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January 20, 2023

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

ENTERED
Office of Proceedings
January 20, 2023
Part of
Public Record

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 ("LPPC") to Delta Southern Railroad, Inc.'s Motion to Reject LPPC's Feeder Line Application and for Action to Terminate this proceeding.

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 at Scheib@gentrylocke.com

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 36447
LAKE PROVIDENCE PORT COMMISSION—FEEDER LINE
APPLICATION—LINE OF DELTA SOUTHERN RAILROAD
LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

**LAKE PROVIDENCE PORT COMMISSION’S
REPLY TO DELTA SOUTHERN RAILROAD’S MOTION
TO REJECT LAKE PROVIDENCE PORT COMMISSION’S
FEEDER LINE APPLICATION**

Lake Providence Port Commission (“LPPC”), by and through its counsel of record, files this reply to the motion to reject filed by Delta Southern Railroad, Inc. (“DSRR”), or more accurately, its new owners, Patriot Rail Company LLC (“Patriot Rail”).¹

I. LPPC’s Initial Feeder Line Was Complete.

According to DSRR, LPPC “continues to fail to meet the basic filing requirements of the applicable statute and regulations.”² That comment falsely suggests that the Board has previously held that LPPC’s initial Feeder Line Application filed in November 2020 was found to be deficient. As reflected by

¹ DSRR and Patriot Rail are used interchangeably in the remainder of this Reply.

² DSRR’s Motion to Reject at page 4 of 18.

the second sentence of the Board's decision served August 23, 2022, "[t]he initial application, in which LPPC sought to acquire only a segment of DSR's Lake Providence Line, was accepted as complete and a procedural schedule was established early last year."

As the Board then observed, DSRR "thereafter pursued discovery in order to prepare its response to that application, and, separately, moved to dismiss the proceeding." However, because the Board suspended the procedural schedule before DSRR presented its response, the Board *never* reached a decision in response to DSRR's argument that LPPC's "Feeder Line Application is fatally defective because it does not (and, frankly cannot) allege any DSR service inadequacies – much less provide any detailed evidence required to support such allegations – and thus on its face cannot satisfy the statutory requirements for relief."³

II. Because DSRR Never Filed A Response to LPPC's Initial Feeder Line Application, And Because The Board Granted LPPC's Motion To File An Expanded Feeder Application, All Claims Pertaining To The Alleged Deficiencies In LPPC's Initial Feeder Application Are Moot And Irrelevant.

Even if it were to be assumed *arguendo* that LPPC had not previously satisfied the statutory requirements, which is not the case, the new evidence regarding DSRR's owners' efforts to deprive shippers of the ability to utilize 72 percent of DSRR's track to move their freight after interchange was opened in 2016, has cured any perceived shortcomings in the initial Feeder Line Application. The evidence that has been provided to the Board in LPPC's

³ DSRR's Motion to Dismiss Proceeding, filed March 2, 2021, at p. 1.

expanded Feeder Line Application demonstrates that DSRR's absentee owners and its absentee managers, who were respectively located in Florida and in California, were alerted to the fact that, in 2015-2016, multiple shippers and potential shippers had signaled their willingness and desire to utilize the *entirety* of DSRR's tracks in order to divert their freight from trucking to rail once interchange operations could be safely and efficiently utilized to handle their freight.⁴ This evidence was known by Jon Ryan, who controlled the flow of funds in his capacity as the CPA for Continental Rail, LLC ("Continental Rail"),⁵ and subsequently replaced John Marino as DSRR's CEO after LPPC filed the initial Feeder Line Application. However, that evidence was deceptively suppressed by him and DSRR's attorneys who have chosen to repeatedly advance the false claim that because DSRR's management team was unaware of any potential shippers, restoration of the long-dormant 20-mile segment of

⁴ The substantial evidence that confirms the above is found in the Verified Statements of Craig Huff, who was DSRR's General Manager in Tallulah, and Daniel Robbins, the President and head of Marketing of North Louisiana & Arkansas Railroad ("NLA"), who was enlisted by J.D. Ventrcek (who was a Vice President of Continental Rail and headed its new business development efforts) to work with Mr. Huff. As their testimony reflects, had Golden Gate Capital backed their efforts to rebuild the track and clear the track of stored railcars, the new business would have produced significant revenues within six (6) months.

