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January 13, 2023

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

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the Delta Southern Railroad, Inc.'s Motion to Reject Lake Providence Port Authority's Incomplete Feeder Line Application and for Action to Terminate This Proceeding. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

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757-916-3511

Attorney for:
Delta Southern Railroad, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36447

**LAKE PROVIDENCE PORT COMMISSION – FEEDER LINE APPLICATION – LINE
OF DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND MADISON
PARISHES, LOUISIANA.**

**DELTA SOUTHERN RAILROAD INC.’S MOTION TO REJECT LAKE PROVIDENCE
PORT COMMISSION’S INCOMPLETE FEEDER LINE APPLICATION AND FOR
ACTION TO TERMINATE THIS PROCEEDING**

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Attorney for:
Delta Southern Railroad, Inc.

Dated: January 13, 2023

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ACTION TO TERMINATE THIS PROCEEDING**

Delta Southern Railroad, Inc. (“DSRR”) hereby requests that the Surface Transportation Board (“STB”) reject the incomplete amended feeder line application filed on January 4, 2023, by the Lake Providence Port Commission (“LPPC”) (“Amended Application”). LPPC seems to conflate length with substance. Despite filing hundreds of pages – mostly expressing frustration over a grant process, which is irrelevant to the feeder line standards – LPPC has failed to proffer the evidence necessary to qualify for feeder line relief. In particular, LPPC has failed to provide the information required pursuant to 49 C.F.R. 1151.3(11), including 1151.3(11)(B),¹ despite the STB’s instructions in its August 23, 2022 decision in this docket.

¹ This motion largely focuses on subpart (B) of Section 1151.3(11)(i). DSRR reserves the right to challenge LPPC’s satisfaction of other elements of that regulation on the merits, but believes that LPPC’s failure to meet the requirements of subpart (B) dooms the Amended Application as incomplete.

LPPC has now had more than two years to generate the information that could permit it to plead and prove the detailed evidence consistent with the clear mandates of the feeder line statute and the applicable STB regulations. The fact is that LPPC cannot state a case. It has now become apparent that this feeder line application inappropriately flows from dissatisfaction with prior private-party discussions about a grant where the parties have been unable to reach a meeting of the minds as to use of the proposed funding.

LPPC's meritless campaign should stop. DSRR's new ownership, which on January 9, 2023, closed on its acquisition, is laser-focused on bringing its entrepreneurial energy and spirit to DSRR to grow traffic on both of DSRR's lines. Customers are clearly aware of this unrelated dispute and need certainty so that they and DSRR can have the most constructive conversations to move forward toward a bright future. DSRR believes the public interest is better served if it devotes its time and resources to enhancing DSRR's vitality, rather than devote any further efforts toward this matter, which will include substantial time and costs to take numerous depositions of those who submitted verified statements, serving discovery on LPPC, and so on.

Therefore, in addition to rejecting the Amended Application as incomplete, DSRR respectfully requests that the STB terminate this proceeding, or otherwise issue a show cause order as to why it should not terminate the proceeding given that LPPC continues to fail to meet the basic filing requirements of the applicable statute and regulations.

I. BACKGROUND

A. LPPC'S Initial Application Was Incomplete

This proceeding involves efforts by LPPC to acquire portions of the Tallulah-McGehee rail corridor owned by DSRR, through a STB enforced sale. The initial application, filed on November 12, 2000, in which LPPC sought to acquire only a segment of DSR's Lake

Providence line, was incomplete, but the STB accepted it conditionally upon LPPC correcting the application's deficiencies. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (Dec. 11, 2020). The application was finally accepted on January 15, 2021. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (Jan. 15, 2021).

B. LPPC's Complete Initial Application Failed to State a Case But LPPC Was Permitted to File an Amended Application

The STB established a procedural schedule early in 2021. *Id.* DSRR pursued costly and time-consuming discovery to prepare its response to that application, and, separately, moved to dismiss the proceeding. The substantial failures pointed out by DSRR led the STB to suspend the procedural schedule pending further STB order. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (Mar. 9, 2021).

The STB ordered mediation that was unsuccessful. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (Feb. 9, 2022). Floundering, LPPC then sought leave to file an amended application, which the STB granted in its August 23, 2022 order – basically giving LPPC a “do-over”. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (Aug. 23, 2022)(“*August 23 Decision*”).

