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July 28, 2023

306900

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
July 28, 2023
Part of
Public Record

Re: STB FD 36447 *Lake Providence Port Commission—Feeder Line Application—
Line of Delta Southern R.R. Located in East Carroll and Madison Parishes, LA.*

Dear Ms. Brown:

We write in response to the filing made by Lake Providence Port Commission ("LPPC"), Southeast Arkansas Economic Development District, Madison Parish Port Commission ("MPPC"), and North Louisiana & Arkansas Railroad ("NLA") on July 10, 2023 (collectively ("LPPC")). LPPC's July 10 filing, which purports to seek the Surface Transportation Board's ("STB's") permission to supplement the record with contemporaneous new evidence, continues to flout the STB's rules and directives, and should be rejected as procedurally improper.¹ It is also inaccurate and misleading, as a matter of substance. Delta Southern Railroad ("DSRR") renews its request for the STB to terminate this costly and meritless proceeding to avoid a further waste of STB and DSRR resources, and the STB should deny LPPC's motion.

As the Board is well aware, LPPC has maintained a long-running attempt to seize the DSRR's Talullah branch that pre-dates Patriot Rail Company's ("Patriot Rail") acquisition of DSRR, which closed on January 9, 2023. That long-running saga between LPCC *et al.* and DSRR continued with LPPC filing an amended feeder line application on January 4, 2023. On January 13, 2023, DSRR filed a Motion to Reject the Amended Application as incomplete. On February 2, 2023, the STB issued a decision waiving the 30-day regulatory deadline for

¹ *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison, Parishes, Louisiana*, STB FD 36447 at 7 (Served Aug. 23, 2023) ("August Decision") ("To ensure the fair and orderly resolution of LPPC's feeder line request, LPPC must include in its amended application all of the arguments and evidence on which it will rely.").

accepting or rejecting the Amended Application. The STB found that “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).” DSRR’s request to terminate this proceeding remains pending, and DSRR respectfully asks the STB to grant it.

LPPC’s July 10, 2023, filing ignores DSRR’s substantial efforts since early January and NLA’s lack of traffic in that same time period. Immediately after acquiring DSRR, Patriot Rail’s management began contacting customers, including talking to Bluelinx, Complex Chemical, and Angus Chemical on its first day -- January 9, 2023.

In addition, contrary to LPPC’s representations, DSRR quickly opened lines of communication with NLA. On January 28, 2023, DSRR’s Rob Thrall telephoned NLA’s Missy Courtwright to discuss interchange and billing arrangements for traffic. On February 10, 2023, Danny Robbins of NLA stopped by the office of the regional operations manager who oversees the DSRR, and the parties discussed interchange operations. NLA did not contact DSRR about any potential traffic to DSRR in the intervening time, and no traffic was tendered or transported by NLA during that intervening time. To date, NLA has tendered zero cars to DSRR in 2023.

DSRR has also made substantial investments in segments of the railroad. Although DSRR and LPPC’s priorities may be different, it does not negate the fact that DSRR has been investing in track rehabilitation. Indeed, that rehabilitation has continued in July of 2023 with the installation of 700 rail ties between MP 471.0 and MP 472.5, which was completed on July 12, 2023, and communicated by email to NLA on the same day. In total, Patriot Rail has installed 2,200 ties between MP 491 and 499. Over the same stretch of railroad, Patriot Rail has added ballast and done surfacing work as well. Patriot intends to complete another \$30,000 in bridge repairs later this year, which will bring the total investment on the line to \$400,000 this year.

Most damning to LPPC’s motion is the fact that the alleged problems are LPPC’s failing. LPPC’s attempts to tarnish DSRR are not useful to any of the customers that LPPC has failed to serve itself due to its own track conditions. On July 14, 2023, DSRR received word that NLA derailed one of their locomotives on MP 470.8. DSRR sent a representative to investigate. The locomotive had been rerailed and left the area, but a loaded cotton seed car on the port lead was derailed. Both areas are on track maintained by NLA and LPPC, and are not DSRR’s responsibility. True and correct copies of photos taken on July 14, 2023, of that track are attached as Exhibit 1, which show the NLA’s track condition and derailment. Exhibit 2 is a true and correct copy of an email trail showing that DSRR investigated and found the derailment to be on the LPPC’s track. DSRR believes that this is the incident that LPPC attempts to blame on DSRR in its most recent motion.

