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Office of Proceedings
September 28, 2022
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Public Record

September 28, 2022

Ms. Cynthia T. Brown
Chief, Section of Administration,
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: FD 36642, *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group Inc.-Control Exemption-Delta Southern Railroad, Inc.*

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the Reply of Lake Providence Port Commission and Request to Postpone Effective Date of the Notice of Exemption and Other Relief. Because the transaction in the Control Exemption is scheduled to be consummated on October 23, 2022, expedited consideration is requested for the reasons set forth in LPPC's Reply.

Thank you in advance for your consideration of this matter.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for LPPC

RHS:rs

cc: John M. Scheib, Scheib@gentrylocke.com
Thomas J. Healey, THEaley@fletcher-sippel.com

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36642

**PATRIOT RAIL COMPANY, LLC, STEELRIVER TRANSPORT
VENTURES LLC, GLOBAL DIVERSIFIED INFRASTRUCTURE
FUND (NORTH AMERICA) LP, FIRST STATE INFRASTRUCTURE
MANAGERS (INTERNATIONAL) LIMITED AND MITSUBISHI UFJ
FINANCIAL GROUP INC. — CONTROL EXEMPTION —
DELTA SOUTHERN RAILROAD INC.**

**REPLY OF LAKE PROVIDENCE PORT COMMISSION AND
REQUEST TO POSTPONE EFFECTIVE DATE OF THE
NOTICE OF EXEMPTION AND OTHER RELIEF.**

Lake Providence Port Commission (LPPC) hereby replies in opposition to the Verified Notice of Exemption filed by Patriot Rail Company, LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited and Mitsubishi UFJ Financial Group, Inc. (Patriot Rail), filed September 23, 2022. By its notice, Patriot Rail seeks to acquire ownership and control of the segment of the Lake Providence Branch Line that is owned by Delta Southern Railroad, Inc. (DSR), as well as a second line that extends from Monroe, Louisiana, to Sterlington, Louisiana. Although LPPC has no interest in the second line, it requests the Board to expeditiously postpone the effective date and ultimately reject Patriot's petition insofar as it would permit West Branch Intermediate Holdings, LLC (West Branch) and DSR to disrupt the ongoing

Feeder Line Application proceeding in which LPPC is attempting to acquire the Lake Providence Branch Line.

As the Board is aware, LPPC, pursuant to the Board's decision, served August 23, 2022, is in the process of revising its pending Feeder Line Application that was initially filed on November 10, 2020, and docketed as FD No. 36447. LPPC's revised application will seek ownership of the segment of the Lake Providence Branch Line between milepost 471.0 and the point of interchange with the Kansas City Southern Railroad Company (KCS) in Tallulah.¹ If the Board approves LPPC's application, its current operator, North Louisiana & Arkansas Railroad Co. (NLA), will hold out single-line rail common-carrier operations between McGehee, AR and the point of interchange with KCS in Tallulah, LA.

As the existing record reflects, the feeder line application involves significant factual disputes and legal questions regarding the lawfulness of actions taken by DSR and its owners, as well as Continental Rail, Inc., which West Branch hired to manage DSR's operations after West Branch acquired stock ownership of DSR from Mr. and Mrs. Wainwright in 2015. LPPC submits that such actions were contrary to the public interest and inconsistent with the

¹ The point of interchange with KCS is a matter that is open to question due, in part, to the fact that Delta Southern Railroad Company (DSRC) never acquired any operating authority from the Interstate Commerce Commission (ICC) in 1988 to operate beyond milepost 498.4. As explained in detail in LPPC's response to DSR's Petition to Correct Notice of Exemption in FD 33802, filed September 26, 2022, neither DSRC nor DSR were ever authorized to operate between mileposts 498.4 and 498.44, which is a stretch of track that was abandoned by Missouri Pacific Railroad Company pursuant to a decision of the ICC in AB-3 (Sub-No 72), served July 3, 1988.

public convenience and necessity. Not only did those actions financially harm NLA by preventing it from holding out interchange service to potential shippers, but they also forced shippers to route their traffic over alternative routes that needlessly increased the cost of transportation due to the need to engage two (2) Class I railroads. DSR's actions, which prevented the movement of freight from being continuous from the place of shipment to the place of destination, arguably violated the statutory requirements of 49 U.S.C. § 10744.

Among the disputes that remain unresolved is the fundamental issue of whether DSR and its owners refused, within a reasonable time, to make the necessary efforts to rehabilitate its track so that it could provide adequate service to shippers. Instead of doing so, DSR abruptly terminated interchange service between DSR and NLA due to the condition of DSR's track between mileposts 491.0 and 471.0.

At p. 3 of its Verified Notice of Exemption, Patriot Rail has candidly acknowledged that "DSRR has been the target of a feeder line application filed by the Lake Providence Port [Commission] ("LPP[C])" in Finance Docket No. 36447." Patriot also states that it will assume responsibility for that matter and looks forward to working with the LPP[C] to obviate the need for any further feeder line proceedings. Patriot Rail also states that "this transaction does not foreclose either LPP[C] from pursuing an amended feeder line application against DSRR or a Patriot Rail-controlled DSRR from defending against it."

However, no explanation has been offered as to how Patriot Rail will provide LPPC and the Board with information regarding DSR's refusal to make

“necessary efforts to provide adequate service to shippers who transport traffic over the segment of track between milepost 471.0 and milepost 491.0.”²

Moreover, LPPC is concerned with Patriot Rail’s comments that “the proposed transaction will not affect the level of operations on the rail lines of DSRR”³ and “will not substantially change the level of operations over, or maintenance of, the rail lines.”⁴ The foregoing plainly suggests that the sale to Patriot Rail will not result in any meaningful improvement for shippers, local communities, and the parties to the Feeder Line Application, namely LPPC, the Southeast Arkansas Economic Development District, Inc. (SEAEDD), the Madison Parish Port Commission (MPPC) and NLA (jointly, Interested Parties).

As the tortured history of the feeder line proceeding demonstrates, DSR and its counsel have, from the outset, sought to delay and derail the proceeding to evade full consideration of DSR’s past activities that have harmed the public interest. While DSR’s owners have previously professed their willingness to continue to own and control DSR, they have obviously changed their position in order to prevent LPPC from acquiring the segment of the Lake Providence Branch Line that is the subject of the Feeder Line Application.

LPPC intends to file its expanded feeder line application in an expedited fashion. Because the sudden sale to Patriot has disrupted LPPC’s efforts to respond to the Board’s recent decision, LPPC respectfully requests the Board, after giving this matter the prompt attention it deserves, to postpone the

² 49 U.S.C. § 10907(c)(1)(A).

³ Verified Notice of Exemption at p. 5.

⁴ *Id.* at p. 6.

effective date of the exemption until further order of the Board. That step would be consistent with the action that the Board took on March 9, 2021, when it suspended the procedural schedule in FD 36447 at DSR's request.

