

52212
EB

SERVICE DATE – AUGUST 2, 2024

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 places this matter in abeyance in light of recently filed state court actions that may impact this proceeding.

Decided: August 1, 2024

This decision places the proceeding in abeyance pending the resolution of state court litigation relating to the authority of Lake Providence Port Commission (LPPC) under Louisiana state law to proceed with its request for a Board-ordered sale of a rail line, a portion of which lies outside the boundaries of East Carroll Parish, La. To give effect to that abeyance, this decision also waives the 30-day deadline under 49 C.F.R. § 1151.2(b) for determining whether an amended feeder line application filed by LPPC should proceed to publication in the Federal Register.

BACKGROUND

This proceeding involves efforts by 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 established in early 2021. On August 23, 2022, the Board granted LPPC's request to file an amended application, and on January 4, 2023, LPPC filed an amended feeder line application seeking to acquire DSR's entire line. Following an unsuccessful challenge by DSR to the amended application's completeness and LPPC's satisfaction of certain technical requirements,² the Board conditionally accepted LPPC's amended application. Lake Providence Port Comm'n—Feeder Line Appl.—Line of

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).

² See Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (Nov. 2023 Decision), FD 36447, slip op. at 6-13 (STB served Nov. 20, 2023).

Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447 (STB served Dec. 11, 2023). Thereafter, discovery relating to valuation moved forward, and on May 29, 2024, LPPC served notice that valuation discovery was completed as of that date.

On June 27, 2024, DSR filed a motion to dismiss this proceeding based on information that came to DSR’s attention during the course of discovery. (Mot. 2, June 27, 2024.)³ DSR asserts that the amended feeder line application impermissibly seeks to dispossess DSR of property located outside East Carroll Parish, La., as LPPC’s powers are limited by state law to actions within the boundaries of East Carroll Parish. (Id.) DSR contends that dismissal is therefore warranted because LPPC lacks authority to pursue the amended application. (Id. at 1-2.) Attached to the motion is a state court judgment and order, filed June 24, 2024, ordering LPPC to “cease its *ultra vires* actions and discontinue pursuit of its feeder line application [with respect to lines] that exist outside the Parish of East Carroll.” (Id. at 3, Attach. A at 1.) On July 3, 2024, DSR notified the Board of an amended judgment and order, filed by the state court on June 26, 2024, which states that LPPC must “cease its *ultra vires* actions and discontinue its pursuit of ownership or control of property outside of East Carroll Parish in its feeder line application before the [STB]” (DSR Letter 1, July 3, 2024; see Am. Judgment & Ord. 2 (attached thereto).)

On July 5, 2024, LPPC filed two submissions. The first submission (Filing ID 308449) is a letter attaching two filings made by LPPC on July 3, 2024, in state court proceedings:

- A “motion for suspensive appeal” that, if granted by the state district court judge, LPPC states, would suspend the effectiveness of the Amended Judgment and Order [attached to DSR’s July 3, 2024 letter and described above] during the pendency of the appeal (which, LPPC states, will be heard by the Louisiana Second Circuit Court of Appeal).
- A petition for declaratory judgment, filed by LPPC and an entity known as the Northeast Louisiana Multimodal District (NELMMD) in the Sixth Judicial District of Tensas Parish, La. LPPC contends that the declaratory judgment, if granted, would hold that LPPC has the requisite authority to pursue the amended feeder line application “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 is located.

(LPPC Letter 1-2, July 5, 2024; see id. Attachs. A & B.) LPPC asserts that the appeal and the petition for declaratory judgment “provide independent bases for the Board to continue with its

³ DSR also seeks attorneys’ fees incurred in responding to discovery after January 4, 2023, (Mot. 4-5), and requests expedited consideration of the motion, (id. at 1-2).

consideration of the Amended Feeder Line Application while the Louisiana courts determine the extent of LPPC’s and NELMMD’s statutory authority.” (LPPC Letter 2, July 5, 2024.)⁴

The second submission (Filing ID 308448) provides LPPC’s updated valuation calculations and supporting evidence. (See V.S. of Thomas Crowley & Christena Nielsen, July 5, 2024.) LPPC asserts, in its July 5 letter (Filing ID 308449), that under the agency’s regulations, the Board “is now to determine if that testimony complies with the Board’s requirements . . . 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.” (LPPC Letter 2, July 5, 2024.)

