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November 10, 2020

Ms. Cynthia Brown, Section Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
November 12, 2020
Part of
Public Record

Re: FD 36447, Lake Providence Port Commission—Feeder Line Application—Line of
Delta Southern Railroad Located in East Carroll and Madison Parishes,
Louisiana

Dear Ms. Brown:

Accompanying this letter for filing in the referenced docket is a “Petition Seeking Expedited Consideration of Feeder Line Application and the Acceptance of the Application Prior to the Determination of the Constitutional Minimum Value of the Property that is the Subject of the Application” is also included. The Application is being filed simultaneously.

Lake Providence Port Commission, in its capacity as a political subdivision of the State of Louisiana, also seeks a waiver of the filing fees pursuant to 49 C.F.R. § 1002.2(e). That section provides that it is the general policy of the Board to waive filing fees for an application or other proceeding filed by a “state or local government entity.” LPPC is not a quasi-government corporation or a government subsidized transportation company.

If you have any questions, please give me a call.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
Counsel for LPPC and SEAEDD

RHS:rs

Cc: Wyly Gilfoil, Director Lake Providence Port Commission
John.Marino@ContinentalRail.us

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 36447
LAKE PROVIDENCE PORT COMMISSION—FEEDER LINE
APPLICATION—LINE OF DELTA SOUTHERN RAILROAD
LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

**PETITION SEEKING EXPEDITED CONSIDERATION
OF FEEDER LINE APPLICATION AND THE ACCEPTANCE
OF THE APPLICATION PRIOR TO THE DETERMINATION
OF THE CONSTITUTIONAL MINIMUM VALUE OF THE
PROPERTY THAT IS THE SUBJECT OF THE APPLICATION**

Lake Providence Port Commission (LPPC) and Southeast Arkansas Economic Development District (SEAEDD), by and through counsel, request the Board to expedite consideration of the Feeder Line Application that is being simultaneously filed by LPPC. The Feeder Line Application is inextricably linked to the “*Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project*” (“the Project”). DOT has determined that this is a Nationally Significant Freight and Highway Project.

- I. Given the Unique Situation that is Presented, Expedited Consideration Is Consistent With the Public Convenience and Necessity.

In August 2019, SEAEDD was awarded an INFRA Grant by the United States Department of Transportation (“DOT”) in the amount of \$10,516, 259. The Grant funds are to be used by the unique public-private partnership composed of SEAEDD, three public ports (Yellow Bend Port, Port of Lake Providence, and Madison Parish Port) and two private short line railroads, the North Louisiana & Arkansas Railroad (NLA) and Delta Southern Railroad (DSR)

to re-develop a multimodal freight corridor located along a 100-mile-long section of the Mississippi River in one of the most severely economically distressed regions of the United States.

SEAEDD, as the grantee and grant administrator, is charged with the responsibility of meeting the terms, conditions, and obligations of the Grant Agreement of August 2019.¹ If it fails to meet a “term, condition *or* conditions” (emphasis added) of the Grant Agreement, The Federal Railroad Administration (FRA) has the right to terminate the Federal Contribution.² Termination of the Federal Contribution would likely destroy any chance that the Corridor would ever be reopened.

The request for expedited consideration is based on the following factors. At the outset, the FY 19-20 INFRA Grant Application projected the reconstruction of the entire Corridor would cost \$59,438,029. SEAEDD requested \$25,589,421 of Federal Funding. When it was notified that DOT would only grant \$10,516,259, SEAEDD and its Partners were required within one day to commit that they would cover the shortfall of \$15,173,162 with public and private funds. Based on the Partners’ unanimous commitment, the INFRA Grant was awarded.

LPPC’s decision to acquire the segment of the line that is the subject of this Feeder Application was compelled by DSR’s belated confirmation on

¹ The Agreement has not yet been finalized by the Federal Railroad Administration (FRA). A copy of the October 2020 INFRA Terms and Conditions, Attachment 1 to the Grant Agreement, is attached to the Feeder Application as Exhibit No. __.

² *Id.* at ____.

August 21, 2020 that it would not commit to the rehabilitation of this portion of its line. Its refusal to commit to rehabilitate this segment of its line clashes with the Grant Applicants' expressed intent *and* DOT's understanding that the INFRA Grant, in conjunction with other public and private funds, would to be used to *rehabilitate the entire McGehee-Tallulah Railroad Corridor*. Because SEAEDD was awarded the Grant with the understanding that it would guarantee that the *entire* Corridor will be reopened, there is no avoiding the conclusion that DSR, by refusing to rehabilitate this segment of the Corridor, would prevent the reopening of the Corridor and could trigger the loss of Federal funds.

