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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Finance Docket No. 36642, *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group Inc. – Control Exemption –Delta Southern Railroad, Inc.*

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the Reply of Patriot Rail et al. to the Request to Postpone Effective Date of the Notice of Exemption and Other Relief that was filed on September 28, 2022, by the Lake Providence Port Commission. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

John M. Scheib
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Richmond, VA 23219
757-916-3511
Attorney for:
Patriot Rail Company LLC, *et al.*

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36642

**PATRIOT RAIL COMPANY LLC, STEELRIVER TRANSPORT VENTURES LLC,
GLOBAL DIVERSIFIED INFRASTRUCTURE FUND (NORTH AMERICA) LP, FIRST
STATE INFRASTRUCTURE MANAGERS (INTERNATIONAL) LIMITED, AND
MITSUBISHI UFJ FINANCIAL GROUP, INC. – CONTROL EXEMPTION --
DELTA SOUTHERN RAILROAD, INC.**

**REPLY TO
REQUEST TO POSTPONE EFFECTIVE DATE OF THE
NOTICE OF EXEMPTION AND OTHER RELIEF**

John M. Scheib
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Attorney for:
Patriot Rail Company LLC, et al.

Dated: October 7, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36642

**PATRIOT RAIL COMPANY LLC, STEELRIVER TRANSPORT VENTURES LLC,
GLOBAL DIVERSIFIED INFRASTRUCTURE FUND (NORTH AMERICA) LP, FIRST
STATE INFRASTRUCTURE MANAGERS (INTERNATIONAL) LIMITED, AND
MITSUBISHI UFJ FINANCIAL GROUP, INC. – CONTROL EXEMPTION --
DELTA SOUTHERN RAILROAD, INC.**

**REPLY TO
REQUEST TO POSTPONE EFFECTIVE DATE OF THE
NOTICE OF EXEMPTION AND OTHER RELIEF**

Patriot Rail Company LLC (“Patriot”), SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP (“GDIF-NA”), First State Infrastructure Managers (International) Limited (“FSIM”), and Mitsubishi UFJ Financial Group, Inc. (“MUFG”), each a non-carrier (collectively, “Patriot Rail”),¹ file this reply to the request of the Lake Providence Port Commission (“LPPC”) to “postpone” the effective date of the Verified Notice of Exemption (the “Notice”) to acquire the Delta Southern Railroad, Inc. (“DSRR”) that was filed by Patriot Rail on September 23, 2022, and other relief that seems to include rejection of the Notice.² The postponement and other relief sought by LPPC is unsupported and unnecessary.

¹ The caption and the foregoing list of entities comprising Patriot Rail identify principal non-carrier entities involved in the proposed control transaction. The corporate control chain was fully disclosed in the Notice of Exemption.

² Reply of Lake Providence Port Comm. And Request to Postpone Effective Date of the Notice of Exemption and Other Relief, *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group Inc.– Control Exemption –Delta Southern Railroad, Inc.*, Finance Docket No. 36642 (filed Sep. 28, 2022) (“LPPC Reply”).

Indeed, the requested postponement or rejection of the Notice would delay the benefits that Patriot Rail will bring to the two DSRR lines. Moreover, LPPC's request for relief has no bearing on the relative rights of the parties in Finance Docket No. 36447.³ Rather, Patriot Rail looks forward to working with LPPC to the benefit of current and future freight users.

The subject Notice relates to Patriot Rail's proposed acquisition of control of DSRR through Patriot's purchase of all of DSRR's issued and outstanding stock.⁴ In its Notice, Patriot Rail discussed how the transaction would advance the public interest, while explaining that the transaction also would not prejudice LPPC's interests.⁵ DSRR would come under the control of a deeply-experienced short line holding company in Patriot Rail, which oversees short line operations throughout the United States. Patriot is now the third largest short line holding company in the United States, controlling 31 Class III carriers in the United States. Patriot Rail is excited to bring its entrepreneurial spirit to the lines of DSRR and to the benefit of current and future customers on those lines.⁶

³ The Board's decision of August 23, 2022, "simply grants LPPC leave to file a full amended application, [and] does not address the merits of those arguments." *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. Located in East Carroll and Madison Parishes, LA*, Finance Docket No. 36447, at n. 14 (STB served Aug. 23, 2022) ("LPPC Feeder Line App."). Further, the Board noted in that decision that "standing alone, LPPC's contentions would not suffice to support acceptance of an amended application to acquire the Lake Providence Line." *Id.*

⁴ Verified Notice of Exemption, *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group Inc.—Control Exemption—Delta Southern Railroad, Inc.*, Finance Docket No. 36642 (filed Sept. 23, 2022) ("Verified Notice of Exemption").

⁵ *Id.*

⁶ *Id.*

The Board should deny LPPC's request for three reasons: (1) LPPC fails to address, much less meet, the Board's stay criteria; (2) regulation is not necessary under Board precedent to warrant rejection of the Notice; and (3) there is no harm to LPPC's ability to file an amended feeder line application – if LPPC decides one is even necessary.

