

SERVICE DATE – FEBRUARY 2, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

LAKE PROVIDENCE PORT COMMISSION
—FEEDER LINE APPLICATION—
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LA.

Digest:¹ The Board waives the 30-day regulatory deadline for accepting or rejecting the amended feeder line application filed on January 4, 2023.

Decided: February 2, 2023

This decision waives the 30-day deadline at 49 C.F.R. § 1151.2(b) for serving a decision accepting or rejecting an amended feeder line application filed by Lake Providence Port Commission (LPPC) on January 4, 2023, to acquire the entirety of a rail line owned by Delta Southern Railroad, Inc. (DSR).

In 2020, LPPC filed a feeder line application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire a portion of a rail line owned by DSR through a Board-ordered sale. That application was accepted as complete under the Board’s regulations at 49 C.F.R. § 1151.2(b)(1), and a procedural schedule was established for the submission of comments and replies. Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447 (STB served Jan. 15, 2021). Soon thereafter, however, discovery disputes and a motion to dismiss the application led the Board to suspend the procedural schedule. Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll and Madison Parishes, La., FD 36447, slip op. at 2 (STB served Mar. 9, 2021).

In 2022, while the procedural schedule was still suspended, LPPC sought leave to file a supplemental feeder line application to acquire the entirety of the rail line owned by DSR. The Board granted that request, allowed LPPC to file a “full amended application,” and started the process for considering the amended application anew under 49 C.F.R. § 1151.2(a). Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll and Madison Parishes, La., FD 36447 (STB served Aug. 23, 2022). The Board stated that, upon receiving the amended application, it would “assess the completeness of the amended application

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

in accordance with the criteria specified in 49 C.F.R. § 1151.2(b) and issue a decision on that matter within 30 days.” Id. at 5. The Board also stated that the amended application “must contain detailed evidence that permits the Board to find, inter alia, that transportation over the line is inadequate for the majority of shippers who transport traffic over the line . . . , and that the sale of the line will not have a significantly adverse financial effect on DSR . . . or an adverse effect on the overall operational performance of DSR.” Id. (citations omitted).

On January 4, 2023, LPPC filed an amended application. On January 13, 2023, DSR filed a motion to reject the amended application as incomplete on the grounds that (1) it fails to plead inadequate service to a majority of shippers, and (2) it fails to adequately address the impact of the proposed sale on DSR’s financial health and overall operational performance. On January 20, 2023, LPPC filed in opposition to the motion to reject.²

Under 49 C.F.R. § 1151.2(b), the Board, through the Director of the Office of Proceedings, will either accept as complete or reject as incomplete a feeder line application in a decision served no later than 30 days after the application is filed. The Board may, however, waive its regulations, see 49 C.F.R. § 1110.9, and has done so on its own motion in various contexts, including in this case. See Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447, slip op. at 5 n.15 (STB served Dec. 11, 2020); see also BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry., FD 32760 (Sub-No. 46), slip op. at 2 n.3 (STB served July 3, 2019) (citing additional examples).

Here, the Board will waive the regulatory 30-day requirement for issuing a decision on the completeness of LPPC’s amended feeder line application. DSR’s motion to reject and LPPC’s response raise substantive questions about what is necessary to show that a feeder line application is complete under 49 C.F.R. § 1151.2(b)(1). For that reason, and in light of the approaching February 3, 2023 decisional deadline, the Board finds good cause to waive the 30-day deadline in 49 C.F.R. § 1151.2(b).

The Board will address whether LPPC’s amended application is complete and DSR’s motion to reject in a subsequent decision.

It is ordered:

1. The 30-day deadline under 49 C.F.R. § 1151.2(b) for serving a decision accepting or rejecting LPPC’s amended feeder line application is waived.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

² LPPC filed a motion to supplement its amended feeder line application on January 25, 2023, and an errata to that motion the next day. DSR responded on January 31, 2023. The motion to supplement will be addressed later, as appropriate.