⁵ As is explained in LPPC's Application, Continental Rail, which is a non-carrier, was hired in 2015 by Golden Gate to manage and operate DSRR, shortly after Golden Gate acquired the Dow Chemical facility that is located on DSRR's Monroe Branch Line. Because LPPC is seeking to protect the integrity of the entire Lake Providence Branch Line, it has not contested Patriot Rail's acquisition of the Monroe Branch Line.

DSRR's track between mileposts 471.0 and 491.0 was unjustified and unwarranted.⁶

III. Not Only Has LPPC Provided All The Information Required Pursuant to 49 C.F.R. 1151.3(11), It Has Fully Considered The Interests That Have Been Voiced By The Shippers That Happen To Be Physically Located Adjacent To DSRR's "Priority Track" Between Milepost 491.0 And The Point Of Interchange With The Kansas City Southern Railroad ("KCS") in Tallulah, Louisiana.

In reaching its conclusion as to whether LPPC's expanded Feeder Line Application is complete, the Board must consider the extensive historical information that LPPC has included in its case-in-chief and should not be swayed by the various unsubstantiated claims that have been raised in DSRR's motion to reject. Based on the bold threats to attack the testimony that has been offered by shippers and individuals who have personal knowledge of what has transpired over the past seven and a half years since Golden Gate Capital ("Golden Gate") formed West Branch Intermediate Holdings, Inc. ("West Branch"), the Board should carefully consider the ramifications of a quick kill of LPPC's Feeder Line Application and the impact on shippers who have not been able to receive interchange service from DSRR and who have stressed the importance of being able to eliminate unnecessary and expensive interchange operations that would be perpetuated if LPPC's Feeder Line is denied.

At the outset, LPPC questions whether Patriot Rail has focused on the entire application or whether its arguments are based on the heavily condensed summary of LPPC's response to 49 CFR § 1151.3(a)(11)(B) at pages 63-65 of

⁶ DSRR's Motion to Dismiss Proceedings, filed March 2, 2021, at p. 2.

LPPC's Application. Most importantly, while Patriot Rail accuses LPPC of various transgressions, it has studiously avoided any mention of the damning evidence that LPPC has introduced that reveals Golden Gate's interference with the efforts that Continental Rail initiated to provide adequate rail service to all shippers that expressed an interest in moving freight over the entire section of the Lake Providence Branch. That evidence repudiates the unsubstantiated and irrelevant assertions that LPPC is engaged in a "meritless crusade against DSRR,"⁷ and that LPPC is driven by "frustration over private party discussions about a grant where the parties have been unable to reach a meeting of the minds."⁸ Nothing LPPC has done in the course of filing its Feeder Line Applications constitutes "retaliation" against DSRR or Golden Gate.

The reasons that LPPC decided to file its original and expanded Feeder Line Application are as follows:

- (i) LPPC's long-standing efforts to preserve the entire Lake Providence Branch Line between McGehee and Tallulah;
- (ii) Shippers' expressed desire to receive safe, efficient rail service that would eliminate costly, inefficient and undesirable interchange service;
- (iii) DSRR's confirmation in August 2020 that it was not interested in restoring any of its track other than the track between mileposts 500 and 491, which Jon Ryan described as DSRR's "Priority Miles";⁹ and

⁷ DSRR Motion to Reject at page 8 of 18.

⁸ DSRR Motion to Reject at page 10 of 18.

⁹ DSRR's filing, dated September 2, 2022, shows that its "Priority Miles" include over a mile of non-jurisdictional track between milepost 498.4 and milepost 500.0 that *Delta Southern Railroad Company* acquired from MoPac in 1989 that is apparently used for railcar storage. As explained at page 12 of LPPC's Feeder Application, the Interstate Commerce Commission ("ICC") in Docket No. AB 3 (Sub-No 72), after authorizing the abandonment of MoPac's line between milepost 408.9 and milepost 651.6, accepted an OFA that

- (iv) LPPC's discovery in March 2021 of the steps that DSRR had taken at the behest of Golden Gate's management team to discourage interchange traffic in violation of 49 U.S.C. § 10742.