First, LPPC cites no precedent to support its requested relief, nor does it address the four criteria for a stay,⁷ which it calls a “postponement.” Moreover, precedent strongly supports the rejection of any other requested relief, for which LPPC bears the burden.⁸ More specifically, LPPC also does not allege that Patriot Rail's Notice is false or misleading.⁹

Second, LPPC also does not show that regulation is necessary especially in light of the fact that Patriot Rail embraces the prospective opportunity to serve customers on DSRR's lines and that there is no effect on LPPC's ability to file its amended feeder line application in Finance Docket 36447 (subject to DSRR's defenses thereof). The Board has repeatedly held that the

⁷ In deciding a request for stay, the Board considers: (1) whether the party seeking a stay is likely to prevail on the merits; (2) whether the party seeking a stay will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. *City of Alameda*, FD 34798, slip op. at 3 (citing *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

⁸ *Macquarie Infra. Partners V GP, LLC –Acquisition of Control Exemption – Grenada Railroad, LLC, and Florida, Gulf & Atl. R.R., LLC*, STB Finance Docket No. 36566 (Apr. 6, 2022)(“*Macquarie*”)(“A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. [§] 10101.”).

⁹ Compare *James Riffin and Eric Strohmeyer – Acquisition and Operation Exemption – In Rio Grande and Mineral Counties, CO.*, Finance Docket No. 35705 (Jan.11, 2013) (“the nature of the rights being sought is unclear”).

existence of other litigation is immaterial to an exemption.¹⁰ None of the reasons that have supported either a stay or rejection of a notice of exemption are present here.

Third, LPPC remains free to file an amended feeder line application if warranted and supported. Patriot Rail acknowledged in the Notice – “candidly,” as LPPC put it¹¹ – that DSRR’s Lake Providence Branch has been the target of a feeder line application filed by LPPC in Finance Docket No. 36447. Patriot Rail further noted that it will assume responsibility for that matter¹² and that its acquisition of DSRR “does not foreclose either LPP[C] from pursuing a supplemental feeder line application or Patriot Rail from defending against it.”¹³ Furthermore, although the Board recently granted LPPC leave to file an amended complaint in the feeder line application case,¹⁴ as Patriot Rail discussed, it “looks forward to working with the LPP[C] to obviate the need for any further feeder line proceedings.” Accordingly, this transaction in no way would disrupt the “ongoing Feeder Line Application proceeding in which LPPC is attempting to acquire the Lake Providence Branch Line.”¹⁵ In fact, new parties working together may moot the feeder line proceeding.

¹⁰ See e.g., *Macquarie* (“[T]he Chancery Court litigation does not make the verified notice complicated or controversial.”); *City of Alameda--Acquis. Exemption--Alameda Beltline R.R.*, FD 34798, slip op. at 3 (STB served Apr. 3, 2006) (“The fact that [the parties] are litigating the validity of the repurchase option in state court, however, does not make the City’s notice complicated or controversial insofar as use of the exemption is concerned.”).

¹¹ *LPPC Reply* at 3.

¹² *Verified Notice of Exemption* at 3.

¹³ *Id.*

¹⁴ *LPPC Feeder Line App.*, n. 14.

¹⁵ *LPPC Reply* at 1-2.

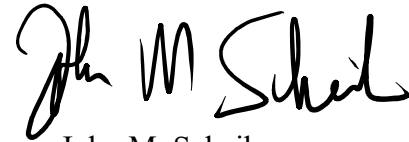
Finally, the Board should not delay this exemption or reject the Notice when it has already expressed skepticism over LPPC's feeder line efforts. Patriot Rail has not been a party to the long history detailed in LPPC's Reply. But Patriot Rail can see that the feeder line proceeding was initiated almost two years ago, and that the proceeding has what LPPC itself describes as a "tortured history."¹⁶ The Board has stated that "standing alone, LPPC's contentions would not suffice to support acceptance of an amended application to acquire the Lake Providence Line."¹⁷ Delaying the effectiveness of this Notice because of a dispute that has already been running for nearly two years (and which faces the unfortunate prospect of being re-started all over again) and over which the agency is skeptical of LPPC's ability to satisfy the public convenience and necessity standards is not in the public interests.

Patriot Rail seeks to assume control of DSRR as soon as possible, and to be a partner to local customers and to LPPC. Patriot Rail is excited anxious to forge a relationship and to discuss our mutual interest in best serving customers in the area. Accordingly, the Board should deny LPPC's unsupported request for the Board to postpone the effective date of the Notice and to reject the Notice, and allow Patriot Rail to acquire control of DSRR in the ordinary course.

¹⁶ *LPPC Reply* at 4.

¹⁷ *LPPC Feeder Line App. at n 14.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Scheib". The signature is fluid and cursive, with the first name "John" and last name "Scheib" being more prominent than the middle initial "M".

John M. Scheib
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Patriot Rail Company LLC, *et*
al.

Dated: October 7, 2022

CERTIFICATE OF SERVICE

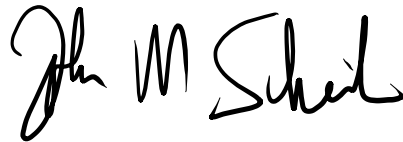
I hereby certify that on October 7, 2022, I sent the foregoing reply to:

Richard H. Streeter
Attorney for Lake Providence Port
Commission
Law Office of Richard H. Streeter
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and

Thomas J. Healey
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which constitutes all parties of record in this matter.

A handwritten signature in black ink, reading "John M. Scheib". The signature is written in a cursive, flowing style with a large initial "J" and "S".

John M. Scheib