

SERVICE DATE – SEPTEMBER 1, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 33802

DELTA SOUTHERN RAILROAD, INC.—ACQUISITION AND EXEMPTION—
DELTA SOUTHERN RAILROAD COMPANY

Decided: September 1, 2023

In 1999, Delta Southern Railroad, Inc. (DSR) filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Delta Southern Railroad Company (DSRC) and to operate approximately 132.78 miles of rail line, including a line described as extending from milepost 408.9 in or near McGehee, Ark, south to milepost 489.44 in or near Tallulah, La. Notice of the exemption was served and published in the Federal Register on October 20, 1999 (64 Fed. Reg. 56,572) (the Notice), and the exemption became effective on October 31, 1999. Later, through a series of transactions, ownership of, and operating rights on, the segment from milepost 408.9 to milepost 471.0 were transferred to various other entities.¹ Thus, DSR now owns and operates only the segment from milepost 471.0 to the southern terminus.

¹ See Delta S. R.R.—Aban. Exemption—Between Lake Vill., Ark., & Shelburn, La., AB 384 (Sub-No. 1X) (STB served Apr. 7, 2005) (terminating the offer of financial assistance (OFA) process, vacating the decision postponing effective date of authorization to abandon the segment between milepost 433.0 and milepost 463.0, and noting that the previously participating offerors, led by Southeast Arkansas Economic Development District (SEAEDD) and Lake Providence Port Commission (LPPC), intended to pursue acquisition of that segment outside the OFA process). As noted in decisions relating to other transactions involving these parties, SEAEDD thereafter acquired the segment of that former line between milepost 433.0 and milepost 454.8, and LPPC acquired the segment between milepost 454.8 and milepost 463.0, in transactions not subject to Board authorization. See Delta S. R.R.—Aban. Exemption—in Desha & Chicot Cntys., Ark., AB 384 (Sub-No. 3X), slip op. at 1 & n.2 (STB served Mar. 25, 2011); N. La. & Ark. R.R.—Acquis. & Operation Exemption—Line of Lake Providence Port Comm’n, FD 35609, slip op. at 1 & n.1 (STB served Oct. 5, 2012); Verified Notice 3, Sept. 20, 2012, N. La. & Ark. R.R., FD 35609. Acquisitions of the remaining segments of DSR’s line between milepost 408.9 and milepost 471.0 were completed through the OFA process in, respectively, Delta S. R.R.—Aban. Exemption—in Desha & Chicot Cntys., Ark., AB 384 (Sub-No. 3X) (STB served May 19, 2011) (authorizing LPPC and Arkansas Shortline Railroads, Inc. (as guarantor for North Louisiana & Arkansas Railroad, Inc. (NLA)) to acquire the segment between milepost 408.9 and milepost 433.0 and authorizing NLA to operate it) and Delta S. R.R.—Aban. Exemption—in E. Carroll Parish, La., AB 384 (Sub-No. 2X) (STB served June 7, 2011) (authorizing LPPC to acquire and operate the segment between milepost 463.0 and

In a separate proceeding currently before the Board, issues were identified relating to discrepancies in the description of the southern terminus of the line and DSR's authorization to operate south of milepost 489.44, the southern milepost identified in the Notice. See 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 8-9 (STB served Aug. 23, 2022). The Board directed DSR to address those issues and provide specified information. Id. at 9.

DSR responded to the Board's order in Docket No. 36447,² and thereafter filed a petition in this docket asking the Board to modify the Notice to correct a milepost error. In its petition, DSR states that the verified notice filed in 1999 identified the southern terminus of the line in question as "MP 489.44 in or near Tallulah, LA," when in fact the intended designation was milepost 498.44, the actual southern end and point of connection with Kansas City Southern Railway Company (now Canadian Pacific Kansas City, or CPKC). (DSR Pet. 4.) DSR points out that the verified notice reflects a clear intent to acquire and operate the entire line to Tallulah, at milepost 498.44, and asserts that the reference to "MP 489.44" was a transcription error in which the "8" and the "9" in the southern milepost designation were inadvertently transposed. (Id. at 4-6 (presenting supporting evidence and argument).) DSR asks that the Notice be corrected to reflect that the southern milepost of the line is located at milepost 498.44, and that the total number of route miles acquired and operated by DSR in 1999 pursuant to this proceeding was 141.78 miles. (Id. at 5.)

LPPC, the applicant in Docket No. 36447, filed a reply to the petition on September 26, 2022. LPPC states that DSR's petition to correct the milepost error "fails to consider the fact that [DSRC] never acquired operating authority from the [agency] to operate beyond MP 498.4." (LPPC Reply 1-2.) However, as LPPC notes, DSRC acquired the real property and tracks between milepost 498.4 and milepost 651 that had been authorized for abandonment in 1988, (id. at 2). Additionally, as explained in the petition, DSR has investigated and determined that milepost 498.44 more accurately identifies the southern terminus of the line (DSR Pet. 5 n.3). DSR also notes that no party can claim prejudice from the requested correction, (id. at 6), and relatedly, LPPC states that it will abide by the milepost designation established by the Board, (LPPC Reply 3).

Accordingly, the Notice will be modified to reflect that the southern terminus of the line over which DSR acquired ownership and operating authority is located at milepost 498.44 at

milepost 471.0). In separate proceedings in 2012, NLA was authorized to lease and operate the segments between milepost 433.0 and milepost 454.8 and between milepost 454.8 and milepost 471.0. See N. La. & Ark. R.R.—Lease & Operation Exemption—Line of Se. Ark. Econ. Dev. Dist., FD 35608 (STB served Mar. 28, 2012); N. La. & Ark. R.R.—Acquis. & Operation Exemption—Line of Lake Providence Port Comm'n, FD 35609 (STB served Oct. 5, 2012).

² (See DSR Response to Information Requests, Sept. 2, 2022, Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447.)

Tallulah, and that the total number of route miles originally acquired and operated by DSR pursuant to this proceeding was 141.78 miles.

It is ordered:

1. This proceeding is reopened.
2. The request to correct the Notice served and published on October 20, 1999, is granted, and the Notice is modified, nunc pro tunc, to reflect that the correct milepost designation for the southern terminus of the line is milepost 498.44 and the total mileage acquired was 141.78.
3. This decision is effective on its date of service.

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