Plainly, these reasons have nothing to do with LPPC's "dissatisfaction with prior private-party discussions about a grant where the parties have been unable to reach a meeting of the minds as to use of the proposed funding."¹⁰ Nor do they have anything to do with retaliation, which appears to be the reason for Patriot Rail's bold threats to prolong this proceeding through additional endless discovery. That, of course, is the very tactic that DSRR employed to harass and delay the Board's consideration of the merits of LPPC's initial feeder line application. Of course, that tactic allowed DSRR to avoid filing a single Verified Statement consistent with its earlier pledge to do so.¹¹

By filing its Feeder Line Application, LPPC seeks to enhance the public convenience and necessity by ensuring that all shippers will receive non-discriminatory and adequate rail service that will promote their best interests by eliminating inefficient and needlessly expensive interchange movement. Furthermore, as the Department of Transportation ("DOT") has recognized, in recent years the region's economy has declined. That decline appears to be due in part to the difficulties of conducting rail operations over substandard rail infrastructure. Without adequate rail service, it has been difficult to attract new business. As has been noted, the recent rehabilitation of the Lake

preserved the Lake Providence Branch Line only between milepost 408.9 and 498.4.

¹⁰ DSRR Motion to Reject at page 4 of 18 and page 10 of 18.

¹¹ See Decision of the Board December 11, 2020, slip op. at 1.

Providence Branch Line in Arkansas has already attracted a new industry.¹² The situation was not improved by DSRR's inability to receive adequate financial assistance from its owners. As DOT also recognized, the goal has always been "to preserve rail service to spur economic development and to provide transportation connectivity with the Class I railroads."¹³ While Continental Rail appears to have acted in a manner that was consistent with that goal, the history of the Line that LPPC has prepared demonstrates that Golden Gate, unlike LPPC, SEAEDD and Continental Rail, was not committed to the preservation and restoration of the entire Lake Providence Branch Line. While Golden Gate favored the maintenance of the "Priority Miles" between milepost 491.0 at the entrance to the Madison Parish Port and milepost 500.0, Golden Gate actively opposed and discouraged Continental Rail's efforts to reduce the storage of rail freight cars on the track between mileposts 471.0 and 491.0, and to restore the track.

As LPPC has explained in detail in its expanded Feeder Line Application, in 2015 it briefly appeared that DSRR was willing to pursue those same objectives. However, within the next year and a half, those efforts abruptly stopped. As LPPC has also explained, it was only after the Board suspended the procedural schedule that LPPC was first alerted to the pressure that was

¹² While DSRR and its new owner mention that they "look forward to working with any of the potential shippers" that have been identified in LPPC's Application, their involvement in any movements will involve unwanted additional inconvenience and costs for the new shippers. DSRR Motion to Reject at p. 13 of 18.

¹³ Grant Agreement-Attachment 2, Statement of Work, at p. 2, dated January 15, 2021.

placed on Continental Rail and DSRR's General Manager by Golden Gate to focus on railcar storage and to cease their efforts to acquire new business and restore the track.

Although DSRR dismissively downplays its refusal to use the INFRA Grant Funds to restore the track between milepost 471.0 and 491.0, the Board cannot overlook the undeniable fact that Golden Gate, after acquiring DSRR's stock in 2015, made no effort to ensure that the Lake Providence Branch would be restored. Instead, it undermined Continental Rail's efforts to do so.¹⁴

Having learned about Golden Gate's actions from the initial filing and recognizing that the failure to acquire the entire section of the Line between milepost 471.0 and the KCS interchange would not be in the best interests of shippers as they would be required to absorb additional charges related to an unneeded and unnecessary interchange, LPPC decided to file its expanded Feeder Line Application. Contrary to DSRR's claims, the expanded Application considers the interests of all of the four (4) shippers who have been able to use DSRR's Priority Miles over the past year. As the Application shows, Complex Chemical Co., Inc., and Terral River Services have filed Verified Statements in support of LPPC's acquisition. As this demonstrates, when these shippers are added to the other supporting shippers that wish to move over DSRR's track, an overall majority of shippers support LPPC's acquisition of the Line from Golden Gate. Because these shippers have not been able to obtain rail service

¹⁴ There is no indication that Golden Gate, despite its "financial expertise," ever performed any due diligence prior to acquiring the Lake Providence Branch Line and the Monroe Branch Line.

from DSRR between MP 471.0 and MP 491.0, DSRR's service is, by definition, inadequate.