Finally, LPPC’s July 10 filing should be rejected as procedurally improper. In the August Decision, the STB attempted to bring order and coherence to LPPC’s feeder line case, specifically citing LPPC’s serial filings of additional evidence and argument as the reason that it directed LPPC to file “all of the arguments and evidence on which it will rely” in its amended application. Decision at 7. Moreover, the STB was clear that “to facilitate the development of a

clear and coherent record, LPPC must present each witness's sworn testimony in support of the application in a single verified statement from each witness," which LPPC has again failed to do. *Id.*; *see also id.* at 6 (LPPC's amended application must include the required information "in the form of verified statements").² LPPC has started down the path again of producing rolling evidence and argument.

In conclusion, LPPC's feeder line case remains fatally flawed and this proceeding should promptly be dismissed.

Respectfully submitted,

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

Attorney for Delta Southern Railroad

cc: Richard Streeter, Counsel LPPC

² Moreover, LPPC has failed to properly supplement the record and its motion should be struck. Here, LPPC's "brief-adavit", littered with arguments and commentary. If LPPC wishes to submit new evidence, it must do so in a form that constitutes actual evidence, with a verified statement attesting to the facts. The absence of such a statement makes it difficult for DSRR to respond and DSRR believes the event discussed was caused by LPPC.

Exhibit 1 -- Photos of July 12, 2023 Derailed Car on NLA/LPPC Track



101 W. Main Street, Suite 705 Norfolk, VA 23510
Toll Free: 866-983-0866



101 W. Main Street, Suite 705 Norfolk, VA 23510
Toll Free: 866-983-0866

EXHIBIT 2

101 W. Main Street, Suite 705 Norfolk, VA 23510
Toll Free: 866-983-0866

From: Jerry Coleman <Jerry.Coleman@patriotrail.com>
Sent: Thursday, July 20, 2023 3:53 PM
To: Jonathan Lewandowski <JLewandowski@apexllc.net>; James Patterson <JPatterson@apexllc.net>; Wyly Gilfoil <wyly_gilfoil@msn.com>; Danny Robbins <dan@dr railroad.com>
Cc: 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>; Nicholas Mazzi <NMazzi@apexllc.net>; Brad Gordon <Brad.Gordon@patriotrail.com>; Scott Gray <Scott.Gray@patriotrail.com>; Christopher Crockett <Christopher.Crockett@patriotrail.com>
Subject: Re: NLA Derailment on DSRR Mainline Recap

Good afternoon, after receiving this email Delta Southern (DSRR) launched an investigation and have found that the derailed car in question is on the Lake Providence Port lead. This is not Delta Southern maintenance responsibility. Capital work has been completed and turned back over for NLA/Delta Southern use as of 7-12-23. If you have any questions, please feel free to reach out to me.

Jerry Coleman
Regional Operations Manager
Patriot Rail LLC
318-423-5725

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From: Jonathan Lewandowski <JLewandowski@apexllc.net>
Sent: Thursday, July 20, 2023 2:38:39 PM
To: James Patterson <JPatterson@apexllc.net>; Wyly Gilfoil <wyly_gilfoil@msn.com>; Danny Robbins <dan@dr railroad.com>
Cc: 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>; Nicholas Mazzi <NMazzi@apexllc.net>; Jerry Coleman <Jerry.Coleman@patriotrail.com>
Subject: RE: NLA Derailment on DSRR Mainline Recap

You don't often get email from jlewandowski@apexllc.net. [Learn why this is important](#)

[EXTERNAL] - This Email originated outside of your organization. **Do Not Click** links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Anything NLA folks?
Thanks,

Jon Lewandowski



Hamburg, NY Office
Mobile: 716-982-8947
Email: jlewandowski@apexllc.net

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Hamburg, NY 14075
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Fax: 716-926-1010
www.apexllc.net

From: James Patterson <JPatterson@apexllc.net>

Sent: Thursday, July 20, 2023 9:03 AM

To: Wyly Gilfoil <wyly_gilfoil@msn.com>; Jonathan Lewandowski <JLewandowski@apexllc.net>; Danny Robbins <dan@dr railroad.com>

Cc: 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>; Nicholas Mazzi <NMazzi@apexllc.net>; Jerry.Coleman@patriotrail.com

Subject: RE: NLA Derailment on DSRR Mainline Recap

Can the RR reps join meeting at 9am?