Such action is also supported by multiple Board precedents. As the Board explained in *Spectrum RR Holdings, LLC-Operation Exemption-Railroad Line in the Town of Brookhaven, N.Y.*, FD36376, slip op. at 4:

The Board's streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters. *Tri-city R.R.—Lease and Operation Exemption—N. Pac. Dev., LLC*, FD 36170, slip op. at 1 (STB served Mar. 21, 2018; *V&S Ry.—Aban. Exemption—in Kiowa Cty., Colo.*, AB 603 (Sub-No. 3X), slip op. at 2 (STB served June 17, 2014). Notices raising unresolved issue or questions that require considerable scrutiny may be rejected. E.g., *V&S Ry., AB 603X*), slip op. at 2.

Plainly, the use of the class exemption procedures to preempt a complicated and controversial feeder line proceeding that is focused on a carrier's refusal within a reasonable time to make the necessary efforts to provide adequate service to shippers should not be tolerated. If West Branch wanted out of the railroad industry, it had ample time to work with LPPC to reach a reasonable solution. At worst, it would receive the Constitutional Minimum Value that LPPC would be compelled to pay for the entire segment of the Lake Providence Branch Line that West Branch owns. Instead, West Branch and its attorneys have deliberately attempted to foreclose the Board's

scrutiny of West Branch's past actions by blindsiding LPPC after the Board denied DSR's Motion to Dismiss the Proceeding.⁵

FACTUAL BACKGROUND UNDERLYING LPPC'S CONCERNS

As Will Be Demonstrated in LPPC's Revised Feeder Line Application, LPPC's Efforts to Preserve Rail Service Over the Lake Providence Branch Have Spanned Over 30 Years.

LPPC has been actively engaged since 1988 in efforts to preserve rail service to the inland water ports in northeast Louisiana. Its efforts have included filing an offer of financial assistance (OFA) to save the Lake Providence Branch Line from abandonment by the Missouri Pacific Railroad Co. (MP), and by acquiring parts of the Lake Providence Branch Line, when DSR's previous owners filed for multiple abandonment proceedings that sought approval from the Board to abandon between milepost 408.9 at McGehee, AR and milepost 471.0 near Lake Providence, LA. In seeking abandonment, DSR focused on the deplorable condition of the tracks.

In the initial matter involving MP's abandonment, the Interstate Commerce Commission (ICC), in a decision dated June 29, 1988 and served

⁵ LPPC does not intend to disparage Patriot Rail and its new attorney in any respect. In fact, LPPC's counsel, on September 26, extended an invitation on behalf of the Interested Parties, to Patriot Rail's counsel, to meet with Patriot Rail personnel in Lake Providence during the first week of October to explore whether grounds for a possible agreement may exist. Because of Hurricane Ian, it appears that this will not be possible and that any meeting must be delayed. Given the need for immediate action, LPPC, out of an abundance of caution, has determined that it is essential that the Board be made aware of LPPC's concerns at this time so that the Board may take appropriate action to preserve the status quo until such time as the Board can reach a decision on the merits of LPPC's expanded feeder line application.

July 11, 1988, determined that the public convenience and necessity permitted MP to abandon its 162.7-mile line of railroad between milepost 408.9 in McGehee in Desha County, AR, and milepost 651.6 near Vidalia in Concordia Parish, LA.⁶ Recognizing the adverse impact that the loss of rail service would have on the shippers and communities in north east Louisiana, LPPC timely filed an OFA to acquire and operate the 89.5-mile segment of the Lake Providence Branch Line between milepost 408.9 in McGehee, AR and milepost 498.4 in Tallulah, LA.⁷ Although the ICC determined that LPPC's OFA was *bona fide*, LPPC voluntarily agreed to MP's acceptance of the OFA submitted by National Railway Equipment Company, which was subsequently substituted for its corporate affiliate, Delta Southern Railroad Company (DSRC). As both MP and DSRC explained to the ICC, LPPC's only interest was to assure continued rail service.

Unfortunately, after DSR acquired the 89.5-mile track from DSRC in 1999, the lack of proper maintenance of the Lake Providence Branch Line once again caused the track to further disintegrate. As a result, LPPC, along with SEAEDD, were compelled to oppose the abandonment of 62.1 miles between milepost 408.9 and milepost 471.0. The initial Notice of Exemption, filed on May 20, 2004, was docketed as AB-384 (Sub-1X), *Delta Southern Railroad, Inc.- Abandonment Exemption-Between Lake Village, AR, and Shelburn* on May 20,

⁶ A copy of the ICC's decision, which briefly summarized LPPC purpose for protesting MP's abandonment at p. 8, is attached hereto.

⁷ MP was authorized to abandon the segment of the Line between milepost 498.4 and milepost 561.6 near Vidalia that MP had embargoed in 1987 due to track conditions.

2004. By its Notice, DSR sought to abandon 30 miles of the Lake Providence Branch Line. This proceeding was not resolved until after LPPC, in January 2011, notified the Board that it would seek to acquire the right of way and track under Louisiana state law. Because the abandonment process failed to timely resolve the matter, the track continued to deteriorate to the point that it would take years to restore after LPPC and SEAEDD were finally able to acquire ownership and provide service by NLA.

Mr. and Mrs. Wainwright, who owned all of DSR's common stock, were able to shed their ownership of DSR when they sold their stock to West Branch in 2015. However, DSR and its corporate owners did nothing to attract new business that would move in interchange service with NLA. Instead, DSR's top management team directed its General Manager in Tallulah to focus on car storage rather than expand its rail service over the 20-mile segment of track between mileposts 471.0 and 491.0.

DSR and its new owners did not make any significant effort to rehabilitate the 20-mile segment of the Lake Providence Branch Line. Instead, *until LPPC filed its Feeder Line Application*, DSR treated the 20-mile segment as being "an inactive railroad line" that was "long out of service," and "long-dormant." All of which caused DSR to conclude that "the desired track renovations on the long-dormant Line are unjustified and unwarranted."⁸ Given the unquestioned public interest in restoring the entire track, that is a

⁸ DSR's Motion to Dismiss Proceeding and Request to Hold Proceeding in Abeyance at p. 2.

call that is contrary to the public interest and cannot be tolerated by the Board.