Although granting LPPC leave to file an amended application, the STB clearly articulated the requirements for any future LPPC amended application. Specifically, the STB stated:

In addition, the application must include the information specified in 49 C.F.R. § 1151.3, in the form of verified statements, and must contain detailed evidence that permits the Board to find, inter alia, that transportation over the line is inadequate for the majority of shippers who transport traffic over the line (49 C.F.R. § 1151.3(a)(11)(i)(B)), and that the sale of the line will not have a significantly adverse financial effect on DSR (49 C.F.R. § 1151.3(a)(11)(i)(C)), or an adverse effect on the overall operational performance of DSR (49 C.F.R. § 1151.3(a)(11)(i)(D)).

Id. at 6-7. But the STB did not stop there. The STB further instructed LPPC :

- “Rather, as discussed herein, the contents of the amended application must contain the information specified in 49 C.F.R. § 1151.3, which includes information pertaining to the statutory criteria specified in 49 U.S.C. § 10907(c)(1), . . . and must include detailed evidence that permits the Board to find that all of the criteria stated in 49 C.F.R. § 1151.3(a)(11)(i) are satisfied.” *Id.* at n.14.
- “The amended application should consider all shippers that currently use the Southern Segment of DSR’s line to move traffic between the Madison Parish Port and the DSR-KCS interchange at Tallulah.” *Id.* at n.15.
- “[T]he amended application must address the impact that a forced sale of DSR’s entire Lake Providence Line would have on DSR’s financial health and overall operational performance.” *Id.* at n.16.
- “LPPC has submitted numerous filings in this proceeding asserting various arguments on the merits throughout those filings. To ensure the fair and orderly resolution of LPPC’s feeder line request, LPPC must include in its amended application all of the arguments and evidence on which it will rely.” *Id.* at 7.

C. Much Has Changed for DSRR, But Not LPPC’s Inability to State a Claim or Comply with the STB’s Guidance

Almost five months have now passed since that STB order permitted LPPC to file an amended application. And much has changed, but not LPPC’s inability to state a claim or comply with the STB’s guidance provide in the *August 23 Decision*.

DSRR’s parent companies entered into negotiations with Patriot Rail Company LLC and its affiliates (“Patriot Rail”), which resulted in a fair market transaction that reflects the going concern value of DSRR (both its Lake Providence line and its Sterlington line). Patriot Rail thereafter filed a notice of exemption with the STB to acquire DSRR. *Patriot Rail Co. 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 South. R.R., Inc., STB Finance Docket 36642.

LPPC injected itself into the pending control proceeding, attempting to obstruct or delay the sale of DSRR to Patriot Rail. In what is becoming a trend, LPPC’s opposition failed to put in any argument or any evidence relevant to the applicable standard for the relief it sought from the STB. The STB was clear about LPPC’s insufficient pleadings: “LPPC has not shown that the notice is false or misleading. LPPC raises arguments that pertain to the feeder line proceeding in Docket No. FD 36447 but has not shown, in this proceeding, that regulation under 49 U.S.C. § 10901 is necessary to carry out the rail transportation policy.” *Patriot Rail Co. 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 South. R.R., Inc.*, STB Finance Docket 36642 at 3 (Dec. 16, 2022).

While Patriot Rail’s notice to acquire DSRR was pending, DSRR continued its work to develop rail traffic on the line. Indeed, in September 2022, a new on-line transload facility was announced. *See* Amended Application at Exhibit O. Also that month, DSRR was able to demonstrate the operational capacity of its track by moving a specialized Schnabel railcar, which ran from milepost 471.0 at Lake Providence to the Madison Parish Port at approximately milepost 491.0. . Amended Application, Verified Statement of Daniel B. Robbins at ¶ 15 (hereinafter “Robbins VS”).

Nevertheless, on January 4, 2023, LPPC filed its incomplete Amended Application – even though there would soon be a new owner of DSRR – in its continuing retaliation over

private party discussions about a grant where the parties have been unable to reach a meeting of the minds.

On January 9, 2023, Patriot Rail completed its acquisition of DSRR. Patriot Rail looks forward to working to continue to develop commercial growth opportunities on both of DSRR's rail lines.