On July 16, 2024, LPPC filed a response to DSR’s motion to dismiss and for attorneys’ fees. LPPC asserts that the motion should be denied or, in the alternative, deferred until LPPC’s statutory authority to acquire rail-related property outside of East Carroll Parish has been clarified. (LPPC Reply 16; see also id. at 1-2 (requesting Board to defer decision until state law issues are clarified), July 16, 2024). DSR filed a surreply on July 22, 2024, which replies to LPPC and asserts, among other things, that, if not dismissed, this proceeding should be stayed while state law claims are addressed. (DSR Surreply 5 n.4, 7, July 22, 2024.)⁵

DISCUSSION AND CONCLUSIONS

The state court litigation described in the parties’ recent filings raises substantive questions about whether LPPC has the requisite authority under state law to seek a forced sale of DSR’s rail line and related property located outside of East Carroll Parish. Resolution of these state law issues is critical to a decision about whether the Board should continue to consider LPPC’s feeder line application. Therefore, the Board will hold this proceeding in abeyance.

Abeyance is appropriate where it would promote efficiency and not be fundamentally unfair to any party. E.g., N. Cnty. Transit Dist.—Pet. for Declaratory Ord., FD 36433, slip op. at 11 (STB served May 23, 2023); N. Am. Freight Car Ass’n v. Union Pac. R.R., NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017). Abeyance would promote efficiency here because resolution of the issues raised in the parties’ state court litigation will inform the Board’s assessment of DSR’s pending motion to dismiss which, in turn, will determine whether the pending feeder line application is permitted to proceed. Accord, e.g., N. Cnty. Transit Dist., FD 36433, slip op. at 2, 10-11 (ordering abeyance where resolution of state law issues in ongoing state court actions would promote efficiency by resolving the dispute or informing the Board’s analysis). Abeyance would not be fundamentally unfair to any party, because obtaining answers to the state law issues presented in the parties’ state court litigation will resolve threshold issues related to LPPC’s authority under state law to pursue the feeder line application. See, e.g., N.

⁴ LPPC also opposed DSR’s request for expedited consideration and stated that it intended to respond to DSR’s motion within the time prescribed for replies under the Board’s rules. (LPPC Letter 1, 3, July 5, 2024.)

⁵ DSR supplemented and corrected its surreply on July 25, 2024.

Cnty. Transit Dist., FD 36433, slip op. at 11 (citing Ballard Terminal R.R.—Pet. for Declaratory Ord., FD 36261, slip op. at 5 (STB served June 27, 2019)).⁶

Accordingly, the Board will hold this proceeding in abeyance pending resolution of the state court actions described above and further order of the Board. The parties will be directed to submit any merits decision or other relevant decision in those actions to the Board within five days of its issuance.

Under 49 C.F.R. § 1151.2(b), the Board, through the Director of the Office of Proceedings, will either accept a feeder line application by publishing a notice in the Federal Register no later than 30 days after the complete application is filed, or serve a decision rejecting the application that explains specifically why the application was incomplete.⁷ However, the Board may 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, e.g., 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 2 (STB served Feb. 2, 2023); 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). For the same reasons supporting abeyance, and in light of the approaching decisional deadline, the Board finds good cause to waive the 30-day deadline in 49 C.F.R. § 1151.2(b).

It is ordered:

1. This proceeding is held in abeyance pending further order of the Board.
2. The parties are directed to submit any merits or other relevant decision by the state courts in the above-referenced actions within five days of issuance.
3. The 30-day deadline under 49 C.F.R. § 1151.2(b) for publishing notice of LPPC’s amended feeder line application in the Federal Register (or, alternatively, serving a decision explaining why it is considered incomplete) is waived.
4. This decision is effective on its service date.

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

⁶ The Board also notes that both parties have initiated court actions concerning the resolution of their dispute about LPPC’s authority to proceed with the pending feeder line application under state law, and that both parties support deferral pending resolution of the state law issues.

⁷ The feeder line regulations at part 1151 require applicants to serve specified public and private entities (49 C.F.R. § 1151.2(a)), and state that to be complete, an application must, among other things, be properly served (49 C.F.R. § 1151.2(b)(1)). The cover letter accompanying LPPC’s updated valuation evidence refers to, but does not include, a service list, so the Board is unable to determine whether proper service was made. LPPC will be required to clarify this point and, if necessary, take corrective action should the feeder line application be permitted to proceed.