

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Part of
Public Record

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.**

**MOTION TO WAIVE 49 C.F.R. § 1104.13(C) AND
AUTHORIZE LAKE PROVIDENCE PORT COMMISSION
TO FILE A REPLY TO PATRIOT RAIL'S REPLY
TO REQUEST TO POSTPONE EFFECTIVE DATE OF
THE NOTICE OF EXEMPTION AND OTHER RELIEF**

Lake Providence Port Commission ("LPPC"), by and through counsel of record, requests the Board to waive the restriction in 49 C.F.R. § 1104.13(c) and permit the filing of a reply to the Reply filed, October 7, 2022, by Patriot Rail, et al. (hereinafter "Patriot"). The significance that LPPC, Southeast Arkansas Economic Development District ("SEAEDD"), Madison Parish Port Commission (MPPC), and North Louisiana & Arkansas Railroad ("NLA")(jointly, "Interested Parties"), the States of Louisiana and State of Arkansas, the United States Department of Transportation ("USDOT") and the Federal Railroad Administration ("FRA") have placed on the need to preserve and expand rail service over the entire rail corridor between McGehee, AR and Tallulah, LA, (the "Lake Providence Branch Line") cannot be ignored. As a result, the Board should carefully consider the full implications of Patriot's recently revealed

involvement in the ongoing controversy between the Interested Parties and DSR's current owners, namely West Branch Intermediate Holdings, LLC ("West Branch"), which is owned and controlled by Golden Gate Capital.¹

The situation involving the future of the entire Lake Providence Branch Line is totally different from the line between Monroe and Sterlington. Although Patriot offers superficial assurances that its acquisition of the segment of the Lake Providence Branch Line between milepost 471.0 and the point of interchange with Kansas City Southern Railway Company ("KCS") does not foreclose "LPP[C] from pursuing an amended feeder line application against DSRR," the abrupt change in ownership raises substantial questions regarding the timing of the instant transaction and whether it is in the public interest. While Patriot suggests that it intends to work with LPPC "to obviate the need for any further feeder line proceedings," its role as an officious intermeddler cannot be overlooked.

Patriot's acquisition of DSR's shares will not change what has happened in the past. Nor will it excuse the Board from considering DSR's repeated refusals to interchange traffic with NLA following the reopening of interchange in 2016. Nor will it allow the Board to ignore verified evidence that DSR and its current owners were aware of the joint efforts of Craig Huff, a former General

¹ The situation involved in Patriot's acquisition of the line that extends from Monroe, Louisiana to Sterlington, Louisiana is clearly distinguishable. Because Golden Gate has invested in ANGUS Chemical, which is one of the two (2) major shippers on that line, Golden Gate has a vested interest in securing adequate transportation. See "angus.com/press-releases/ardian-acquires-50-percent-ownership-stake-in-angus-chemical-company/".

Manager of DSR in Tallulah, and Danny Robbins, a Vice-President, of NLA to expand interchange traffic.

Given the concerted efforts of the Interested Parties that spanned seven (7) years between 2004 and 2011 to preserve a majority of the Lake Providence Branch Line from being abandoned by DSR, it is their collective position that no public benefit has been identified that would be realized by Patriot's acquisition of DSR's stock and DSR's retention of the right to provide rail service over the segment of track between milepost 471.0 and the point of interchange with KCS. While Patriot alludes to the *benefits* that it will bring to the two (2) DSR lines, the Interested Parties cannot ignore the unequivocal statements in Patriot's Notice of Exemption that its acquisition of control will not substantially change the level of operations over, or maintenance of, the Lake Providence Branch Line. *If* that is the case, there is nothing to be gained by authorizing Patriot to acquire DSR's stock. Moreover, *if* that is the case, the recently announced transaction and the attempted use of the class exemption that has been orchestrated by DSR's owners is not in the best interest of the shippers who are sick and tired of the treatment they have received from DSR. Furthermore, it is not consistent with the underlying goal of promoting the economic development of one of the most severely economically distressed regions of the United States. That goal mirrors the rail transportation policy that seeks "to ensure the development and continuation of a sound rail

transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.”²

Given the unique situation that is involved herein, the Board is requested to consider whether Patriot’s acquisition of DSR’s shares would foster “sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes.”³ In other words, the Board must scrutinize whether there are any positive benefits that will flow from the continued presence of multiple short-line rail carriers in the routing between McGehee and Tallulah over the Lake Providence Branch Line. In this regard, LPPC notes that neither LPPC, nor the Board, had any opportunity to protest West Branch’s secret acquisition in 2015 of the common stock held by Wainwright. As subsequent events have demonstrated, West Branch’s ownership has undermined the efforts to restore the entire Lake Providence Branch Line.