Thanks,

James W. Patterson



12 North Congress St, Ste. B

York, SC 29745

803-684-5288 Office

803-684-5238 Fax

From: Wyly Gilfoil <wyly_gilfoil@msn.com>

Sent: Wednesday, July 19, 2023 3:49 PM

To: James Patterson <JPatterson@apexllc.net>; Jonathan Lewandowski <JLewandowski@apexllc.net>; Danny Robbins <dan@dr railroad.com>

Cc: 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>; Nicholas Mazzi <NMazzi@apexllc.net>; Jerry.Coleman@patriotrail.com

Subject: Re: NLA Derailment on DSRR Mainline Recap

I can call in 7/21 Friday @ 9am cst.

Wyly

From: James Patterson <JPatterson@apexllc.net>

Sent: Wednesday, July 19, 2023 2:13 PM

To: Jonathan Lewandowski <JLewandowski@apexllc.net>; Danny Robbins <dan@dr railroad.com>

Cc: 'Wyly Gilfoil' <wyly_gilfoil@msn.com>; 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>; Nicholas Mazzi <NMazzi@apexllc.net>; Jerry.Coleman@patriotrail.com

Subject: RE: NLA Derailment on DSRR Mainline Recap

I'd like to schedule a conf call with Port and RR representatives to discuss service issues. We have to resolve these problems. We are loosing lots of money and nobody seems to care or willing to do anything. Is everyone available for teams meeting on Friday, 7/21 at 10am EST / 9am CST?

Thanks,

James W. Patterson



12 North Congress St, Ste. B

York, SC 29745

803-684-5288 Office
803-684-5238 Fax

From: Jonathan Lewandowski <JLewandowski@apexllc.net>
Sent: Wednesday, July 19, 2023 3:02 PM
To: Danny Robbins <dan@dr railroad.com>
Cc: 'Wyly Gilfoil' <wly_gilfoil@msn.com>; James Patterson <JPatterson@apexllc.net>; 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>; Nicholas Mazzi <NMazzi@apexllc.net>; Jerry.Coleman@patriotrail.com
Subject: RE: NLA Derailment on DSRR Mainline Recap

Being told cars are derailed again??? Also that all the loaded cars have yet to be picked up? And we still have no empties to load back at LP....

Thanks,

Jon Lewandowski



Hamburg, NY Office
Mobile: 716-982-8947
Email: jlewandowski@apexllc.net

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Hamburg, NY 14075
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Fax: 716-926-1010
www.apexllc.net

From: Danny Robbins <dan@dr railroad.com>
Sent: Tuesday, July 11, 2023 2:57 PM
To: Jonathan Lewandowski <JLewandowski@apexllc.net>
Cc: 'Wyly Gilfoil' <wly_gilfoil@msn.com>; James Patterson <JPatterson@apexllc.net>; 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>
Subject: RE: NLA Derailment on DSRR Mainline Recap

The DSRR did not return the track to us today. We have our power in place as soon as they give us the track. I am anticipating sometime tomorrow.

Daniel B. Robbins
Vice President Marketing
Arkansas Short Line Railroads
Dardanelle & Russellville Railroad
Ouachita Railroad
Camden & Southern Railroad
North Louisiana & Arkansas Railroad
479-968-6455 Office
479-857-6103 Cell
dan@dr railroad.com

From: Jonathan Lewandowski [<mailto:JLewandowski@apexllc.net>]
Sent: Monday, July 10, 2023 8:54 AM
To: Danny Robbins
Cc: 'Wyly Gilfoil'; James Patterson; 'Noah B Robbins'; 'Michael Robbins'
Subject: RE: NLA Derailment on DSRR Mainline Recap

Thanks please keep me posted.