While DSR, in 2017, briefly joined the Interested Parties in applying for an INFRA Grant from the U.S. Department of Transportation (DOT), DSR decided to withdraw because it lacked the money to proceed. After that application was denied, DSR again initially joined with the other four (4) parties when they filed the 19-20 INFRA Grant Application. However, DSR did not commit any funds to deliver the Project, while the Interested Parties committed to contribute \$19,315,000 of funds to match the INFRA Grant funds that would be awarded by DOT.⁹ In addition to the money that the Interested Parties spent to acquire the track from DSR, rather than allowing it to be abandoned, they also spent a combined \$12,133,608 to rehabilitate the segments of the Lake Providence Branch Line that they previously acquired from DSR before they filed the INFRA Grant Application in 2019.¹⁰ As of July 19, 2022, the Interested Parties have drawn down INFRA Grant funds and match funds in the amount of \$6,153,989 that were used, in part, to pay \$5,149,126 to the contractor for the ongoing rehabilitation of the track between milepost 408.9 and milepost 471.0, leaving an available balance of \$1,120,903. As of this date, the Interested Parties are waiting for FRA to approve further payments. Remaining funds will be used to cover the cost of brush cutting in

⁹ INFRA Grant Application at p. 15, Table 5.

¹⁰ *Id.* at p. 13, Table 3.

the amount of \$486,733. The Interested Parties are also in the process of soliciting bids for bridge work.

Recognizing the significance of DOT's determination that the preservation and rebuilding of the multimodal freight corridor between the city of McGehee in rural southeast Arkansas on the northern end and the city of Tallulah in rural northeast Louisiana is a "nationally significant freight project,"¹¹ the Interested Parties, again unlike DSR, are fully committed to do all that is necessary to rehabilitate the entire Lake Providence Branch Line. LPPC respectfully submits that given the significance that has been placed on the ongoing efforts to rebuild the entire corridor, DSR's private interests are trumped by the overall public interests that support LPPC's acquisition of the entire Lake Providence Branch from DSR.

Given the significant amount of public and private funds that the Interested Parties have invested to restore a major segment of the Lake Providence Branch Line between McGehee and the Lake Providence Port, the Board, at a minimum, should reject Patriot Rail's use of the class exemption to acquire control of DSR before it becomes effective on October 23, 2022. The Board should not entertain a virtual rerun of what happened in 2015 when West Branch secretly acquired DSR's stock without having to acquire the Board's approval "because neither West Branch nor Continental [Rail LLC]

¹¹ See Statement of Work attached to the Grant Agreement dated January 1, 2021. A copy of which is attached to Motion Seeking Entry of Protective Order Requested by North Louisiana & Arkansas Railroad, entered into the Public Record in FD 36447 on February 18, 2001.

owned or managed any common carrier railroads operating in the United States at the time of that acquisition.”¹² Obviously, because West Branch’s takeover did not require Board approval, LPPC and SEAEDD had no opportunity to contest the sale or request conditions that would have helped to ensure that DSR’s tracks would be rehabilitated in a timely fashion.¹³

Given West Branch’s decision to sell DSR’s stock to Patriot Rail, it is obvious that West Branch does not wish to continue to retain ownership of DSR’s rail assets. That being the case, LPPC must question why the Board would permit West Branch to interfere with LPPC’s prolonged efforts to acquire the remaining segment of the Lake Providence Branch and thereby avoid the repeated problems that have been encountered over the past 30 years that have threatened to eliminate all rail service between McGehee and Tallulah. Because LPPC is driven by the overall public interest in preserving future rail service, its acquisition of the entire Lake Providence Branch is consistent with the public convenience and necessity and the public interest.

¹² See West Branch Intermediate Holdings, LLC and Continental Rail LLC – Continuance in Control Exemption – Central Gulf Acquisition Company Verified Notice of Exemption under 49 CFR § 1180.2(d)(2), FD 36006, filed April 4, 2016, at p. 3 n.1.

¹³ While DSR now claims that the recent movement, on September 7, 2022, of an empty Schnabel car in interchange with NLA disproves the claim that the 20-mile segment between mileposts 471 and 491 was impassable, DSR provides no reason why it took six (6) years to address the issue. Moreover, while it is obvious that DSR did some recent remedial work to ready the track for the movement of the Schnabel car, legitimate questions remain whether high-gravity cars that are used in the area to transport cotton seed can be moved without incident at speeds more than 10 miles an hour. It is also noted that empty Schnabel cars could be moved at speeds up to 25 mph.

CONCLUSION

For all the above stated reasons, LPPC respectfully submits that given the extraordinary circumstances surrounding this transaction, Patriot Rail's Notice of Exemption is not appropriate for consideration under the Board's class exemption procedures and should be rejected or held in abeyance pending the Board's determination in FD 36447.

Respectfully submitted,

/s/ Richard H. Streeter

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Dated: September 28, 2022

ATTACHMENT

SERVICE DATE

INTERSTATE COMMERCE COMMISSION

JUL 11 1988

DECISION

Docket No. AB-3 (Sub-No. 72)

MISSOURI PACIFIC RAILROAD COMPANY - ABANDONMENT - IN DESHA AND
CHICOT COUNTIES, AR, AND EAST CARROLL, MADISON, TENSAS, AND
CONCORDIA PARISHES, LA

Decided: June 29, 1988

By application filed January 29, 1988, Missouri Pacific Railroad Company (MP), seeks to abandon its 162.7-mile line of railroad between milepost 408.9 near McGehee in Desha County, AR, and milepost 651.6 near Vidalia in Concordia Parish, LA. This line consists of the Lake Providence Branch between milepost 408.9 and milepost 642.2 at Ferriday and the Vidalia Branch between milepost 642.2 and milepost 651.6. Public notice was properly given. Protests were filed by Arkansas Transportation Safety Agency (ARTrans), Brotherhood of Locomotive Engineers (BLE), Chicot Warehouse, Inc. (ChiWare), Cobra Resources, Inc. (Cobra), Complex Chemicals Co. Inc. (Complex) Farmers Terminal (FarmGrain) and its wholly-owned subsidiary Farmers Cottonseed Company (FarmCotCo), Hardwoods of Morganton, Inc. (Hardwoods), Lake Providence Port Commission (PortCom), Livingston Pecan & Metal Co. (Livingston) Louisiana Railcar, Inc. (LARailcar), Riceland Foods, Inc. (Riceland), E. Sondheimer Co. (Sondheimer Lumber), The Louisiana Public Service Commission (LAPSC) and U.S. Senators Dale Bumpers and David Pryor. Comments were filed by U.S. Senators John Breaux and J. Bennett Johnston; U.S. Representatives John P. Hammerschmidt, Jerry Huckaby and Beryl Anthony, Jr.; the First National Bank of McGehee (Bank of McGehee), City of McGehee, McGehee Chamber of Commerce (Chamber), Hollybrook Warehouse, Inc. (Hollybrook) and Epstein Gin Company (Epstein).

Comments were also filed by numerous non-shipper protestants, area cotton producers, municipal governments, state and local officials, and residents of the communities served by the rail line. However, the railroad was not served with a copy of any of these comments. Accordingly, none of these comments will be considered.

