

RICHARD H. STREETER

ATTORNEY AT LAW

5255 Partridge Lane , N.W.

Washington, D.C. 20016

Tele: 202-363-2011 Mobile 202-210-4761

rhstreeter@gmail.com

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August 7, 2023

Part of

Public Record

August 7, 2023

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

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:

This letter is written in response to the unverified filing, submitted July 28, 2023, on behalf of Delta Southern Railroad, Inc. (“DSRR”).¹ Although Lake Providence Port Commission (“LPPC”, Southeast Arkansas Economic Development District, Madison Parish Port Commission (“SEAEDD”), Madison Parish Port Commission (“MPPC”), and North Louisiana & Arkansas Railroad, Inc. (“NLA”) (collectively “Movants”), do not wish to burden the Board with any unnecessary defensive pleading, certain extremely misleading and false comments in DSRR’s filing regarding Movants’ Verified Motion to File Contemporaneous New Evidence, which was filed on July 10, 2023, compel an immediate response.

At the second page of DSRR’s “unnumbered” letter, DSRR attempts to leave the false impression that its recent investigation regarding the derailment on July 14, 2023, causes DSRR to believe that the derailment of NLA’s

¹ While DSRR’s attorney petulantly comments at note 2 of his letter that “[i]f 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,” he appears to have overlooked the fact that the LPPC Motion, filed July 10, 2023, was properly verified. Furthermore, the Board is respectfully requested to note that DSRR’s attorneys, including in this instance, have never backed up their unverified “testimonial comments” with a Verified Statement from any DSRR employee who had first-hand knowledge of the matters at issue.

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locomotive and two (2) railcars on June 23, 2023, which is the basis for Movants' July 10 motion, did not happen on DSRR's track.

In response to DSRR's counsel's charges, LPPC requested Noah B. Robbins, who is NLA's General Manager, to review Mr. Scheib's comments. As Mr. Robbins has explained in his Verified Statement, which is attached hereto, there is no question that the derailment on Friday, July 14, 2023, which involved the last car on a 10-car train, happened on the LPPC lead track. However, there is also no question that the June 23, 2023 derailments did occur on DSRR track.

Movants must object to the false and misleading statements that the photos 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 LPPC's track" and that "DSRR believes that this is the incident that LPPC attempts to blame on DSRR in its most recent motion."

Because Movants most recent motion involves only the derailments that occurred on June 23, 2023, and because no one is contending that the July 14, 2023, derailment occurred on DSRR's mainline, there is no avoiding the conclusion that DSRR is, in effect, claiming that Movants filed a false claim with the Board on July 10, 2023. To ensure due process, LPPC must be allowed to respond.

As explained in his Verified Statement, Mr. Robbins has confirmed that the derailments on June 23, 2023, involved cars ITFX 9813 and ITFX 9845. As confirmed by two (2) contemporaneous photographs that were taken by an NLA crew member immediately after the derailment occurred, the cars were on a northbound train that was operating on the DSRR/NLA mainline that extends from McGehee, AR to Tallulah, LA. As one of the photographs reflects, neither of those cars had reached MP 471.0. Because the spot of derailment is between MP 471.0 and 472.25, the cars derailed on the segment of the mainline that is owned by DSRR. As the record reflects, that segment track is the subject of the Trackage Rights Agreement between DSRR and NLA that imposes the burden on DSRR of maintaining the track to FRA Class 1 standards.

Although DSRR claims that its Exhibit 2 shows that the June 23, 2023, derailment happened on LPPC's track, that claim must be rejected in light of Mr. Robbins' Verified Statement. Moreover, it is noted that in his email, dated June 28, 2023, at 6:41 AM (included in DSRR's Exhibit 2 at page 13), Mr. Jerry Coleman reported that NLA had advised DSRR that "NLA had derailed two loaded cars of cotton seed at MP 471.04." After he arrived at the site of the derailment, the cars had not been rerailed. However, he did not contest the location of the derailment. Furthermore, after being notified that the cars had

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been rerailed, he “traveled to the derailment site at 2:00pm on 6-27-23 and noticed that the cars and locomotive had departed from the area.” When he contacted Noah Robbins, he was informed that a second locomotive that had been brought to grab some other loaded cars off the lead at Lake Providence Port, its “trailing set of wheels” had derailed at MP 471.4.” That point of derailment is also part of DSRR’s mainline track.