II. ARGUMENT

LPPC's Amended Application remains deficient and the STB should reject it. The STB gave LPPC clear guidance and set clear expectations about what was required if LPPC chose to pursue an amended application. *August 23 Decision* at 6-7 and n.14-16. The STB even warned LPPC that "standing alone, LPPC's [existing] contentions would not suffice to support acceptance of an amended application to acquire the Lake Providence Line." *August 23 Decision* at n.14. LPPC has failed to meet those expectations even when it has included "in its amended application all of the arguments and evidence on which it will rely." *Id.* at 7.

LPPC has had sufficient opportunity to plead a case if one existed, costing the STB, DSRR, and others time and resources. In granting LPPC the opportunity to file an amended application, the STB clearly stated the regulatory requirements and the agency's expectations. LPPC again falls short of meeting the basic requirements set forth in 49 U.S.C. 10907 and the STB's regulations by failing to provide the information required pursuant to 49 C.F.R. 1151.3(11), including 1151.3(11)(B), despite the STB's instructions in the *August 23 Decision*. Given LPPC's inability to meet the basic pleading requirements – now in two different proceedings involving DSRR – it is time to end LPPC's meritless crusade against DSRR.

DSRR respectfully requests that the STB (1) reject the amended application as deficient and (2) terminate this proceeding or at a minimum issue a show cause order as to why it should not terminate this proceeding.

A. LPPC Continues to Ignore STB Guidance

In the *August 23 Decision*, the STB specifically provided a roadmap to LPPC of what was required to be included if it chose to file an amended application – even though those basic prerequisites are set forth in 49 U.S.C. 10907. Specifically, the STB said:

In addition, the application must include the information specified in 49 C.F.R. § 1151.3, in the form of verified statements, and must contain ***detailed evidence that permits the Board to find, inter alia, that transportation over the line is inadequate for the majority of shippers who transport traffic over the line*** (49 C.F.R. § 1151.3(a)(11)(i)(B)), and that the sale of the line will not have a significantly adverse financial effect on DSR (49 C.F.R. § 1151.3(a)(11)(i)(C)), or an adverse effect on the overall operational performance of DSR (49 C.F.R. § 1151.3(a)(11)(i)(D)) (emphasis added).

Lake Providence Port Comm.— Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA. STB Finance Docket 36447 at 6-7 (Aug. 23, 2022).

As discussed more fully in this motion, LPPC has included reams of material about an irrelevant grant and little to establish a failure to provide adequate service in response to reasonable service requests. LPPC has not provided any indication that transportation over the line is inadequate for a majority of shippers on the line. The Amended Application is plainly incomplete.

B. LPPC's Amended Application Reveals Its True Motive

LPPC cannot plead or establish that there is inadequate rail service to a majority of shippers who hold themselves out to transport traffic over the line. LPPC cannot make this mandated showing because it is not true. The material that LPPC provides in fact reinforces that there is no case here, as discussed below.

LPPC, however, is consistently clear about its motives – emphasizing frustration over private party discussions about a grant where the parties have been unable to reach a meeting of the minds. Indeed, LPPC’s Amended Application discloses the real reason for seeking to force a sale DSRR’s assets, which has nothing to do with inadequate service. In its Amended Application, LPPC stated simply: “This proceeding was triggered by DSRR’s refusal to accept a multi-million-dollar INFRA Grant from the Department of Transportation (“DOT”).” Amended Application at 3. The verified statement of Ms. Patrecia Hargrove underscores LPPC’s motivation:

Because Mr. Marino’s email confirmed that DSRR and its owner would not commit to the rehabilitation of the twenty-mile segment of its line, LPPC, with the approval of SEAEDD, MPP and NLA, decided to file the original Feeder Line Application to acquire the segment of the Corridor between MP 471 and MP 491.

Verified Statement of Patrecia Hargrove at ¶ 23 (hereinafter “Hargrove VS”). LPPC and its partners are disappointed and perhaps frustrated that the private negotiations among various parties have not resulted in the project that they want for purposes of a grant. But this argument, which LPPC primarily relies on as the basis for a forced sale, is irrelevant to a feeder line case, which renders much of the Amended Application, including supporting verified statements, of no value to LPPC’s case. LPPC’s candor about its real motive is commendable but its use of the feeder line process as “retaliation” is unacceptable. LPPC cannot even provide the basic evidence to initiate a feeder line proceeding, and the application respectfully should be dismissed.