By decision served March 11, 1988, we instituted an investigation and set the proceeding for handling under the modified procedure. MP was directed to supply traffic and financial data separately for the line segments running between milepost 408.9 near McGehee and milepost 498.4 at Tallulah, LA (Northern Segment) and milepost 498.4 at Tallulah and milepost 651.6 near Vidalia (Southern Segment).^{1/}

Pursuant to the March 11, 1988 order and the grant of a requested 2-week extension, MP filed its opening statement on April 7, 1988. In it, MP replied to the protests filed in response to its application. No protestants filed any statements, and by notice filed April 29, 1988, MP asked that we find that protestants had waived any further participation in this proceeding and asked that we grant the application forthwith. The fact that the protestants have not elected to submit statements, does not constitute a waiver of their protests and we will not treat it as such.

^{1/} For the Northern Segment, the requested information covered 1986 and 1987 (base year). Since the Southern Segment was not operated after January 1987, the requested information covered only 1986.

On March 23, 1988, FarmGrain and FarmCotCo filed a letter stating that they no longer intend to participate in this proceeding. Material contained in their protests remains a part of the record, but will be considered only to the extent other pleadings refer to them.

By decision served March 25, 1988, the Acting Director of the Office of Proceedings granted the motion to compel answers to interrogatories filed by MP, and directed ChiWare, Complex, Cobra and Hardwoods to answer MP's interrogatories on or before April 1, 1988. Embodied in MP's opening statement is a motion to strike the protests of Cobra, Complex and ChiWare for failure to answer MP's interrogatories and a request that we order that these three protestants not oppose the abandonment application. Subsequently, Cobra answered MP's interrogatories and on April 15, 1988, MP amended its motion accordingly. Because Complex and ChiWare failed to answer MP's interrogatories and because they advanced no reason why they were unable to comply with the March 25th decision directing them to answer MP's interrogatories, we will strike their protests from the record and dismiss them from further participation in this proceeding See 49 CFR 1114.31(b)(2)(111).

Lastly, on April 25, 1988, LARailcar filed a letter requesting permission to withdraw its protest. Permission is granted.

TRAFFIC AND OPERATIONAL DATA

MP seeks to abandon the 162.7-mile line because the line allegedly requires substantial rehabilitation and revenues are insufficient to justify continued operation and rehabilitation of the line. Train service over the Northern Segment is provided by one tri-weekly local. The train departs McGehee on a Monday, travels to Tallulah and returns to McGehee on a Saturday. Farm products, coal, waste or scrap materials, food or kindred products and petroleum products are the principal commodities moving over the Northern Segment, while transportation equipment, metallic ores and farm products were the principal commodities hauled on the Southern Segment prior to January 1987. Traffic handled on the Northern Segment amounted to 1,569 cars in 1986 and 1,279 in 1987, while the Southern Segment handled 617 cars in 1986. Applicant identified 12 significant users of its Northern Segment service (users of 20 cars or more) during 1986 and 1987,^{2/} and 8 significant users were identified for the Southern Segment service during 1986.^{3/} Of these significant users, only Cobra (301 carloads in 1986 and 238 in 1987), Livingston (22 carloads in 1986 and 21 in 1987) and Riceland (144 carloads in 1986 and 58 in 1987) oppose the application.

Overhead traffic handled on the line amounted to 12 carloads of lumber in 1986 and 21 carloads in 1987. This traffic moves to points in California and is now interchanged with MidSouth Rail Corporation at Tallulah. If abandonment is approved, MP anticipates that a similar route can be found for this California lumber traffic.

Applicant states that it has employed "standard and customary" sales techniques in an effort to obtain additional traffic over the line. It asserts that customers have been made

2/ Allenberg Cotton, Cobra, Complex, Dixie River Cotton, Dunavant Enterprises, FarmCotCo, Great River Grain, Howard Cotton, Livingston, Riceland, Shell Chemical and Waterman Lines shipped or received 1,500 carloads in 1986 and Allenberg Cotton, Cobra, Complex, Conoco, Delta Gin, FarmCotCo, Great River Grain, Julien, Livingston, Newellton Gin, Planters Gin and Riceland shipped or received 1,132 carloads in 1987.

3/ Allenberg Cotton, Aluminum Company of America, Delta Gin, Dunavant Enterprises, LARailcar, Newellton Gin, Howard Cotton and Planters Gin shipped or received 573 carloads.

aware of the poor economic condition of the line through letters, telephone calls and public meetings. MP claims that it was through its efforts in recent years that new movements of cottonseed to the Pacific Northwest were developed, and this traffic constitutes the major portion of traffic originating on the line. However, MP maintains that there appear to be no reasonable prospects for traffic to increase sufficiently in the foreseeable future so as to justify continued operation of the line.

PortCom states that it is very questionable that MP officials have made any effort to obtain new business for the line. It further states that it understands that MP was instrumental in forcing one business from the Port of Lake Providence.⁴ According to PortCom, this business operated a public terminal at the port from 1978 to 1985 and received an average of 51,000 tons of cargo by rail each year.

MP replies that it has made strong efforts to develop new business on the line. It notes that, in February 1986, its sales personnel were involved in meetings with local business people, State economic development and transportation officials and local government officials to emphasize that more business was needed to keep the line in operation. MP states that it has not seen any substantial increase in traffic over the line since the February meetings.

TRACK CONDITION, MAINTENANCE AND REHABILITATION

The line is classified as "excepted track" under Federal Railroad Administration (FRA) regulations.⁵ MP states that the excepted track designation was necessary primarily because of the poor tie condition caused by: (1) lightweight 85-pound rail section with a small tie plate (which decreases tie life); and (2) the fact that the ground underneath the track -- the "subgrade" -- remains saturated through much of each year due to the proximity of the Mississippi River and because the line passes through swamp areas. MP asserts that the Southern Segment was removed from service in January 1987 because the carrier could no longer operate over this segment without derailments. According to MP, the condition of the Southern Segment has continued to deteriorate and the segment is in such poor condition that only walking track inspections are possible over much of it. MP estimates that to rehabilitate the line to FRA Class I safety standards would require expenditures of \$2,957,978 for the Northern Segment and \$2,737,153 for the Southern Segment. MP indicates that these rehabilitation expenditures would only enable it to provide service for 2 to 3 years (or 1 year with poor weather conditions). It projects annual normalized maintenance at \$880,070 for the Northern Segment and \$734,282 for the Southern Segment.

⁴ To support this statement, PortCom submits a letter dated February 22, 1988, addressed to PortCom from the Columbus River Transportation Center (CRTC), of Columbus, MS, stating that the prime reason it did not exercise the 5-year option on its port facilities lease is the pending abandonment of the MP line. It also states that had the rail rate structures into Lake Providence been more "fair", the port would have continued to share in its traffic. Finally, the letter concludes that if: (1) rail service at the port is retained, (2) freight rate structures return to more logical and reasonable levels, and (3) there would be an opportunity for CRTC to engage in a stevedoring and terminal business, then CRTC would consider once again its involvement with Lake Providence port.