Thanks,

Jon Lewandowski



Hamburg, NY Office
Mobile: 716-982-8947
Email: jlewandowski@apexllc.net

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Hamburg, NY 14075
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From: Danny Robbins <dan@dr railroad.com>
Sent: Monday, July 10, 2023 9:52 AM
To: Jonathan Lewandowski <JLewandowski@apexllc.net>
Cc: 'Wyly Gilfoil' <wyly_gilfoil@msn.com>; James Patterson <JPatterson@apexllc.net>; 'Noah B Robbins' <noah.b.robbins@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>
Subject: RE: NLA Derailment on DSRR Mainline Recap
Noah just called DSRR to check on the progress of their contractor. They said they hope to be done this evening. If the track is open tomorrow we will begin moving all the cars out of Lake Providence.

Danny

From: Jonathan Lewandowski [<mailto:JLewandowski@apexllc.net>]
Sent: Monday, July 10, 2023 8:16 AM
To: Danny Robbins
Cc: 'Wyly Gilfoil'; James Patterson; 'Noah B Robbins'; 'Michael Robbins'
Subject: RE: NLA Derailment on DSRR Mainline Recap

Good morning,

Please advise if track work is on schedule per below.

Thanks,

Jon Lewandowski



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Mobile: 716-982-8947
Email: jlewandowski@apexllc.net

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From: Jonathan Lewandowski
Sent: Friday, July 7, 2023 4:54 PM
To: Danny Robbins <dan@dr railroad.com>
Cc: 'Wyly Gilfoil' <wyly_gilfoil@msn.com>; James Patterson <JPatterson@apexllc.net>; 'Noah B Robbins' <noah.b.robbs@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>
Subject: RE: NLA Derailment on DSRR Mainline Recap

Any update?

Thanks,

Jon Lewandowski



Hamburg, NY Office
Mobile: 716-982-8947
Email: jlewandowski@apexllc.net

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Hamburg, NY 14075
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Fax: 716-926-1010
www.apexllc.net

From: Jonathan Lewandowski
Sent: Friday, July 7, 2023 11:35 AM
To: Danny Robbins <dan@dr railroad.com>
Cc: 'Wyly Gilfoil' <wyly_gilfoil@msn.com>; James Patterson <JPatterson@apexllc.net>; 'Noah B Robbins' <noah.b.robbs@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>
Subject: RE: NLA Derailment on DSRR Mainline Recap

Good Morning,

Wanted to see if you are still on track with moving cars on the 12th?

Thanks,

Jon Lewandowski



Hamburg, NY Office
Mobile: 716-982-8947
Email: jlewandowski@apexllc.net

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Hamburg, NY 14075
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Fax: 716-926-1010
www.apexllc.net

From: Danny Robbins <dan@dr railroad.com>
Sent: Friday, June 30, 2023 5:12 PM
To: Jonathan Lewandowski <JLewandowski@apexllc.net>
Cc: 'Wyly Gilfoil' <wyly_gilfoil@msn.com>; James Patterson <JPatterson@apexllc.net>; 'Noah B Robbins' <noah.b.robbs@outlook.com>; 'Michael Robbins' <ouachitarailroad@sbcglobal.net>
Subject: RE: NLA Derailment on DSRR Mainline Recap

We have had locomotives and 2 crews awaiting DSRR to release the track to use all week. When DSRR returns the track to our use we will leave LP with all cars using NLA 21, 22, and 1658. They have promised us the track the next day all week. We did not receive this until this afternoon and I sent it to you right away.

Danny

From: Jonathan Lewandowski [<mailto:JLewandowski@apexllc.net>]
Sent: Friday, June 30, 2023 4:03 PM
To: Danny Robbins
Cc: 'Wyly Gilfoil'; James Patterson
Subject: RE: NLA Derailment on DSRR Mainline Recap

Adding James.

The lack of rail service has made the facility in Lake Providence un useable. All it does is cost us money, with cars sitting at times over a month and now another delay. All we've gotten is bad information, lied to about what service you can provide. Cars will be stuck and we cannot get customers products.

