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ENTERED
Office of Proceedings
July 5, 2024
Part of
Public Record

July 5, 2024

Via Electronic Filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: Finance Docket No. 36447, Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana

Dear Ms. Brown:

On June 27, 2024, Delta Southern Railroad, Inc. (“DSRR”) filed a Motion to Dismiss and for Attorneys’ Fees with respect to the Amended Feeder Line Application in this proceeding. Lake Providence Port Commission (“LPPC”), the Applicant, intends to reply within the time permitted for doing so under the Board’s rules, i.e., by July 17, 2024.

On July 3, 2024, DSRR submitted the Amended Judgment and Order issued by the Sixth Judicial District of East Carroll Parish, Louisiana, which was signed by Judge Boddie on June 26, 2024 and entered by the Clerk on June 27, 2024. By its terms, the Amended Judgment and Order does not require that the Amended Feeder Line Application herein be dismissed; rather, if it were to remain in effect, it would limit LPPC to acquiring that portion of the rail Line at issue in this proceeding in East Carroll Parish, Louisiana.

In any event, also on July 3, 2024, LPPC filed an appeal of that Amended Judgment and Order (styled as a “Motion for Suspensive Appeal”) in the same Court, the effect of which, if ordered by Judge Boddie, would be to suspend the effectiveness of the Amended Judgment and Order during the pendency of the appeal (to be heard by the Louisiana Second Circuit Court of Appeal). A copy of

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that Motion is enclosed herewith. When Judge Boddie acts in response to the Motion for Suspensive Appeal, LPPC will submit such order herein.

Also on July 3, 2024, the Northeast Louisiana Multimodal District (“NELMMD”) and LPPC filed a Petition for Declaratory Judgment in the Sixth Judicial District of Tensas Parish, Louisiana, the effect of which, if granted, would be to declare that LPPC has the requisite authority to pursue the Amended Feeder Line Application herein, pursuant to the statutory authority of the NELMMD to acquire property, including rail-related property, in four Louisiana Parishes, including East Carroll and Madison Parishes, the Parishes in which the rail Line at issue herein is located. A copy of the Petition for Declaratory Judgment is also enclosed herewith. When the Sixth Judicial District of Tensas Parish acts in response to the Petition for Declaratory Judgment, LPPC will submit such order herein.

Both the appeal and the filing of the Petition for Declaratory Judgment provide independent bases for the Board to continue with its consideration of the Amended Feeder Line Application while the Louisiana courts determine the extent of LPPC’s and NELMMD’s statutory authority. LPPC is convinced that Judge Boddie’s Amended Judgment and Order will be overturned on appeal but, in any event, that dispute may become moot if, as LPPC expects, the Petition for Declaratory Judgment filed by NELMMD and LPPC is granted.

In any event, LPPC’s Reply, to be filed herein by July 17, 2024, will demonstrate that the Motion to Dismiss and for Attorneys’ Fees should be denied, or in the alternative held in abeyance pending the above-described appeal. In the interim, however, the Board should not be concerned, despite DSRR’s argument for expedited consideration, that the parties herein are expending significant sums pursuing relief herein. In fact, only LPPC needs to expend such sums at the present time, by submitting its valuation testimony (which was submitted today). Under the Board’s rules, the Board is now to determine if that testimony complies with the Board’s requirements (which we are convinced it does) and, if so, to issue a procedural order within 30 days establishing a formal proceeding for consideration of the Amended Feeder Line Application, with a schedule for responsive evidence and argument by DSRR, and rebuttal by LPPC.

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Accordingly, the Board should not grant expedited consideration of the Motion to Dismiss and for Attorneys' Fees filed by DSRR herein.

Respectfully submitted,

Richard H. Streeter

Michael F. McBride

/s/ Richard H. Streeter

/s/ Michael F. McBride

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Law Office Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016

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Van Ness Feldman, LLP
2000 Pennsylvania Ave., N.W.
Suite 6000
Washington, D.C. 20006

Cc (w/attachments): All Parties on Service List

Attachment A

Motion for Suspensive Appeal

DELTA SOUTHERN RAILROAD, INC.

STATE OF LOUISIANA

VERSUS

PARISH OF EAST CARROLL

LAKE PROVIDENCE PORT
COMMISSION, WYLY GILFOIL,
MARK BUNTYN, ROGER CLEMENT,
JERRY KING, FRANCIS LENSING,
KARVAN POWELL, AND
JAMES THOM, IV.

