

RICHARD H. STREETER
ATTORNEY AT LAW
5255 Partridge Lane, N.W.
Washington, D.C. 20016
tele: 202-363-2011 fax: 202-363-2012
rhstreeter@gmail.com

ENTERED
Office of Proceedings
November 14, 2022
Part of
Public Record

November 14, 2022

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

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:

This letter responds to the letter filed on November 10, 2022, by counsel for Patriot Rail with the concurrence of Delta Southern Railroad, Inc. (“DSRR”). Unfortunately, that letter is premised on the misrepresentation that the Lake Providence Port Commission (“LPPC”) did not negotiate in good faith. It is true that LPPC believes that Patriot Rail’s acquisition of the DSRR’s ownership of the line of track between milepost 471.0 and the point of interchange with the Kansas City Southern Railway Company (“KCS”) is not in the best interests of shippers. Simply stated, there is no good reason to perpetuate the current inefficient and costly operation of multiple interchanges between McGehee, Arkansas and Tallulah, Louisiana. Nevertheless, LPPC was ready, willing and able to negotiate in good faith with Patriot Rail to see if a resolution could be reached.

In fact, LPPC extended an invitation to meet with Patriot’s team at LPPC’s headquarters in the Lake Providence Port nearly two (2) full weeks before the Board released its decision that directed “Patriot Rail, DSRR and LPPC ... to meet and confer on the outstanding issues raised in Docket No. FD 36447.” After Patriot Rail declined the offer to meet in Louisiana, Wyly Gilfoil, LPPC’s

Executive Director, and Bryant Killen, LPPC's Deputy Director, flew to D.C. on October 6 to meet with Patriot Rail officials. Mr. Gilfoil and Mr. Killen erroneously anticipated that because Patriot Rail had done its due diligence and was aware of LPPC's position, Patriot Rail would have sent someone who was conversant with the existing track situation and would be able to discuss what Patriot Rail would do to match LPPC's, the Southeast Arkansas Economic Development District's ("SEAEDD") and North Louisiana & Arkansas Railroad's ("NLA") ongoing efforts to restore the Line to FRA Class 2 status consistent with the United States Department of Transportation's ("US DOT") INFRA Grant application. Because that did not happen, nothing was accomplished. Because the second session confirmed that there is an insurmountable difference between the parties' objectives, LPPC acted in good faith when it advised Patriot Rail's counsel that LPPC saw no reason to continue negotiations.

So long as a locomotive continues to arrive in a timely fashion to pick up and deliver incoming traffic, the shippers located in the Madison Parish Port ("MPP") are not that concerned that they will have to work with DSRR until this matter is resolved. As Complex Chemical has advised LPPC and MPP, its current concern is whether DSRR's continued storage of rail cars will disrupt its ability to receive timely service. As Complex Chemical has already testified, and will do so again, it fully recognizes and supports LPPC's efforts to wrest control of the Line from Golden Gate Capital ("Golden Gate") and West Branch Intermediate Holdings, LLC ("West Branch"), which was formed in 2015 to hold the stock of DSRR that it would acquire from William and Linda Wainwright. As will be fully addressed in the Feeder Line Application, Complex Chemical appreciates LPPC's efforts to preserve the Lake Providence Branch Line that have spanned thirty-four years from July 21, 1988, when LPPC filed an offer of financial assistance to prevent Missouri Pacific's abandonment of the Line. Those efforts have enabled Complex Chemical to grow into the second largest producer of glycols in the United States. Because a majority of its customers are captive Union Pacific Railroad Company ("UP") customers, Complex Chemical's ability to reach UP in McGehee, AR rather than in Monroe, LA, would provide substantial savings by reducing the miles necessary to reach UP.

While Patriot Rail claims that it "made several reasonable proposals," LPPC is only aware of one proposal that was made in the second session. That proposal would not allow the Port of Lake Providence to have full access to the Madison Parish Port. Because LPPC also viewed the asking price to be unreasonable, it deemed the proposal to be unreasonable.

In addition, Patriot Rail has ignored the fact that LPPC proposed an offer to acquire the track and lease it back to Patriot Rail. That offer would protect the Line for the benefit of the shippers and the entire region. Most importantly, it would guarantee that no shipper or the Ports would be left at the mercy of

private equity firms based in San Francisco or in the hands of a holding company that already owns 31 other short line railroads who are solely focused on the bottom line and have no commitment “to benefit a rural region and help catalyze greater opportunities for economic development.”¹

There is nothing to suggest that Patriot Rail would be willing to create an ability for shippers to enjoy less expensive and more efficient single line service to both KCS and UP, which is one of LPPC’s primary goals. Instead, Patriot Rail has revealed its true colors and its utter disdain for the public interest and the public convenience and necessity by brazenly threatening to deliberately complicate LPPC’s efforts to “upgrade the Corridor and its connecting branch lines to two ports to improve rail operations and leverage recent rehabilitation investments and construction of new infrastructure to benefit a rural region and help catalyze greater opportunities for economic development.”