⁵ Under FRA regulations, when a line is in such a condition that it does not comply with FRA Class I standards, it is classified as excepted track.

of the line and the expenditures estimated to rehabilitate and maintain the line at FRA Class I safety standards. We have reviewed the evidence and accept MP's representations.

REVENUE AND COST DATA

MP's operations have yielded the following revenues,^{6/} costs, and losses:

	<u>Northern Segment</u>		<u>Southern Segment</u>
	<u>1986</u>	<u>Base Year (1987)</u>	<u>Base Year (1986)</u>
Revenues	\$2,251,828	\$1,794,114	\$651,909
Avoidable Costs	<u>2,564,362</u>	<u>2,183,435</u>	<u>1,149,723</u>
Avoidable Losses \$	312,534	\$ 389,321	\$ 497,814

MP's revenue and cost data are not contested they are reasonable in light of the evidence in the record. We will therefore accept them.

ECONOMIC COSTS

Economic costs are derived by adding the opportunity costs incurred on the line and the return on investments (ROI) in freight cars and locomotives. The ROI for locomotives and freight cars is \$263,693 for the Northern Segment and 93,876 for the Southern Segment for a total of \$357,569.^{7/}

Opportunity cost reflects the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. It is determined by multiplying an investment base consisting of: (1) the net liquidation value (NLV) of the line; (2) the allowable base year working capital; and (3) the current

^{6/} MP submitted revenue and cost data reflecting all traffic, including bridge traffic on the Northern Segment which generated revenues of \$21,434 in 1986 and \$36,330 in 1987. MP has not demonstrated conclusively that it would continue to receive this bridge traffic revenues and incur the associated costs following the abandonment. Accordingly, it was appropriate for MP to include the revenue and cost data for the bridge traffic.

^{7/} MP's Exhibit EJB-1A list the ROI for Freight Cars at \$34,060 and the ROI for locomotives at \$231,633 for a total ROI of \$265,693 for the Northern Segment. Exhibit EJB-1C lists the ROI for freight cars at \$32,107 and the ROI for locomotives at \$61,769 for a total ROI of \$93,876 for the Southern Segment. In calculating its opportunity costs in Exhibits EJB-2A and EJB-2C MP: (a) used \$263,899 as the ROI for Freight Cars and Locomotives for the Northern Segment and \$93,357 for the Southern Segment ROI for Freight Cars and Locomotives; and (b) included the ROI in the investment base by which the 14.5 percent rate of return was then multiplied, rather than adding it as a separate item to opportunity cost. Because page 2 of Exhibits EJB-1A and EJB-1C list the ROI separately for freight cars and locomotives, these figures will be used in computing MP's economic costs rather than the \$263,899 and \$93,357 figures used by MP. In Association of American Railroads v. ICC, No. 87-1124 (D.C. Cir. May 17, 1988), the court remanded for further analysis our decision in Abandonment Regulations - Costing, 3 I.C.C.2d 340 (1987), to the extent that we had concluded that the ROI for freight cars and locomotives is an economic cost and not an avoidable cost of operation in abandonment and subsidy proceedings. Even if we were to move these ROI costs to the avoidable cost category, it would not change the result in this case.

income tax benefits (if any) resulting from abandonment, by a rate of return adequate to cover the current cost capital.⁸

Based on NP's data, the NLV of the Northern Segment is \$2,035,335 and the Southern Segment is \$2,047,212. The figures are based on a land value of \$375,130 for the Northern Segment and \$722,150 for the Southern Segment land value; and a net value of track materials of \$1,660,205 for the Northern Segment and \$1,325,062 for the Southern Segment track materials. Base year working capital is \$26,062 for the Northern Segment and \$20,480 for the Southern Segment. An income tax liability of \$106,162 is reported for the Northern Segment and \$204,368 for the Southern Segment income tax liability. Accordingly, the investment base for the Northern Segment is \$1,955,235 and \$1,863,234 for the Southern Segment investment base. No party objects to these figures. Applying a 14.5 percent rate of return⁹ to the unchallenged investment figures of \$1,955,235 for the Northern Segment and \$1,863,234 for the Southern Segment, results in annual opportunity costs of \$283,509 and \$270,182 respectively.

Total economic costs are \$549,202 and \$364,058 for the Northern and Southern segments, respectively.

None of these costs has been challenged by any of the protestants, and none has submitted its own evidence. The costs on their face do not appear to be unreasonable or disproportionate to the amount of real estate or real property involved. We will accept the figures submitted by the applicant.

ALTERNATIVE TRANSPORTATION AND SHIPPER INTEREST

NP states that rail, motor and water carrier service alternatives exist to meet the needs of shippers in Desha and Chicot Counties and East Carroll, Madison, Texas and Concordia Parishes. It states that rail service for Arkansas shippers is available at McGehee from NP and one of its rail lines runs parallel to the Northern Segment.¹⁰ Louisiana shippers will have rail service from MidSouth at Tallulah and Illinois Central Gulf Railroad Company at Natchez, MS. Additional rail service is available at Greenville, MS from Columbus and Greenville Railway Co.

U.S. Highway 65 parallels the line providing good access to Interstate Highways 30 and 40 near Little Rock, AR, and Interstate Highway 20 at Tallulah. According to NP, numerous bulk and general commodities carriers are authorized to provide motor carrier service for the considered Arkansas and Louisiana shippers.

NP notes that water carrier service is available at numerous facilities along the Mississippi River, including those at Natchez, Lake Providence, Vicksburg, MS, and Greenville. NP states that another alternative available to local shippers is to purchase the line.

LAPSC maintains that, contrary to NP's representations, no viable transportation alternatives exist. It contends that the available transportation alternatives result in prohibitive freight charges, rendering businesses noncompetitive.

⁸ See Abandonment Regulations - Costing, 3 I.C.C.2d 340,343 (1957).

⁹ In Abandonment of Railroad Lines-Use of Opportunity Costs, 4 I.C.C.2d 92(1957), we adopted 14.5 percent as the appropriate rate of return.

¹⁰ For example, NP notes that Parkdale, AR is on a parallel NP line located 18 highway miles west of Endora, AR, which is located on the Northern Segment.

Cobra, of Madisonville, KY, operates the port facilities at Lake Providence, LA (milepost 470.1 on the Northern Segment). It currently ships coal by rail from Lake Providence to the International Paper company (IPC) at Mansfield, LA. Cobra has shipped approximately 300 carloads of coal a year for the past 2 years, and anticipates shipping the same volume or more in 1988 and coming years. It asserts that it is pursuing other business with a possible customer near Texarkana, TX, for a quantity of about 100,000 tons of coal a year. Cobra complains that, because MP will not quote it a freight rate for this potential coal traffic, it is investigating other possible opportunities in Arkansas to supply this potential customer with coal. Cobra maintains that, if MP abandons the Northern Segment, Cobra will lose its business with IPC and all possibilities of obtaining additional business.