In conclusion, because DSRR has once again failed to provide a scintilla of verified testimony, DSRR’s July 28, 2023 submission must be purged from the record.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for LPPC, NLA, SEAEDD and MPP

Cc: John M. Scheib

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF NOAH B. ROBBINS

1. My name is Noah B. Robbins. I am the General Manager of the North Louisiana & Arkansas Railroad (“NLA”). My business address is 500 Crooked Bayou Drive, McGehee, Arkansas 71654. I am a qualified locomotive engineer and conductor and am also a qualified track inspector. I am authorized to make this Verified Statement and know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information, and belief.

2. I have carefully reviewed the unverified letter, dated July 28, 2023, that was filed by John M. Scheib on behalf of Delta Southern Railroad, Inc. (“DSRR”). In his letter, Mr. Scheib states that on “July 14, 2023, DSRR received word that NLA derailed one of their locomotives on MP 470.8” and sent a representative to investigate. According to Mr. Scheib, by the time the unnamed representative arrived, the locomotive had been rerailed and left the area. I have been advised that the locomotive quickly rerailed itself within minutes and did not impact the cars. He also claims that “a loaded cotton seed car on the port lead was derailed.” I will confirm that the car that is the subject

of DSRR's Exhibit 1 is ITFX 9890; that it was a loaded cotton seed car; and that the point of derailment was on the Lake Providence Port ("LPP") lead track. The LPP lead track is located to the east of DSRR's mainline and extends from the point of interchange with DSRR's mainline about three (3) miles a southeasterly direction in a roughly parallel fashion to DSRR's mainline track before climbing over the levee to reach the facilities located within the Lake Providence Port.

3. ITFX 9890 was the last car on a 10-car train. Neither the locomotive nor any of the other cars derailed. When the members of the crew recognized that it would not be possible to rerail the car in a short time, they uncoupled ITFX 9890, which was not damaged, and resumed the movement to McGehee. The nine (9) cars were interchanged with UP on Monday, July 17, 2023. As a result, the only issue with the first photograph in DSRR's Exhibit 1 is the incorrect date, namely "July 12, 2023", which conflicts with the narrative at page 2 of DSRR's letter which states that the two photographs in Exhibit 1 were taken on July 14, 2023." See Attachment 1 hereto.

4. In referencing the other photograph, Mr. Schieb states that "[b]oth 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 conditions and derailment." The reference to "that track" is misleading as it ignores the fact that two (2) distinct tracks are involved. Unlike the first photo, the second photo was taken at a spot that is located at the point that the NLA/DSRR

mainline track crosses over Highway 65. That photograph reflects the segment of the mainline track that extends from McGehee, AR to Tallulah. The photo concentrates on the piece of mainline track that, after crossing Hwy. 65 just to the south of the town of Lake Providence, extends from MP 470.8 to MP 471, which is owned by NLA, to a point that extends to the south well beyond MP 471, which is owned by DSRR and is the subject of the Trackage Rights Agreement between NLA and DSRR.

5. The letter, without precisely defining the derailment, states that “DSRR investigated and found the derailment to be on the LPPC’s track.” To the extent that “the derailment” refers to ITFX 9890, I agree that it happened on LPPC’s lead track. However, based on the statement that “DSRR believes that this is the incident that LPPC attempts to blame on DSRR in its most recent motion,” it appears that DSRR is referring to the derailment on June 23, 2023, which caused the Movants to file their Motion. To clarify the situation, I have undertaken my own investigation of the June 23, 2023, and can confirm that the derailments that happened on that date occurred on the segment of track that is owned by DSRR.