SIXTH JUDICIAL DISTRICT

CIVIL DOCKET NO. 23740

DIVISION B

FILED: _____

BY: _____

CLERK

MOTION FOR SUSPENSIVE APPEAL

NOW INTO COURT, through undersigned counsel, come Defendants, LAKE PROVIDENCE PORT COMMISSION ("LPPC"), WYLY GILFOIL, MARK BUNTYN, ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND JAMES THOM, IV., ("Defendants"), who, pursuant to Art. 2121 of Louisiana Code of Civil Procedure, moves this Honorable Court to grant it a Suspensive Appeal from the Judgment of June 19, 2024 and the Amended Judgment of June 26, 2024, regarding LPPC's authority to act outside of East Carroll Parish, Louisiana, without the need to provide advanced costs, bond, or security (R.S. 13:4581), returnable unto the Louisiana Second Circuit Court of Appeal within the applicable delays fixed by law.

Respectfully submitted:

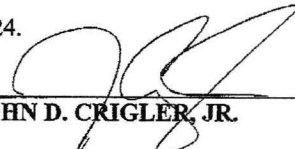
By: 

JOHN D. CRIGLER, JR.
BISHOP PAXTON CRIGLER & MOBERLEY
A Professional Law Corporation
124 Hancock Street
Post Office Box 97
Saint Joseph, Louisiana 71366
Phone: (318) 766-4892
Facsimile: (318) 766-3945

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that copies of the foregoing Motion for Suspensive Appeal has this date been forwarded to all known counsel of record by email transmission and by U.S. mail, properly addressed and postage prepaid.

St. Joseph, Louisiana, this 3 day of July, 2024.



JOHN D. CRIGLER, JR.

DELTA SOUTHERN RAILROAD, INC.

STATE OF LOUISIANA

VERSUS

PARISH OF EAST CARROLL

**LAKE PROVIDENCE PORT
COMMISSION, WYLY GILFOIL,
MARK BUNTYN, ROGER CLEMENT,
JERRY KING, FRANCIS LENSING,
KARVAN POWELL, AND
JAMES THOM, IV.**

SIXTH JUDICIAL DISTRICT

CIVIL DOCKET NO. 23740

DIVISION B

FILED: _____

**BY: _____
CLERK**

ORDER

CONSIDERING the Motion for Suspensive Appeal filed by Defendants:

IT IS HEREBY ORDERED that a Suspensive Appeal be and is hereby granted to Defendants from the Judgment signed on June 19, 2024 and Amended Judgment signed on June 26, 2024, without the necessity of posting bond or other security or advanced payment of costs, returnable to the Louisiana Second Circuit Court of Appeal on the _____ day of _____, 2024.

JUDGMENT READ, RENDERED AND SIGNED in chambers at _____,
Louisiana this day ____ of _____, 2024.

JAMES H. BODDIE, JR., JUDGE AD HOC

Attachment B

Petition for Declaratory Order

NORTHEAST LOUISIANA
MULTIMODAL DISTRICT

STATE OF LOUISIANA

AND

PARISH OF TENSAS

LAKE PROVIDENCE PORT
COMMISSION

TO: THE PUBLIC

#24,827A

SIXTH JUDICIAL DISTRICT

FILED:

July 3, 2024 @ 2:02 PM

BY:

Cheryl Chee

CLERK

PETITION FOR DECLARATORY JUDGMENT

The Petition of **NORTHEAST LOUISIANA MULTIMODAL DISTRICT** (hereinafter referred to as "MMD") and **LAKE PROVIDENCE PORT COMMISSION** (hereinafter referred to as "LPPC") respectfully represents as follows:

1.

The MMD is a railroad development district comprised of four (4) Parishes (Concordia, Tensas, Madison, and East Carroll), and created pursuant to La. R.S. 33:140.71, et seq.

2.

The MMD was formed for the purpose of promoting and encouraging development of rail service in and between the four Parishes identified above.

3.

The MMD is endowed with all powers necessary or convenient for the carrying out of its objects and purposes. Such powers include, but are not limited to, the power:

[t]o acquire, whether by purchase, expropriation, exchange, gift, lease, or otherwise, and to construct and improve, maintain, equip, and furnish, one or more railway development project(s), including all real and personal properties which the board of commissioners may deem necessary in connection therewith. La. R.S. 33:140.73.