Cobra claims that service on the Northern Segment has gotten progressively worse over the last 3 years, and is so bad that it once had to ship coal by truck at a considerable higher rate and at a loss to keep its customer in fuel. It further claims that rail cars are hard to obtain when needed and service is only once a week.¹¹ Furthermore, it notes that transit time for traffic to reach IPC, which initially was 3 to 5 days, is now 7 to 17 days. Finally, Cobra asserts that its ability to continue a port operation at Lake Providence will be severely jeopardized if abandonment is allowed, since alternative transportation is not economically competitive with rail.

Epstein operates a cotton gin and owns a cotton seed warehouse at Lake Village, AR. Epstein claims that it spoke with two local MP officials in 1986 about the feasibility of constructing a \$400,000 cotton seed warehouse adjacent to MP's line. According to Epstein, both MP officials encouraged it to build the warehouse and promised the continued cooperation of MP. It notes that MP even repaired a spur line so more boxcars could be stored in the area. Epstein states that it built the warehouse, and FarmCotCo,¹² a buyer of Epstein's cotton seed, stores cotton seed there. Epstein complains that at no time during the construction of the warehouse did the local MP officials inform it that abandonment of the Northern Segment was being contemplated. It fears that, if the Northern Segment were abandoned and FarmCotCo no longer could sell the cotton seed stored in its warehouse, the warehouse will close, four employees will lose their jobs and it will be in jeopardy of losing a \$450,000 investment in land, building materials and machinery.

Hardwoods maintains a wholesale lumber facility at Morganton, NC. It opposes the proposed abandonment because it relies exclusively on MP to transport hardwood lumber from Sondheimer, LA (milepost 487.4 on the Northern Segment) to Morganton.

Hollybrook operates a cotton gin and warehouse at Lake Providence. It maintains that customers have directed cotton bales not be loaded on rail cars because of the deteriorating and undependable service received from MP. Consequently, Hollybrook now uses motor carriers to transport about 100,000 cotton bales a year to North and South Carolina textile customers and to Gulf of Mexico export facilities. It asserts that MP has never exhibited any interest in recapturing its cotton bale traffic.

11/ While as noted above, MP describes its service as tri-weekly (and it is unclear whether this means service is provided three times a week or once every 3 weeks) this shipper's indication that service is provided once a week may be in conflict. However, the frequency of service is not a matter that must be resolved in reaching a decision on the merits.

12/ As noted supra, FarmCotCo is no longer participating in this proceeding.

Livingston conducts a scrap metal business at Lake Village, AR. It notes that in 1980 it purchased land and track from MP so that it could expand its scrap yard and better handle its increasing volume of scrap metal shipments. Livingston claims that rail shipments of scrap metal in 1987 were the largest in 3 years and each rail car generated about \$1,400 in revenue for MP. It currently uses MP to transport scrap metal to customers at Fort Smith, AR, and points in Louisiana, Oklahoma and Texas. Livingston claims that, without MP's service, its business and the jobs of eight employees will be threatened.

Riceland is a farmer-owned cooperative engaged in processing and marketing agricultural commodities produced by its more than 12,500 members. It operates 34 rice and grain elevators, including one at Eudora. Riceland states that since 1985 it has shipped 334 carloads of rice from Eudora to Pine Bluff, AR, under a rail transportation contract with MP.

Sondheimer Lumber operates a sawmill at Sondheimer. It claims that it is very dependent on MP to transport its hardwood lumber products to its domestic and Mexican markets.

In reply, MP reaffirms its statement that rail, motor, and water carrier transportation alternatives exist to meet the needs of the line's shippers. MP states that: (1) rice and cotton seed are transported by rail, motor and water carriers; (2) scrap metals and coal are hauled by rail and motor carriers; and (3) baled cotton is handled exclusively by motor carriers. As to the movement of rice, MP asserts that, prior to an adjustment of MP's rates in 1984 and 1985, all traffic moved by motor carriage. After the adjustment of rates, rice traffic shifted to MP. However, MP complains that its revenue on rice traffic is limited on movements to Stuttgart, AR, because of the short distance (130 miles) and because of the joint-line nature of these shipments. Since Riceland used motor carriers to haul 482,920 bushels of rice in 1986 and 722,888 bushels in 1987 from its Eudora facility, it is MP's opinion that motor carriers can easily replace rail as the prime carrier of rice after abandonment of the Northern segment. MP notes that the only cotton seed shipper still opposing the abandonment (Epstein) does not use rail service, since all of its cotton seed traffic is sold to FarmCotCo.¹³ With respect to scrap metal traffic, MP states motor carriers are currently used for inbound movements and there is no reason why motor carriers can not be used for outbound movements of scrap metal. As to coal, MP asserts that it has presented a rate offer to Cobra for possible new business into Arkansas. It maintains that it has attempted to increase rail volume from Cobra in the past, i.e., rate negotiations were begun with Cobra on a coal movement to Box, TX, but negotiations were unsuccessful because of delivery carrier revenue requirements. MP claims that much time has been spent coordinating equipment to protect continuing coal movement by Cobra. Lastly, MP states that Cobra has at least one major segment of business which involves shipping coal by motor carriers and it asserts it is reasonable to assume Cobra could remain competitive in certain markets if rail service were no longer available at Lake Providence.

COMMUNITY INTEREST

U.S. Senators Dale Bumpers and David Pryor maintain that the closing of MP's rail line will be highly disruptive to the citizens who are now being served by it.

¹³ MP asserts that it has attempted to develop a truck/rail reload operation near Collinston LA, or McGehee, which would allow cotton seed shippers to truck cotton seed traffic to these railpoints for reloading onto rail cars. However, MP claims that the principal shipper of cotton seed has decided not to pursue this option.

The Governor of Arkansas, Bill Clinton, filed a statement in conjunction with the City of McGehee. The Governor notes that, while MP has submitted detailed information concerning the abandonment's impact on the environment, there is an absence of information on the economic impact that the abandonment would have on the local communities. He states that the Chicot and Desha Counties area is one of the most economically depressed areas in the Nation. The Governor states that retention of the Northern Segment is necessary for economic improvement in Chicot and Desha Counties.

The City of McGehee asserts that abandonment of the Northern Segment would spell economic disaster in southeast Arkansas and northeast Louisiana. It notes that unemployment is high in the area and loss of rail service would cause a large upturn in the already unacceptable unemployment rate. It maintains that abandonment of the line would result in McGehee's rail service being cut off both to the south and the north, stopping rail service to a proposed river port at Yellow Bend MS. Furthermore, the city asserts that the abandonment would leave McGehee's "biggest selling point," its proposed industrial park, without rail service.