6. Attached hereto are two (2) photographs that were taken on June 23, 2023, that reflect the two derailed cars. The train was moving in a northerly direction when the derailments occurred. The orange colored NLA locomotive has come to a stop near the point where the DSRR/NLA mainline crosses Hwy. 65. The second car on the train, ITFX 9813, which is heavily leaning, is at MP 471, while the flagstick of the red flag points to the derailed front wheel on the

west side of car ITFX 9845. As demonstrated by the other photograph, the wheel had derailed when the composite cross tie split in the middle of the track, which caused the wheel on the east side of car ITFX 9845 to hit the ground between the rails. These photographs, which were taken by a crew member immediately after the train stopped, show that the derailment happened before the two cars reached MP 471.0. Therefore, the derailment occurred on a segment of the mainline track that DSRR is responsible for maintaining.

7. Because the June 23, 2023 derailment occurred shortly before 3:00 p.m., and because the crew had been working in extreme heat since 7:00 a.m., a decision was made to leave the train in place and to begin rerailing the cars on Saturday morning, June 24, 2023. After the rerailing was finished on Tuesday, June 27, 2023, the cars were moved to McGehee and interchanged with UP later that day.

FURTHER SAYETH THE AFFIANT NOT.

I, Noah B. Robbins, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 7th day of August 2023.

/s/ Noah B. Robbins

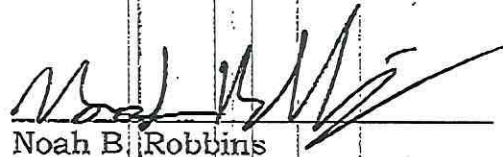
Noah B. Robbins

west side of car ITFX 9845. As demonstrated by the other photograph, the wheel had derailed when the composite cross tie split in the middle of the track, which caused the wheel on the east side of car ITFX 9845 to hit the ground between the rails. These photographs, which were taken by a crew member immediately after the train stopped, show that the derailment happened before the two cars reached MP 471.0. Therefore, the derailment occurred on a segment of the mainline track that DSRR is responsible for maintaining.

7. Because the June 23, 2023 derailment occurred shortly before 3:00 p.m., and because the crew had been working in extreme heat since 7:00 a.m., a decision was made to leave the train in place and to begin rerailing the cars on Saturday morning, June 24, 2023. After the rerailing was finished on Tuesday, June 27, 2023, the cars were moved to McGehee and interchanged with UP later that day.

FURTHER SAYETH THE AFFIANT NOT.

I, Noah B. Robbins, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 7 day of August 2023.


Noah B. Robbins

Attachment 1 to the Verified Statement
Of Noah B. Robbins

NLA Train Involved in the Derailment, on July 14, 2023, on the LPP Lead Track

List of nine (9) Railcars in an NLA Train that moved from Lake Providence Port to interchange with UP at AKMD's yard at McGehee, AR on July 17, 2023, after the derailment of railcar ITFX 9890 on the LPPC Lead track on July 14, 2023.

