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SERVICE DATE – DECEMBER 11, 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.

Decided: December 11, 2023

This proceeding involves efforts by the Lake Providence Port Commission (LPPC), a noncarrier political subdivision of the State of Louisiana, to acquire portions of the McGehee-Tallulah rail corridor owned by Delta Southern Railroad, Inc. (DSR), a Class III rail carrier, through a Board-ordered sale under 49 U.S.C. § 10907 and 49 C.F.R. part 1151. LPPC's initial feeder line application (which sought to acquire only a portion of DSR's line) was accepted and a procedural schedule was established in early 2021. LPPC thereafter sought leave to file a supplemental application to acquire DSR's entire line, which the Board granted by decision served August 23, 2022. LPPC filed an amended feeder line application on January 4, 2023.

By decision served November 20, 2023, the Board denied a motion to reject LPPC's amended feeder line application and terminate this proceeding filed by DSR. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (Nov. 20 Decision), FD 36447 (STB served Nov. 20, 2023). The November 20 Decision stated that if LPPC filed and served by November 30, 2023, a certificate of service for the amended application in compliance with 49 C.F.R. § 1151.2(a) and § 1151.3(a)(16), together with the described verification and any agreement between LPPC and the proposed operator pertaining to the line, the Board expected to promptly issue a decision conditionally accepting the amended application, and discovery relating to valuation could proceed under the process described in the decision. Nov. 20 Decision, FD 36447, slip op. at 16.¹ The November 20 Decision waived any provisions that could otherwise support rejection of the amended application because those materials were not included in that filing. Id. at 6 n.12 (citing waiver authority and precedent). It also directed LPPC to serve on the entities listed in § 1151.2(a) copies of all LPPC filings in this docket that post-date the amended application and assigned an administrative law judge to address any discovery disputes. Id. at 13-15.

¹ As noted in the November 20 Decision, there was no indication in the record that a copy of the amended application had been served on the entities listed in 49 C.F.R. § 1151.2(a), which is required to render an application complete. Nov. 20 Decision, slip op. at 13. Additionally, the contents of the amended application were not fully verified. Id. at 12.

On November 30, 2023, LPPC filed a certificate pursuant to § 1151.3(a)(16) stating that the service requirements of § 1151.2(a) had been met, together with the requested verification, a copy of the operative agreement, and a second certificate of service certifying that these documents had been served on the entities listed in § 1151.2(a) on November 29, 2023. On December 1, 2023, LPPC filed a supplemental certificate of service to clarify that LPPC had also served copies of all of its post-January 4, 2023 filings on these entities on November 29, 2023. As LPPC has complied with the requirements described in the November 20 Decision, the Board will conditionally accept LPPC's amended application. LPPC's request for discovery relating to valuation may move forward under the process specified in the November 20 Decision.²

As directed in the November 20 Decision, the parties are reminded to notify the Board in writing upon the completion of discovery. See Nov. 20 Decision, FD 36447, slip op. at 15, 17. LPPC will have 45 days from the date of that notice to file and serve revised valuation calculations and supporting evidence for its amended application, if desired (and shall file and serve notification if no changes are required). Upon the completion of these steps, notice of LPPC's amended feeder line application will be published in the Federal Register and a procedural schedule will be issued. Id.

It is ordered:

1. The amended feeder line application is conditionally accepted.
2. LPPC's request for discovery relating to valuation may proceed under the process specified in the November 20 Decision.
3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

² See Nov. 20 Decision, FD 36447, slip op. at 14, 17 (directing the parties to (i) meet and confer on the scope of discovery necessary for LPPC to develop a sound valuation assessment and (ii) report to the administrative law judge on any remaining disputes within 30 days after the service date of a decision conditionally accepting the amended application).