ARTrans is vested with the general jurisdiction over intrastate service in Arkansas. The agency has the responsibility to ensure there is reasonable, safe, adequate, sufficient service observed, furnished, enforced, or employed by railroads operating in Arkansas. ARTrans notes that the Northern Segment runs through the Mississippi Delta region where cotton, rice, soybeans, and other products are grown for consumption in various domestic and foreign markets. It claims that industries situated on rail lines have made sizeable expenditures to allow use of rail service and that most of the commodities grown in the Chicot and Desha Counties area or shipped into the area are by their sheer volume not suitable for handling by motor carriers. It further claims that to require shippers or receivers in Chicot and Desha Counties to transport their traffic to or from the nearest railhead in another county or parish would be inconvenient and expensive. ARTrans alleges, without supporting evidence, that MP apparently has performed very little, if any, maintenance on the line in the past 5 years and shippers and receivers of freight have been systematically discouraged from using the line. ARTrans predicts that in the next decade: (a) barge traffic will increase dramatically and Arkansas will be the site of a number of new slack water harbors; and (b) industry will seek to locate in Chicot and Desha Counties area because of an abundant, capable work force and will demand rail facilities to move their traffic efficiently, quickly and economically.

PortCom of Lake Providence is a governmental agency created for the development of port and port-related facilities. It states that its primary objective is to create jobs and improve the economic well being of the Lake Providence community. PortCom asserts that coal and cotton seed are the only commodities currently shipped from the port. However, PortCom claims that the markets for these two commodities are in their infancy and it expects the amount of coal and cotton seed shipped from port facilities to increase each year. It notes that over 21,000 ton of coal were shipped by rail in 1987 and estimates for cotton seed traffic in 1988 amount to over 12,000 tons. PortCom states that is presently working with a company that would create 15 new jobs at the port if rail service is available. According to PortCom, loss of rail service at the port facilities will force the company to locate elsewhere. It maintains that not only will these jobs be lost, but 20 additional jobs will be lost if MP abandons the line. On the other hand, PortCom claims that the number of future jobs that would be created at the port should rail service continue is unlimited.

The president of Bank of McGehee states that he is a member of the Chicot-Desha Port Authority (Port Authority) and recently received notice that Congress had appropriated funds: (1) for the

construction of a river port at Yellow Bend; and (2) to conduct a feasibility study to construct a bridge between Desha and Bolivar Counties. He further states that the Port Authority is in the process of developing an industrial park adjacent to the Yellow Bend port and the City of McGehee recently acquired land within the city limits for industrial park development. He claims that continued rail service is extremely essential to the development of the industrial parks and new bridge. According to this witness, without rail service the Chicot and Desha Counties area as well as northeast Louisiana will experience continued economic decline. However, he claims that if MP continues rail service, these areas will have not only a chance for economic survival, but will prosper with the development of the industrial park, Yellow Bend port and bridge projects.

The Chamber contends that retention of MP's rail service is necessary for the area's economic survival.

LAPSC is the agency charged with the responsibility of assuring adequate and sufficient common carrier transportation, including rail transportation, in the State of Louisiana. It claims that abandonment of the line will detrimentally and seriously affect critical portions of the integrated transportation system in Louisiana and will consequently have an adverse effect on the shipping, receiving, producing and consuming public. LAPSC notes that during 1986 and 1987, shippers on the line used over 4,000 rail cars for their transportation needs. Furthermore, LAPSC asserts that various political subdivisions and other authorities have constructed port facilities on the banks of the Mississippi River for the shipment and trans-shipment of cotton seed, coal and other bulk commodities. According to LAPSC, these port facilities were constructed especially to take advantage of MP's rail presence with a spur being built at great expense by the port authorities to tie into the line. LAPSC states that loss of MP's rail service would be economically devastating to the region and financially disastrous to Louisiana shippers and ports.

MP replies that industrial development along the Northern and Southern Segments of the line and the adjacent Mississippi River area has been very slow in recent times, and that the future does not appear any brighter. According to MP, the area has inherent disadvantages, i.e., no deep water ports, a lack of proximity to a major airport, and land with poor weight-bearing qualities which make some types of construction very expensive. It states that the agricultural orientation of the area also works against the location of large manufacturing or chemical plants, which require a ready pool of technically-trained workers. MP concludes that since future industrial development is most likely to occur only by small fabricators or manufacturers requiring relatively small amounts of rail service, and since existing transportation alternatives exist to handle rail traffic, abandonment of the line should not have a serious impact on industrial development or any other community interest.

DISCUSSION AND CONCLUSIONS

In considering an application for abandonment, our responsibility is one of balancing the public need for continuation of rail service against the burden which continued operations impose on the railroad and interstate commerce. The factors in this case weigh in favor of abandonment.

MP has incurred substantial losses from operating both segments of the line in 1986 and the Northern Segment in 1987. These already substantial losses would be significantly increased if rehabilitation is done, and it must be done if the Southern Segment service is to be resumed. If normalized maintenance were performed losses would be even greater. In addition, MP is incurring significant economic costs by continuing to operate the line.

Protestants have the burden of showing that their proposal for retention of service over the Northern or Southern Segment is in the public interest. See State of Me. Dept. of Transp. v. I.C.C. 587 F.2d 541,543 (1st Cir 1972). We required segmented data so that they could further develop their protest arguments regarding segmentation. However, protestants did not make use of this opportunity and have not shown that retention of either segment is economically justified. MP instead has demonstrated that it incurred avoidable losses of \$389,321 in operating the Northern segment during 1987 and operation of this segment for another year would increase this loss to \$486,808;¹⁴ avoidable losses on the Southern Segment amounted to \$497,814 in 1986 and if operations were resumed, the loss would increase. This does not include rehabilitation costs of \$2,957,978, normalized maintenance of \$880,070 and opportunity cost of \$283,509 for the Northern Segment and rehabilitation costs of \$2,737,672, normalized maintenance of \$734,282 and opportunity cost of \$270,182 for the Southern Segment.

Rail shippers have not shown that they could generate sufficient additional traffic to warrant continued rail service. Traffic on the Northern Segment has declined from 1,569 cars in 1986 to 1,279 cars in 1987. Significant users of the Northern Segment shipped or received 1,500 cars in 1986 and only 1,132 in 1987. Of the 12 significant users of this segment only Cobra, Livingston, and Riceland oppose the abandonment and their traffic has also declined: Cobra from 301 cars in 1986 to 238 in 1987; Livingston from 22 carloads in 1987 to 21 in 1987; and Riceland from 114 carloads in 1986 to 58 in 1987. The traffic increases projected by Cobra and Livingston are speculative. There is no assurance that Cobra will capture new coal business or if it does that it will move by rail via MP. Even if they occur, they will not be adequate to stem MP's losses. Riceland made no prediction about future traffic increases. Of the remaining shippers opposing the application, Hollybrook uses motor carriers exclusively; Epstein currently sells all of its cotton seed to FarmCotCo and has no control over the traffic moving from its warehouse; and Sondheimer Lumber and Hardwoods ship and receive, respectively, small amounts of lumber. There is no shipper support for retention of the Southern Segment.