C. The Amended Application Is Yet Another LPPC Failure to Plead Required Elements

Beginning with LPPS’s original application, which was conditionally accepted subject to correction for deficiencies, through its filing in Finance Docket 36642 that lacked support for its requested relief, the Amended Application continues LPPC’s trend of submitting documents with

the STB that fail to address required legal elements – wasting the time and resources of the STB, the named parties, and multiple third parties called on to prove or disprove LPPC’s claims. The STB’s rules plainly state that an applicant seeking an STB finding of public convenience and necessity must provide in the application “detailed evidence that permits the Board to find that . . . (B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line.” 49 C.F.R. 1151.3(11)(i)(B). Additionally, in its *August 23 Decision*, the STB directed LPPC to ensure that it met this and other requirements. Nevertheless, LPPC has not included such a showing.

STB precedent makes clear that a party seeking feeder line relief must provide information sufficient to calculate whether a majority of shippers on the line are receiving inadequate service. In *Or. Int’l Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Cent. Or. & Pac. R.R.*, FD 35160, slip op. at 6 (Served Oct. 31, 2008), the STB conducted a formal count of shippers who transport traffic over the line. Specifically, the STB stated “[e]leven of the 14 shippers that have used the Line in the last five years state that the transportation service has been inadequate.”² Similarly, in *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo Peoria, and Western Railway Corporation Between La Harpe and Hollis, IL.*, 7 S.T.B. 893, 898 (2004), the STB formally counted shippers, finding that five of the six shippers located on the 76-mile rail line stated that the railroad’s service was inadequate. LPPC does not meet this standard of specificity here.

D. The Amended Application Is Incomplete Because LPPC Fails to Plead Inadequate Service to a Majority of Shippers

² The decision goes on to list the seven of eleven shippers that provided letters stating that service was inadequate. Those shippers included: “Georgia-Pacific West, Inc; Roseburg Forest Products; American Bridge Manufacturing; Southport Forest Products, LLC; Swanson Group; Swanson Brothers; and Ferrelgas”

LPPC provides no information that would allow the STB to determine how many shippers “transported traffic over the line” or how many would constitute a “majority”. 49 C.F.R. 1151.3(11)(i)(B). LPPC has not (and, DSRR submits, cannot) provide the STB the evidence that is required in 49 C.F.R. 1151.3(11), including subpart (B).

First, an examination of the verified statements submitted show that no shipper says that it has had inadequate service from DSRR in any recent time.³ Indeed, DSRR has not yet located the words “inadequate service” in a single shipper comment submitted by LPPC.⁴

Second, many of the statements submitted prove that service is adequate and therefore cannot be read to be “detailed evidence that permits the STB to find” transportation over the line has been inadequate for a majority of the shippers who transport traffic over the line.” 49 C.F.R. 1151.3(a)(11)(B). For example:

- Complex Chemical’s verified statement attached to the Amended Application does not and cannot claim inadequate service because such a statement would contradict Mr. Jerry J. Melton’s prior verified statement that “[t]he current rail provider, DSR is providing adequate service,” which LPPC submitted to the STB on November 12, 2020 in this docket. Verified Statement of Jerry J. Melton (filed Nov. 12, 2020).
- LPPC’s filing admits that shipments have moved – even over DSRR’s line segment about which they complain most. In September 2022, DSRR moved a specialized Schnabel car over track. Robbins VS at ¶ 15.
- Exhibit O to the Amended Application demonstrates that DSRR continues to provide service and opportunity to new customers. That exhibit, which is a September 16, 2022 announcement of a new transload facility locating on DSRR, is a clear example of DSRR’s continuing provision of adequate service (perhaps more than adequate given the

³ The STB should disregard all the discussions about activity or service on the line from the distant past. For example, Robert Amacker, of Hollybrook Warehouse, Inc. provides no facts more recent than 2016. Verified Statement of Robert Amacker.

⁴ The closest attempt is in the verified statement of Mr. Jerry J. Melton, but it falls short of him alleging inadequate service. Verified Statement of Jerry J. Melton at ¶ 6. As noted below, Mr. Melton previously testified that “[t]he current rail provider, DSR is providing adequate service.” Verified Statement of Jerry J. Melton (filed Nov. 12, 2020).

attraction of this new facility) afforded to existing and that new customer -- Precision Terminal Logistics.