Patriot Rail even touts its expectation that DSRR’s owners would “choose it” if LPPC dares to exercise its statutory right by filing the expanded Feeder Line application that the Surface Transportation Board (“Board”) authorized in its decision dated August 23, 2022. LPPC respectfully submits that Patriot Rail’s threats reveal the simmering controversy that underlies Patriot Rail’s belated effort to acquire the Line. As a result, the Board should adhere to its well settled precedents in this type of situation and not only deny Patriot’s request to lift the abeyance, but it should also reject Patriot Rail’s latest attempt to take advantage of what it terms as the “*necessary* regulatory exemption.” Most importantly, when Patriot Rail files a competing feeder line application, the Board should remember Patriot Rail’s explicit threats to the public convenience and necessity.

The Board should also remember the verified statements in Patriot Rail’s Notice of Exemption that its acquisition of control “will not substantially change the level of operations over, or maintenance of, the rail lines.” Given the net effect of Patriot’s positions, the Board must realize that LPPC’s conclusion that further negotiations with Patriot Rail and DSRR’s owners are a total waste of time and money was reasonable. As Patriot Rail’s prediction that DSRR will choose to deal with it reflects, Patriot Rail is nothing but a stalking horse that is being used to deflect attention from the real owners.

Finally, the history of this application clearly demonstrates that LPPC, SEAEDD and NLA, had already invested \$12,133,608 to rehabilitate the Line before they filed the INFRA Grant Application while Continental Rail, which was DSRR, had spent \$2,300,000 before the INFRA Grant Application was

¹ See US DOT’s *Statement of Work*, dated January 15, 2021, at p. 2. Copies of pages 1 and 2 are attached hereto.

filed. In addition, US DOT has advanced an additional \$10,516,259 to be used to rehabilitate the *entire* Lake Providence Branch Line. Those funds were advanced because US DOT determined that this is a “Nationally Significant Freight and Highway Project” that is in the public interest.

As of this date, there is no evidence in FD 36447 that Patriot Rail has invested a penny in the rehabilitation efforts. While the heavily redacted agreement in Docket FD 36642 may reflect some expenditures and reveal the “consideration” that has been received by West Branch, LPPC’s counsel was explicitly informed that even if he and L. E. Peabody & Associates, Inc., LPPC’s economic consultants, signed the Undertakings, they could not use any information from FD 36642 in FD No. 36447 because FD 36447 is not “a related proceeding.” Given Patriot Rail’s position, the Board is asked to amend its August 23, 2002 decision and authorize LPPC to immediately seek relevant information from DSRR to establish the constitutional minimum value of the Line. The new offer will be consistent with the Board’s final decision in *Caddo Antoine et al – Feeder Li. Acq. – Arkansas Midland RR*, 4 S.T.B. 326 (1999). That proceeding, similar to this matter, involved both a viable segment and a segment of the line that had been allowed to disintegrate to the point where the cost of rehabilitation would substantially reduce, if not wipe out, any profits.² Most importantly, it requires a determination of the constitutional minimum value (the greater of the net liquidation value or the going concern value) and “not its projected value to the acquiring company.”³

In the interim, LPPC must urge the Board to focus on the potential source of information that was used to determine DSRR’s valuation. In his Verified Statement, filed March 24, 2022, Jon Ryan, who replaced John Marino, the CEO of Continental Rail, testified that he was unaware of any requests for interchange service and that the only source of revenues came from storage of railcars and earnings from interchange with KCS. Because it viewed Continental Rails efforts to revitalize DSRR as a waste, Golden Gate has been attempting to sell DSRR for several years. In fact, US DOT’s Statement of Work, dated January 15, 2021, states, at p.2, n.1, that, “[a]s of the date of this Agreement, Delta Southern Railroad is negotiating the sale of its portion of the railroad mainline to be improved under this Agreement.” LPPC is committed to paying West Branch the constitutional minimum value for the entire track from milepost 471.0 and the point of interchange with KCS. In the interim, LPPC intends to file its expanded feeder line application in the near future. Because that figure depends on a careful review of the information for which discovery is sought, receipt of that information will allow LPPC’s experts to present their

² *Id.* at 337.

³ *Id.* at 340-41.

Ms. Cynthia T. Brown
November 14, 2022
Page 5 of 5

assessment of the constitutional minimum value of the Line based on actual data rather than estimates from other sources.

LPPC firmly believes that this approach is consistent with the public convenience and necessity. That figure may allow LPPC and DSRR to agree on a price that would cause LPPC to avoid having to fight an extended and expensive battle with DSRR's current owners and Patriot Rail. As a matter of public interest, those funds would best be spent on rebuilding the entire Line.