There are alternative transportation services available for all shippers from water, motor or through trans-shipping arrangements with the nearest rail sites at McGehee, Parkdale and Tallulah. It is apparent that none of the opposing shippers is totally rail dependent: Riceland now uses motor carriers for a large part of its traffic; Cobra has not denied MP's contention that it uses motor carriers for some traffic; and Livingston, Sondheimer and Hardwoods have not refuted MP's claim that motor or water carriers are capable of handling their traffic. Admittedly, the opposing shippers may be forced to use alternative and possibly more expensive water, motor or rail trans-shipping options causing them to experience higher transportation costs and other forms of inconvenience. However, in numerous proceedings the Commission has held that inconvenience and increased costs alone are not sufficient to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities. Chicago and North Western Transp. Co. - Abandonment, 354 I.C.C. 1,7 (1977). Here on balance MP's losses are very high.

The concern expressed by ARTrans, LAPSC, PortComm, the Governor, City of McGehee, Chamber and Bank of McGehee over the adverse impact abandonment will have on the development and industrial growth of the area through which the line traverses is a serious one that we consider in our balancing. While the availability of rail service is a positive factor which may

¹⁴ Based on 1987 traffic levels set forth in MP's Exhibit EJB-1A.

enhance prospects not only for attracting manufacturing concerns to locate in the proposed Yellow Bend and City of McGee industrial parks but also for the economic development of the Arkansas and Louisiana area under consideration here, the record fails to reveal that those prospects are firm and would allow MP to operate either segment of the line profitably or even marginally. While retention of rail service might enhance the continued employment prospects of the present employees of Epstein, Livingston and PortComm and thus preserve the status quo of the economic bases of Chicot County and East Carroll Parish, the record does not indicate that the loss of rail service and its replacement by water or motor transportation will force Epstein, Livingston and PortComm to cease any of their operations or discharge any of their employees. Although the use of motor or water carrier transportation may result in some changes in Epstein's warehouse operations and Livingston's and PortComm's traffic arrangements, the record does not show that such changes would have a significant adverse impact on Chicot County and East Carroll Parish as a whole.

Finally, MP argues that we should consider protestants' ability to purchase or subsize the line. In Ex Parte No. 274 (Sub-No. 18), Rail Abandonments - Consideration of Possible Sale or Subsidy In Analysis of an Abandonment under 49 U.S.C. 10901, et al., served January 25, 1988, we have instituted a proceeding to consider whether the possibility that a shipper could purchase or subsidize a rail line should be considered in our analysis of an application under 49 U.S.C. 10903 and, if so, how the issue should be factored into the decision on whether to grant or deny an abandonment. Given our above conclusions, we need not decide this question here.

On balance, we conclude that neither the speculative prospects for future traffic nor the adverse effects on present shippers or the potential effects on the area offset the substantial actual burdens which continued operation of the line will impose upon applicant and interstate commerce.

ENVIRONMENTAL ISSUES

The Commission's Section of Energy and Environment (SEE) assessed the environmental and energy impacts of the proposed abandonment and concluded that they will not be significant. Areas of consideration included, but were not limited to, energy consumption, air and water quality, noise levels, and public safety. It was determined that the right-of-way would be suitable for alternative public use following the abandonment.^{15/} However, since no one requested the imposition of a public use condition, none will be imposed.

^{15/} One of the landowners whose property abuts the line opposes SEE's determination that the right-of-way would be suitable for alternative public use following the abandonment. He argues that he has a reversionary interest which should be protected by the Commission. The Commission does not regulate the post-abandonment use of the property. A public use condition does not require the railroad to sell the land for these purposes. The condition merely disallows disposal of the property for a non-public use for up to 180 days unless it has first been offered on reasonable terms for sale for public use. If the railroad does not hold clear title to the property and it would revert to adjacent landowners after abandonment (absent trail use, which has not been requested here), the imposition of a public use condition will not defeat such reversion and it does not imply that the carrier holds a transferable interest in the subject property following abandonment. Whether the landholders' reversionary rights would be protected in the face of government interest in acquiring the land for public use is a question for the state courts to decide. Docket No. AB-6 (Sub-No. 242) Burlington Northern R. Co. - Abandonment - In King County, WA, (not printed) served June 17, 1985.

LABOR PROTECTION

In approving this application, we must ensure that affected rail employees are protected. 49 U.S.C. 10903(b)(2). We have found that the conditions in Oregon Short Line R. Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979) satisfy these statutory requirements. The Oregon conditions will, therefore, be imposed.

We find:

1. The present and future public convenience and necessity permit the abandonment of the line of railroad running between milepost 408.9 near McGehee and milepost 651.6 near Vidalia,

subject to the provisions for protection of employees in Oregon Short Line R. Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979).

2. The property is suitable for other public purposes.

3. Abandonment of this line will not result in a serious adverse impact on rural and community development.

4. This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The protests of Chicot Warehouse, Inc. and Complex Chemicals Co. Inc., are stricken from the record for failure to comply with the March 25, 1988 decision directing them to answer MP's interrogatories and they are dismissed from further participation in this proceeding.

2. These findings will be published in the Federal Register on the date this decision is served. An offer of financial assistance to allow rail service to continue must be received by the railroad and the Commission within 10 days after publication. The offeror must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c).

3. Offers and related correspondence to the Commission must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: Rail Section, AB-OPA."

4. Subject to the conditions set forth above, and provided no offer for continued rail operations is received, an appropriate certificate of abandonment will be issued. The railroad may not effect abandonment before the effective date of the certificate.

5. If abandonment is effected, tariffs applicable to this line may be canceled upon not less than 10 days notice to this Commission. The cancellation tariffs must refer to this certificate by date and docket number.

6. This decision will be effective 30 days from the date of service unless otherwise ordered by the Commission.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley dissented with a separate expression. Commissioner Simmons did not participate in the disposition of this proceeding.

(SEAL)

Noreta R. McGee
Secretary

COMMISSIONER LAMBOLEY, dissenting:

I would deny this application for abandonment of
162 miles of rail line in Eastern Arkansas and Louisiana.

While evidence has been presented in reference to
Northern and Southern line segments, the entire line is
at issue.

On the record established in this case, I am persuaded
that abandonment is not appropriate.

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 28th day of September 2022, I served a true copy of the foregoing Reply of Lake Providence Port Commission and Request to Postpone Effective Date of the Notice of Exemption and Other Relief on Thomas J. Healey by email at thealey@fletcher-sippel.com and on John M. Scheib by email at Scheib@gentrylocke.com.

/s/ Richard H. Streeter