4.

Thus, the MMD is explicitly authorized to take the actions identified in paragraph three, including, but not limited to, the establishment, maintenance, and operation of a railroad.

5.

For railroad development, the MMD is specifically authorized to acquire property for railroad development projects, by various means, all in accordance with La. R.S. 33:140.74(B)(1).

6.

The MMD is authorized to enter into any cooperative financing associated with railroad development between or among the district and the State, any of its local governmental subdivisions, political corporations or public benefit corporations, the United States, or its

agencies, or any public or private association, corporation, or individual. La. R.S. 33:140.74 (B)(5)(a).

7.

Furthermore, the MMD is specifically authorized to enter into any cooperative development between or among the district and the State, any of its local governmental subdivisions, political corporations or public benefit corporations, the United States, or its agencies, under the Railroad Revitalization and Regulatory Act, or any public or private association, corporation, or individual. La. R.S. 33:140.74 (B)(5)(b).

8.

Thus far, the LPPC has requested and received funding or funding commitments in excess of forty million dollars (\$40,000,000.00) from the State of Louisiana to finance the port and railroad improvement project (hereinafter referred to as "the project") described below.

9.

The project consists of the attempted acquisition of right of ways and reconstruction of the line of railroad between MP 454.8 at the Arkansas/Louisiana State boundary line and MP 651.6 near Vidalia, Louisiana in order to better serve the ports within all four parishes.

10.

This project is related to and has thus far been supported by State Project Numbers H.014377, H.015636, H.016015, and H. 016016.

11.

On October 25, 2022, MMD (formerly the Northeast Louisiana Railroad Development District) and LPPC entered into a cooperative development agreement as authorized by La. R.S. 33:140.74 (B)(5)(a) and La. R.S. 33:140.74 (B)(5)(b).

12.

The current cooperative development agreement between the MMD and LPPC authorizes the LPPC to utilize the MMD's authority to acquire right of ways, as well as property for railway development projects in all four parishes that comprise the MMD.

13.

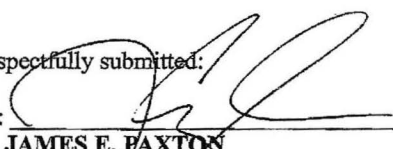
In return, the cooperative development agreement between the MMD and LPPC authorizes the MMD to utilize the funding and funding commitments the LPPC has obtained in order to develop the railroad project within its four Parishes (Concordia, Tensas, Madison, and East Carroll.)

Through the joint use of funds secured by the LPPC and the authority granted to the MMD to construct, improve, maintain, and equip railroad development projects in Concordia, Tensas, Madison, and East Carroll Parishes, the LPPC has the authority to acquire a line of railroad in Madison Parish on behalf of the MMD. *See* La. R.S. 33:1324.

WHEREFORE, the MMD and LPPC pray that, pursuant to LA C.C. Pr. Art. 1871, et seq., this court enter a declaratory judgment in favor of petitioners as follows:

1. A declaratory judgment in favor of petitioners determining that the Agreement entered into and between the MMD and the LPPC is valid and binding in accordance with the Local Services Law pursuant to La. R.S. 33:1321, et seq.; and
2. A declaratory judgment in favor of the petitioners ordering that, pursuant to the Agreement entered into between MMD and the LPPC, the LPPC is authorized to act on behalf of the member Parishes of the MMC to seek authority from the Surface Transportation Board, pursuant to the provisions of 49 U.S.C. § 10907, to acquire the segment of the line of railroad between milepost 488.61 at the East Carroll Parish/Madison Parish Boundary and milepost 498.44 from Delta Southern Railroad, Inc.

Respectfully submitted:

By: 

JAMES E. PAXTON

JOHN D. CRIGLER, JR.

BISHOP PAXTON CRIGLER & MOBERLEY

A Professional Law Corporation

124 Hancock Street

Post Office Box 97

Saint Joseph, Louisiana 71366

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Facsimile: (318) 766-3945

PLEASE SERVE:

Delta Southern Railroad, Inc.
Through registered agent:
Corporation Service Company
450 Laurel Street, 8th Floor
Baton Rouge, Louisiana 70801

**OTHER INTERESTED PARTIES TO BE NOTIFIED VIA UNITED STATES
POSTAL SERVICE MAIL AND ELECTRONIC MAIL**