While Patriot Rail acerbically complains that LPPC has not yet filed its new application, a host of factors have delayed LPPC's ongoing efforts to file its expanded application. Such factors include the instant matter which has further delayed the final preparation of the expanded feeder line application.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter

RHS/rs

Cc: Scheib, John M., Scheib@gentrylocke.com

Thomas J. Healey, THealey@fletcher-sippel.com

Attachment 2

STATEMENT OF WORK

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

Nationally Significant Freight and Highway Projects (INFRA) Program, Fiscal Year 2019

I. AUTHORITY

Authorization	23 U.S.C. § 117(c)(1)(E) and (d)(1)(A)(iii)
Funding Authority/Appropriation	Contract authority in FAST Act Sec. 1101(a)(5), Pub. L. 114-94 (December 4, 2015)
Notice of Funding Opportunity	Nationally Significant Freight and Highway Projects (Infrastructure for Rebuilding America (INFRA) Grants) for Fiscal Year 2019; 83 FR 65789; Dec. 21, 2018

To the extent there is a conflict between Attachment 1 and this Attachment 2, Attachment 1 governs.

II. BACKGROUND

This Agreement between the Federal Railroad Administration (FRA) and the Southeast Arkansas Economic Development District (“SEAEDD” or “Grantee”) provides \$10,516,259 (“Federal Contribution” or “INFRA grant”), which, when combined with \$10,861,267 in matching funds, will fund the partial redevelopment of a multimodal freight corridor, through a mixture of rail rehabilitation, railroad bridge upgrades, and new rail infrastructure improvements (together and as further described herein and in the tasks below, the “Project”), which is located along a 91.3-mile continuous short line railroad corridor known as the McGehee-Tallulah Railroad Corridor, that parallels the Mississippi River, between the city of McGehee in rural southeast Arkansas on the northern end and the city of Tallulah in rural northeast Louisiana on the southern end (the “Corridor”).

The Project is a unique public-private partnership between the Grantee, which is a state economic development agency, two public ports (Lake Providence Port, Madison Parish Port), and two private short line railroads (North Louisiana & Arkansas Railroad (NLA) and Delta

Southern Railroad¹ (DSR)) (collectively “Project Partners”). The McGehee-Tallulah Railroad Corridor was developed in the early 1900s. It connects to two Class I railroads with regional and national connections: The Union Pacific Railroad (UP) in McGehee, AR, and the Kansas City Southern Railway (KCS) in Tallulah, LA. At points within the Corridor, the rail line is connected to local short line railroad Arkansas Midland Railroad in McGehee, AR; and the NLA and DSR connect with each other in Lake Providence, LA.

Much of the Corridor had been closed or underutilized for approximately 15 years, which is consistent with the overall economic decline of the region. During this period, there was a decrease in demand for freight rail service. Eventually, rail service ceased due to difficulties operating over substandard rail infrastructure, and DSR filed to abandon the majority of the rail corridor from Lake Providence Port northward to McGehee due to unprofitability.

In an effort to save the corridor from abandonment, the Grantee, NLA, DSR and the Lake Providence Port Commission (owner of Lake Providence Port) acquired various segments of the Corridor from UP between 1989 and 2011. Their goal was to preserve rail service to spur economic development and to provide transportation connectivity with the Class I railroads. Portions of the rail line were partially rehabilitated by the Grantee and its partners and placed back into continuous service in 2016. Although partially rehabilitated, some of the track on the main line is comprised of the original lightweight rail of 85 pounds (lb.) and is classified as FRA “Excepted” Track limiting train operations to less than 10 miles per hour (mph). Other portions include 115 lb. rail updated to Class 1 Track (max. speed is 10 mph) and Class 2 Track (max. speed is 25 mph). Furthermore, some of the railroad bridges have a load rating of 263,000 lb. and cannot support 286,000 lb. freight cars. These conditions and constraints of the existing legacy tracks and railroad bridges provide impediments to accommodating loaded freight cars with a maximum allowable gross weight of 286,000 lbs. along the entire Corridor.

III. OBJECTIVE

The objective of the Project is to upgrade the Corridor and its connecting branch lines to two ports to improve rail operations, and leverage recent rehabilitation investments and construction of new infrastructure to benefit a rural region and help catalyze greater opportunities for economic development. This will be accomplished through the rehabilitation of track and railroad bridges, and the construction of new track in certain areas.

Project benefits include:

- Enhanced railroad transportation operating capacity, efficiency, and safety
- Improved rail access/connectivity and capacity
- Enhanced economic development through additional rail business opportunity throughout the entire corridor

IV. PROJECT LOCATION

¹ As of the date of this Agreement, Delta Southern Railroad is negotiating the sale of its portion of the railroad mainline to be improved under this Agreement.