My Commission expires: Lifetim

EXHIBIT B

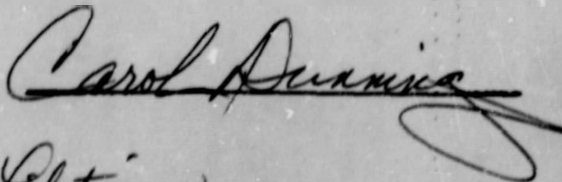
CERTIFICATION

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:

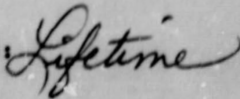


EXHIBIT C

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

CERTIFICATE OF SERVICE

I hereby certify that, on this 23th day of September, 2022, I served a copy of the foregoing “Delta Southern Railroad, Inc.’s Petition to Reopen and Correct Notice” electronically (via email) upon the parties of record in this docket if any and the following as a courtesy:

Richard H. Streeter
5255 Partridge Lane, NW
Washington, DC 20016
rhstreeter@gmail.com

/s/ Thomas J. Healey
Thomas J. Healey