Although DSRR has complained about the inclusion of such evidence, LPPC's approach is consistent with precedents of the Interstate Commerce Commission and the Board. *See, e.g., PSI Energy, Inc. – Feeder Line – Norfolk Southern Corp.*, 7 I.C.C. 2d 227, 231 n. 13 (1991)(no service at all is, *a fortiori*, an inadequate level of service). *See also, KCVN, LLC and Colorado Pacific Railroad, LLC—Feeder Line Application—Line of V and S Railway, LLC, Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado*, FD 36005, slip op. at 10 (STB served July 1, 2017)(in determining whether transportation over a line is inadequate for the majority of shippers who use the line, the Board looks “to former, current, and potential shippers.” *See also, Or. Int’l Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Cent. Or. & Pac. R.R.*, FD 35160, slip op. at 6 (STB served Oct. 31, 2008); *Pyco Indus.—Feeder Line Application—S. Plains Switching, Ltd. (Pyco)*, FD 3490 et al. (STB served Aug. 31, 2007); and *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo Peoria, and Western Railway Corporation Between La Harpe and Hollis, IL.*, 7 S.T.B. 893, 898 (2004).

In effect, Patriot Rail's pending motion seeks to have the Board ignore the very evidence that the Board ordered LPPC to produce regarding the history of the Line and, in effect, rubber stamp Patriot Rail's acquisition of DSRR. That objective can only succeed if the Board fails to consider the adverse impact on the shippers that LPPC is seeking to correct. While DSRR suggests that LPPC is

engaged in a “meritless crusade,” the truth of the matter is that any “crusade” that seeks to ensure that shippers have access to adequate rail service is not a “meritless crusade.”

IV. DSRR’s Attempt To Turn The Table On LPPC By Arguing That LPPC Has Injected Itself Into A “Pending” Control Proceeding Should Be Summarily Rejected.

While DSRR complains that “LPPC injected itself into [Patriot Rail’s] pending control proceeding,”¹⁵ the same is true of Patriot Rail, which obviously was aware of LPPC’s pending feeder application as well as its outstanding motion to file an expanded Application and even the Board’s Decision, dated August 23, 2022.¹⁶ Having spent several million dollars of public and private funds along with SEAEDD and NLA to acquire and restore a majority of the tracks that DSRR’s owners had allowed to deteriorate, LPPC was left with no alternative but to respond to Patriot Rail’s explicit statements in its Control Exemption that “the proposed transaction will not affect the level of operations on the rail lines of DSRR” and “will not substantially change the level of operations over, or maintenance of, the rail lines.” That, in turn, required LPPC to oppose Patriot Rail’s acquisition of DSRR.

CONCLUSION

For all the above-stated reasons and the legal arguments and evidence set forth in LPPC’s expanded Feeder Line Application, that Application, which

¹⁵ DSRR Motion to Reject at page 7 of 18.

¹⁶ As reflected by the Board’s decision in FD No. 36635, *Patriot Rail Company LLC, et al-Control Exemption—Pioneer Lines, Inc., et al*, slip op at 3, served August 26, 2022, Fletcher & Sipple, LLC was Patriot Rail’s counsel.

demonstrates DSRR's failure to provide adequate rail service over the entire Lake Providence Branch Line, is complete. For the past seven plus years, DSRR has violated the statutory mandate of 49 U.S.C. § 10742 to provide interchange service over its Line between milepost 471.0 and the southernmost point of that Line in Tallulah. During that time, DSRR's statutory common-carrier obligations were not limited to the "Priority Miles" located in the contrived "Southern Segment" of its Line, they also apply to the twenty (20) miles of track that are located in "long-dormant" "Northern Segment" whose renovation was deemed to be "unjustified and unwarranted" in March 2021. As a result, DSRR made the calculated decision to treat the disfavored 20-mile "Northern Segment" as being long-out-of-service, with an exception granted for its use to store railcars for third parties. Based on Patriot Rail's Control Exemption statement that it "will not substantially change the level of operations over, or maintenance of, the rail lines," the new ownership will not rectify DSRR's past actions and those actions must be condemned by the Board.

Respectfully submitted,

/s/ Richard H. Streeter

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Dated: January 20, 2023

Certificate of Service

I, Richard H. Streeter, hereby certify that I, this 20th day of January, 2023, have served a true copy of the foregoing reply of Lake Providence Port Commission on John M. Scheib, counsel for Delta Southern Railroad, Inc., via email at Scheib@gentrylocke.com.

Richard H. Streeter