While Patriot touts its existing control of 31 Class III carriers, Patriot has not invested a penny in the ongoing rehabilitation of the entire Line. By way of comparison, NLA had already invested over \$4 million in the effort to restore the entire Lake Providence Branch Line before the INFRA Grant Application was filed. By extending its existing operations fewer than 29 miles to offer single-line service, NLA will eliminate the many issues associated with multiple operators. There is no sound or rational reason that could justify the continued

² 49 U.S.C. § 10101(4).

³ *Id.* at (5).

presence of two (2) Class III carriers when a single carrier can efficiently and economically operate over the entire Lake Providence Branch Line.⁴

That being the case, what is the justification for allowing Patriot to suddenly acquire DSR's stock prior to the Board's consideration of LPPC's revised Feeder Line Application? It is obvious that West Branch and Golden Gate want out of the rail business. Given their apparent refusal to adequately finance DSR's operations, what entitles them to realize more revenue from the sale to Patriot than they would receive from a sale to LPPC that would be based on the constitutional minimum value, which in this instance appears to be the going concern value of the segment of the Line between milepost 471.0 and the point of interchange with KCS at Tallulah.

Because Patriot is not buying assets, but is instead buying a going concern, it steps into DSR's shoes and must be held accountable for DSR's past actions that have been taken to undermine the Interested Parties' prolonged efforts to restore the entire corridor between McGehee and Tallulah. Given the foregoing considerations, what is the justification for the use of the class exemption other than to avoid Board scrutiny? Plainly, no shipper, including Angus Chemical will be harmed if Patriot is allowed to acquire the

⁴ Moreover, the Board has previously found that the creation of single-line service from an end-to-end transaction, as would occur if NLA extends its operations, can bring improved operating efficiencies to the Line, which is a benefit for shippers and receivers that is in the public interest. See Docket FD. No. 36347, *Bessemer And Lake Erie Railroad Company —Acquisition And Operation— Certain Rail Lines Of CSX Transportation, Inc. In Onondaga, Oswego, Jefferson, Saint Lawrence, And Franklin Counties, N.Y.*, served April 6, 2020, at p. 5.

line that extends from Monroe, Louisiana to Sterlington, Louisiana. While preservation of the status quo will not improve the current situation, it will allow the Interested Parties, who clearly represent the interests of shippers who are looking to move their products by rail once they can be assured that it is safe to do so, to hold West Branch and DSR accountable for undermining their efforts to rehabilitate the entire Lake Providence Branch Line. Of course, should the Board deny LPPC's Feeder Line Application, Patriot would then be allowed to acquire the segment of the track that is the subject of the feeder proceeding.

In its Reply, Patriot selectively quotes individual comments in *MACQUARIE Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada Railroad, LLC, and Florida, Gulf & Atlantic Railroad, LLC*, FD 36566 (Apr. 6, 2022) to support its position that LPPC must demonstrate that the notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy of 49, U.S.C. [§] 10101.” However, Patriot ignores the Board's comments that identify various issues, including those regarding the level of service that would be provided, that would complicate the transaction beyond the bounds intended for the class exemption procedure.

Given the foregoing, the Board must question whether the public interest is served in any fashion by allowing Patriot, which already controls 31 Class III carriers in the United States, to acquire a tiny segment of the Lake Providence Branch through a Notice of Exemption.

CONCLUSION

For all the foregoing reasons, the Board should either reject or postpone the effective date of Patriot's Notice of Exemption insofar as it seeks to acquire ownership of a segment of the Lake Providence Branch Line between Lake Providence and Tallulah through its acquisition and control of DSR.

Respectively submitted,

/s/ Richard H. Streeter

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Dated: October 11, 2012

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 11th day of October, 2022, I served a true copy of the foregoing *Motion to Waive 49 C.F.R. § 1104.13(C) and Authorize Lake Providence Port Commission to File A Reply to Patriot Pail's Reply to Request to Postpone Effective Date of the Notice of Exemption and Other Relief* on John M. Scheib by email at Scheib@gentrylocke.com and on Thomas J. Healey by email at thealey@fletcher-sippel.com.

/s/ Richard H. Streeter