

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

302655

ENTERED
Office of Proceedings
June 30, 2021
Part of
Public Record

THOMAS J. HEALEY

(312) 252-1505
thealey@fletcher-sippel.com

June 30, 2021

Via E-mail

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

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

Dear Ms. Brown:

In its most recent status report in this proceeding, Delta Southern Railroad, Inc. (“DSR”) acknowledged the receipt of several hundred pages of responsive discovery materials tendered on June 23 by the “Other Parties” – Lake Providence Port Commission (“LPPC”), North Louisiana & Arkansas Railroad (“NLA”), and Southeast Arkansas Economic Development District, Inc. (“SEAEDD”). Counsel for DSR has now reviewed the tendered materials to determine how best to move forward.

DSR is pleased that the Other Parties have managed to locate so many responsive documents, but it is also disappointed with the Other Parties’ unilateral limitation of its obligations to comply with DSR’s discovery requests. For example, DSR had requested, as part of its discovery, that the Other Parties supply a “privilege log” identifying all otherwise-responsive documents withheld from production on the basis of privilege. Counsel for the Other Parties has advised that no such documents had been identified, qualifying his response by adding that “nothing was ever withheld from production that was discovered by NLA, LPPC and SEAEDD when they dug through their files.” When DSR’s counsel, in response, clarified that the privilege log extended to documents exclusively in the possession of legal counsel (if not his clients), the Other Parties’ counsel countered that, “I have fully responded regarding the absence of any document being withheld for attorney-client or work product reasons and will not further

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

Ms. Cynthia T. Brown

June 30, 2021

p. 2

respond.” DSR takes this as Other Counsel’s unilateral decision not to comply fully with DSR’s privilege log request, and DSR is disappointed by it.

While it is conceivable – improbable, but conceivable – that not a single attorney-client communication exists touching on any of the myriad subjects covered in the discovery requests, counsel’s acknowledgement that the obligation to respond to discovery included the obligation for counsel to search his own records for responsive materials could have eliminated any concern about the claim of the absence of privileged communications.

Nevertheless, DSR has elected not to pursue a motion to compel, and deems discovery concluded. Instead DSR will focus its resources on formally responding to LPPC’s ill-conceived feeder line application, if such a response proves to be necessary in light of the still-pending issues of Board-sponsored mediation and DSR’s request for dismissal of the underlying feeder line application.

Very truly yours,

Thomas J. Healey

Thomas J. Healey

TJH/dg

cc: All parties of record