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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
November 10, 2022
Part of
Public Record

Re: **Finance Docket No. 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.**

Finance Docket No. 36447, Lake Providence Port Comm.— Feeder Line Application—Line of Delta South. R.R. Located in East Carroll and Madison Parishes, LA.

Dear Ms. Brown:

As the parties advised in our joint letter of November 8, 2022, our attempt to meet and confer was unfortunately unsuccessful. Accordingly, we respectfully ask the STB to remove the abeyance on the Verified Notice of Exemption (the “Notice”) in FD 36642 and allow the control transaction to be effective immediately. Such action would be in the best interest of all of Delta Southern Railroad, Inc.’s (“DSR”) customers, without impairing the rights of the Lake Providence Port Commission (“LPPC”) in any way. As Patriot Rail Company LLC (“Patriot Rail”) stated previously, upon effectiveness of the Notice, LPPC retains all its rights to pursue a feeder line application if LPPC chooses. Patriot Rail’s exemption, however, should not be linked to such a potential refiling of a feeder line application in a docket that has been open for nearly two years and to which Patriot Rail is not a party. Instead we believe that the transaction should go forward as explained below.

Like the STB, DSR and Patriot Rail would prefer a privately negotiated solution to the potential feeder line case. The parties met on two occasions with representatives of LPPC for a total of several hours and had other communication (some of which LPPC failed to respond to at all). Patriot Rail made several reasonable proposals that LPPC did not accept. While Patriot Rail focused on options to advance the future of the line, LPPC instead focused much of its discussion on events that happened as long ago as when the Missouri Pacific held the line. Regrettably, on November 2, LPPC confirmed by voicemail that it is unwilling to continue

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negotiations and intends to exercise the leave granted by the STB to file an amended feeder line application.

Given the good faith efforts by DSR and Patriot Rail to negotiate with an unwilling LPPC, the STB should lift the abeyance and allow the Notice to become effective immediately.¹

Patriot Rail is prepared to close its transaction with DSR now. The delay in closing the transaction is not only affecting DSR's customers on its Lake Providence Branch (who face uncertainty as to which of three possible owners will be operating the line), but also those customers located on DSR's Sterlington Branch, who are unaffected by the feeder line case but nonetheless are being denied access to Patriot Rail's skills and resources because of its pendency. Patriot Rail is ready to bring its entrepreneurial spirit and rail operations expertise to not only the line that is at issue in FD 36447 but to all of DSR's assets, for the benefit of current and future customers. During this delay, Patriot Rail has not stopped its active preparations to assume control of DSR (in the hope of the necessary regulatory exemption from this Board). Patriot Rail has had employees on the ground examining the line and planning operations. It has met with its potential future employees. Patriot Rail is ready to assume ownership of DSR, and no good purpose would be served by restarting the 30-day exemption waiting period or otherwise delaying Patriot Rail's ownership of DSR.

LPPC, which has been afforded a full opportunity to express concerns about Patriot Rail's proposed ownership of DSR, has made no showing in FD 36642 that regulation is necessary. LPPC has not expressed any concerns about Patriot Rail's abilities, financial strength, or shipper-focused operations, and Patriot Rail has stated that it embraces the prospective opportunity to serve customers on DSR's lines. LPPC has not met any legal standard for staying, postponing, or otherwise denying Patriot Rail's Notice.

Following the lifting of the abeyance and the closing of the sale of DSR to Patriot Rail, LPPC would be able to file its amended feeder line application. LPPC then could proceed to negotiate (and litigate, if necessary) directly with the owner of that asset. A closed transaction alleviates the complexity of the current situation – a three-party negotiation between the current owner of DSR, Patriot Rail as the prospective owner of DSR, and LPPC – and puts the right players at the negotiating table.

As the STB noted at page 6 of the decision of August 23, 2022, in FD 36447 ("Order"), the procedures specified in 49 C.F.R. 1115.2 must be satisfied anew with the potential amended application, which has not been filed in the two and half months since the Order. That is a high bar given that the Board has already expressed skepticism in the feeder line docket that LPPC can meet the feeder line requirements especially given that the customers on the line are receiving rail service today (and who Patriot Rail is ready to work with – literally – tomorrow).

¹ The exemption in FD 36642 would have been effective several weeks ago but for the Order.

Moreover, the potential restarted feeder line case will be more complicated going forward given Patriot Rail's interest in all of DSR. If filed and at the appropriate time, Patriot Rail intends to be a full participant in any such proceeding. Patriot will defend against a feeder line application as owner or, if it is not yet owner, will file a competing feeder line application. In the latter instance, pursuant to 49 C.F.R. 1151.2(i), "[i]f two or more applicants timely file notices accepting the Board's determination, the owning railroad must select the applicant to which it will sell the line. . ." (emphasis added). Patriot Rail believes that DSR would choose it in that situation for many reasons, including that Patriot Rail has already negotiated terms with DSR and has the consideration; whereas, it is not clear if and when LPPC could obtain consideration.

Having attempted to negotiate in good faith with LPPC, Patriot Rail and DSR² respectfully request that the STB remove the abeyance on the Notice and allow the exemption to become effective immediately.

Respectfully,

A handwritten signature in black ink, appearing to read "John M. Scheib". The signature is fluid and cursive, with the first name "John" and last name "Scheib" being more prominent than the middle initial "M".

John M. Scheib

cc: All Parties of Record in Docket Nos. FD 36642 and FD 36447

² I am authorized to represent that DSR concurs in this filing. Although the Board decision of October 14, 2022, ordering the meet and confer was issued in both FD 36642 and FD 36447, Patriot Rail is only a party to FD 36642, which is the docket in which we are filing this letter because Patriot Rail is not yet, and hopes it does not need to become, a party to FD 36447. DSR, which is a party to FD 36447, is submitting this letter in that docket.