In reaching a decision, the Board should be aware that DSR was not asked to pay any matching funds to utilize the Grant Funds to rehabilitate this portion of its Line. Its "share of matching funds" is being paid by LPPC and the Madison Parish Port Commission (MPPC). Furthermore, DSR was the only entity in the unique Public-Private-Partnership that pursued the INFRA Grant that did not pay for any of the grant filing costs. NLA has agreed to pay \$300,000 of private funds to match the Federal Contribution, while LPPC and MPPC are paying millions of dollars via the Louisiana DOT Port Program.

As the entirety of the INFRA Application and the subsequent Grant reflects, the rehabilitation of that 20-mile stretch of the Corridor is essential. Because a portion of that segment is impassable, it must be rehabilitated before any rail service can be offered over it. Of course, if it is not rehabilitated, it will be impossible to conduct rail carrier operations over the entire Corridor

Because the failure to commit to the full rehabilitation of the Corridor could result in the loss of INFRA Grant funding, which would likely lead to the ultimate abandonment of the Corridor, LPPC decided that it would acquire the segment and assume the financial responsibility to re-open this segment for future rail service.

Given the full support of the Louisiana and Arkansas Congressional delegations, members of the Louisiana and Arkansas State Legislations, shippers and Ports, as well as the Union Pacific and the Kansas City Southern, for the re-development of the entire Corridor, anything that would result in the loss of the INFRA Grant funds would be contrary to the Public Convenience and Necessity. Because the INFRA Grant imposes time restraints on SEAEDD, which cannot unilaterally modify any of the terms and conditions of the Grant, the Board is urged to give LPPC's expedited consideration. FRA has recently agreed to accept LPPC as the replacement for DSR should the Board authorize LPPC to acquire the segment of track at issue herein.

- II. Because of DSR's Unexpected, Unilateral Decision, and because the Corona Virus Pandemic has Materially Interfered with the Ongoing Effort to Determine the Constitutional Minimum Value, the Board is Requested to Accept the Feeder Application Based on LPPC's Commitment to Pay the Constitutional Minimum Value.

LPPC has retained RMI Valuation (RMI) to determine the Constitutional Minimum Value (CMV). Due to prior commitments and the pandemic, RMI has not yet been able to complete the appraisal. It is anticipated that the CMV may be available within the next 45 days.

LPPC hereby commits to the payment to DSR of the CMV of the segment of track between MP 471 and MP 491. As explained in the Feeder Application, no rail common carrier rail service has been provided for the past three years over the segment of track that LPPC seeks to acquire from DSR. During this period of time, DSR has declined to accept available cars in interchange service over the segment.

Given the need to finalize all arrangements with FRA, LPPC requests the Board to begin its review of the Feeder Application upon its receipt of the Application and related documents. These documents, which include SEAEDD's 2019 INFRA Grant Application that details the importance of the Project, will total several hundred pages. Given the request for expedited consideration, LPPC respectfully submits that the delayed submission of the CMV calculations is consistent with the Public Convenience and Necessity and the National Transportation Policy. The MRI study will be filed as soon as it is completed.

III. Waiver of the Filing Fee.

As explained in the transmittal letter that accompanies the Application, and as reflected by past Board decisions involving LPPC's prior acquisition of segments of the rail corridor from DSR, LPPC is a political subdivision of the State of Louisiana. It therefore seeks a waiver of the filing fees pursuant to 49 C.F.R. § 1002.2(e). That section provides that it is the general policy of the Board to waive filing fees for an application or other proceeding filed by a "state or local government entity."

Respectfully submitted,

/s/ Richard H. Streeter

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Counsel for Lake Providence Port Commission
Southeast Arkansas Economic Development
District

November 10, 2020

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that on November 12, 2020, true copies of the following documents were served by U.S.P.S., postage prepaid to the following:

John Molino
Delta Southern Railroad c/o
Continental Rail
2929 E. Commercial Blvd.
Suite PH-D
Fort Lauderdale, FL 33308

Louisiana Public Service Commission
Galvez Building
12th Floor
602 North Fifth St.
P.O. Box 91154 Baton Rouge, LA 70821-9154

East Carroll Parish
400 First St.
Lake Providence, LA 71254

Madison Parish
100 North Cedar St.
Tallulah, LA

Richard H. Streeter

/s/Richard H. Streeter