Thanks,

Jon Lewandowski



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From: Danny Robbins <dan@dr railroad.com>
Sent: Friday, June 30, 2023 4:37 PM

To: Jonathan Lewandowski <JLewandowski@apexllc.net>

Cc: 'Wyly Gilfoil' <wyly_gilfoil@msn.com>

Subject: FW: NLA Derailment on DSRR Mainline Recap

Gentlemen,

Please see below. DSRR is preventing NLA from going into the Port until July 12th.

Danny

From: Jerry Coleman [<mailto:Jerry.Coleman@patriotrail.com>]

Sent: Friday, June 30, 2023 2:55 PM

To: dan@dr railroad.com; Noah B Robbins

Cc: Christopher Crockett; Scott Gray

Subject: Fwd: NLA Derailment on DSRR Mainline Recap

NLA,

Considering the two recent derailments last week. We have adjusted our planned capital work and have sent extra resources and our contractors have adjusted their schedule to complete this work. The ties have already been delivered , and the earliest our contractors can start the work is 7/5/23 with expectations of work being completed by 7/12/23. We recommend that any movements you need to make over our track could wait until this work is completed. However, if the NLA must make a move over the area, then the NLA assumes all risk for making any movement. If a move needs to happen before the work is completed, then the move would have to be completed by the start of our planned work scheduled to start on 7/5/23.

Thank you

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From: Jerry Coleman <Jerry.Coleman@patriotrail.com>

Sent: Wednesday, June 28, 2023 6:41 AM

To: dan@dr railroad.com <dan@dr railroad.com>; 'noah.b.robbs@outlook.com' <noah.b.robbs@outlook.com>

Cc: Scott Gray <Scott.Gray@patriotrail.com>; Derrick Ford <Derrick.Ford@patriotrail.com>; Christopher Crockett <Christopher.Crockett@patriotrail.com>

Subject: NLA Derailment on DSRR Mainline Recap

Good Morning

I just wanted to recap with you guys regarding the derailments NLA had on the DSRR mainline and our plans to inspect and make repairs to the DSRR mainline from MP 471 to 472. We were notified at 9:45 am on 6-26-23 that the NLA had derailed two loaded cars of cotton seed at MP 471.04. Upon our arrival we spoke with Noah and discovered the cars were derailed on 6-23-23 at approximately 2:45 pm. I asked why we were not notified on Friday of the derailment and was told it was Friday and did not plan on rerailing until Monday 6-26-23. I asked if the crew had a verified copy of the DSRR DOB which they did not. I discussed the importance of verifying the DOB and carrying a copy in the crew's possession. I asked for notification once the cars are rerailed so we could come down and inspect and make repairs. I was notified via text at approximately 11 am on 6-27-23 that the cars were rerailed. I traveled to the derailment site at 2:00pm on 6-27-23 and noticed the cars and locomotive had departed the area. I contacted Noah and he said that they brought another locomotive up to grab some cars off the lead at Lake Providence Port and derailed the locomotive trailing set of wheels at MP 471.4. We were not aware of plans to go back in and pull more cars. We discussed again the importance of verifying and carrying a copy of the DSRR DOB and making the 24-hour notification prior to occupying the joint track on DSRR. I also asked that once the locomotive is rerailed to clear the POD and to not make any more

movements on the track until we can get there this morning 6-28-23 to inspect and make repairs to the track. At 4:21 pm I was notified that the locomotive was rerailed and tied down. My Regional Roadmaster Derrick Ford will be on site this morning to inspect and make the needed repairs so you guys can get back to work.

Process for NLA to occupy DSRR Mainline

- 24-hour notification should be made to Christopher Crockett at 318-780-4597 prior to occupying the mainline at DSRR MP 471 to MP 472.5. When making notification please advise on how many days you will be occupying the track.
- Current Verified copy of the DSRR DOB must be in the crew's possession.

As a side note we have ordered 500 new ties for MP 471 to MP 472.5 and have contractors on standby waiting for the word go. As soon as I have the timeline, I will let you guys know.

Thank You

Jerry Coleman Regional Operations Manager
Louisiana and North West Railroad/ Delta Southern Railroad
O: 318-927-2031 | M: 318-423-5725
jerry.coleman@patriotrail.com

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