ITFX

9819

9851

9826

9806

9803

9882

9857

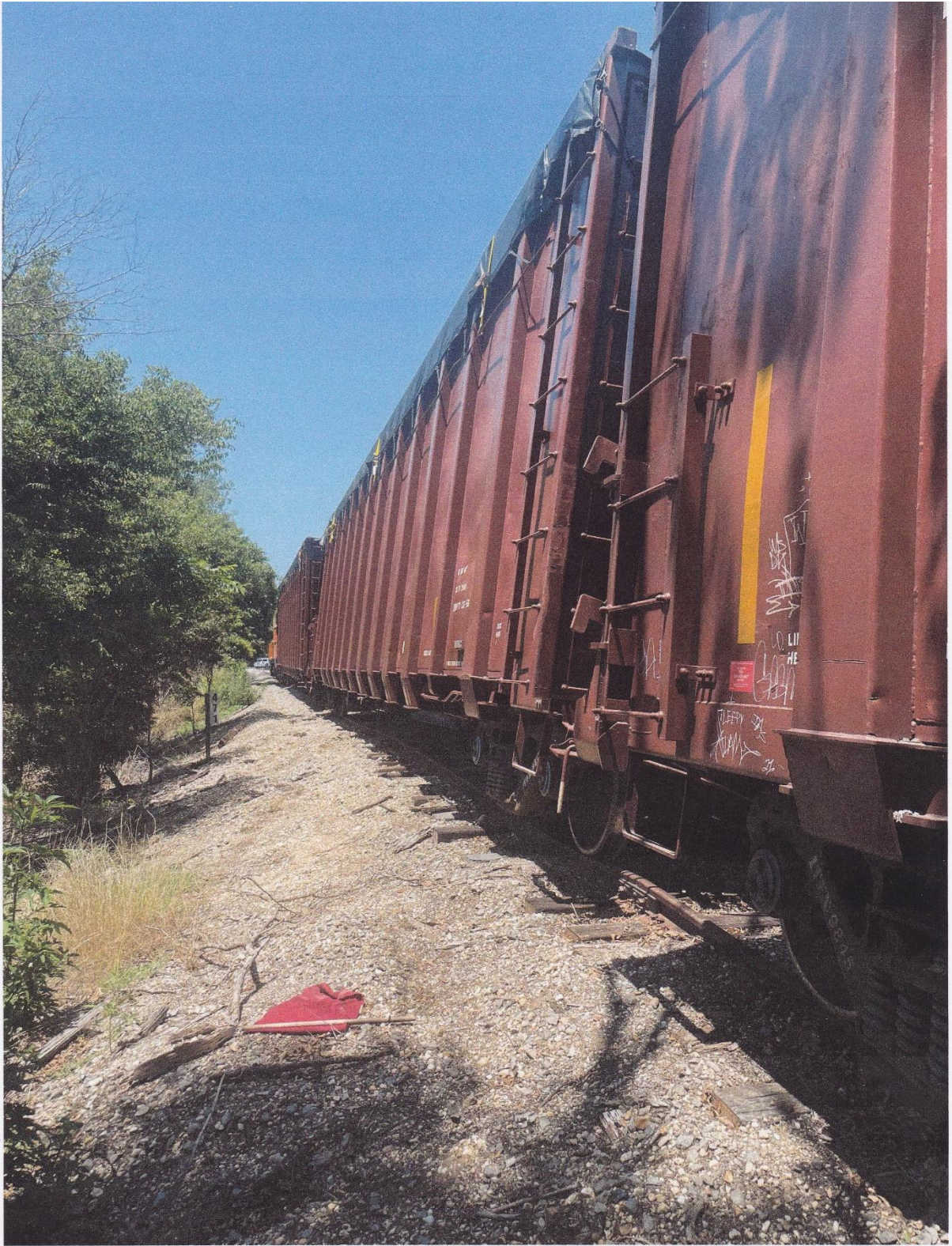
9871

9875

9890 Railcar ITFX 9890 was initially attached to the same NLA Train as the nine (9) railcars listed above. Railcar ITFX 9890, derailed when the track, which is located on the LPP Lead Track, split on July 14, 2023. Railcar ITFX 9890 is the railcar that is reflected in DSRR's Exhibit 1 attached to DSRR's unverified letter dated July 28, 2023. Contrary to the title of Exhibit 1, the "Derailed Car" actually derailed on July 14, 2023, and not on July 12, 2023.

After the track was repaired, Railcar ITFX 9890 was subsequently interchanged with UP at AKMD's yard, at McGehee, AR, along with ITFX railcars 9855, 9854, 9823, and 9879.

Attachment 2 to the Verified Statement
Of Noah B. Robbins





Certificate of Service

I, Richard H. Streeter, do here by certify that a true copy of the foregoing documents was served this 7th day of August 2023 on John M. Scheib at Scheib@gentrylocke.com.

/s/ Richard H. Streeter