- The verified statement of Craig Huff does not identify any customer whose service is inadequate. Rather, Mr. Huff's only example is one in which the customer received its rail cars. Verified Statement of Craig Huff at ¶ 17.
- Sam Angel of Epstein Gin Company and Epstein Transloading is not a shipper on DSRR. Mr. Angel states that moving his freight with DSRR "works". Verified Statement of Sam Angel at ¶ 3. He further notes that "DSRR was recently able to move a specialized low-gravity car over its track." *Id.* at ¶ 7.

Third, much of the evidence submitted by LPPC is not from shippers at all. The following verified statements are not from a shipper who transports traffic over the line:

- Patrick Terry Murphy – is not a shipper who transports traffic over the line.
- Craig Huff – is not a shipper who transports traffic over the line.
- Patrecia G. Hargrove – is not a shipper who transports traffic over the line.
- Daniel B. Robbins – is not a shipper who transports traffic over the line.
- Wyly Gilfoil – is not a shipper who transports traffic over the line.⁵

Fourth, the verified statements occasionally include "if you built it they might come" statements about non-existent shippers. For example, Daniel B. Robbins, who is not a shipper on the line, alleges that there are potential shippers. Robbins VS at ¶ 29 and 33. Similarly, Patrecia G. Hargrove attempts to identify two potential new shippers. None of these potential new customers named by these two "witnesses" have shipped by rail; and, not one of them has submitted a verified statement. DSRR, and its owner Patriot Rail, however, look forward to working with any of the potential shippers identified by Mr. Robbins and Ms. Hargrove – if they have legitimate rail transportation needs.

⁵ DSRR notes that if this case is permitted to move forward, it regrets that it will likely have to depose many, if not all, of those whose verified statement was appended to LPPC's Amended Application. At the same time, DSRR looks forward to working with the various stakeholders to develop commercial opportunities.

Similarly, Neil Martin, of Terral River Service does not allege inadequate rail service. Mr. Martin simply states, “Terral *has interest* in shipping cottonseed from Madison Parish Port to UP” and that Terral *will also consider* moving inbound aggregate that originates on UP.” Martin at ¶ 6 (emphasis added). That statement is not even definitive enough to trigger the common carrier obligation of a railroad,⁶ much less to support a finding of inadequate rail service.

Fifth, many of the statements seek to force DSRR to be replaced not because of inadequate service, but because some entity seeks to have the STB improve their position relative to its current state. A prime example is Sam Angel of Epstein Gin Company and Epstein Transloading, which is not a shipper on DSRR. Rather, it is a shipper on NLA who would like to ship over KCS, which would require it to move freight NLA-DSRR-KCS. He admits that moving his freight with DSRR “works” (Angel VS at ¶ 3), and reveals his true motivation in submitting a verified statement: “LPPC's ownership of the segment from milepost 471.0 and the

⁶ An alleged failure to provide service can only be found when there has been a reasonable request for service. “What constitutes a reasonable request for service is not statutorily defined but depends on all the relevant facts and circumstances.” *Union Pac. R.R. Co.—Petition for Dec. Order*, STB Finance Docket No. 35219 (June 11, 2009); *see also Granite State Concrete Co. v. STB*, 417 F.3d 85, 92 (1st Cir. 2005); *Nat'l Grain & Feed Ass'n v. U.S.*, 5 F.3d 306, 310 (8th Cir. 1993). In past decisions, the STB has held that a reasonable request is one that is specific as to the volume, commodity, and time of shipment. *CSX Transp., Inc. -- Abandonment -- Between Bloomingdale and Montezuma, in Parke County, IN*; *CSX Transp., Inc. -- Abandonment Exemption -- in Parke and Vermillion Counties, IN*; *Montezuma Grain Co., LLP and Parke County Redevelopment Comm. v. CSX Transp., Inc.*, ICC Docket No. AB-55 (Sub-No. 486), STB Docket No. AB-55 (Sub-No. 579X) (“*CSXT Montezuma*”); STB Finance Docket No. 34019, at 21-22 (Served Sept. 13, 2002); *see also The Atchison, Topeka, and Santa Fe Railway Company -- Abandonment Exemption -- In Lyon County, KS*, Docket No. AB-52 (Sub-No. 71X) (ICC served June 17, 1991).” Accordingly, the STB has held that a “generalized request for replacement of the crossing diamond and for CSX to agree to provide freight cars, rates, and rail service for unspecified traffic at some unspecified future time does not constitute” a reasonable request. *CSXT Montezuma*, ICC Docket No. AB-55 (Sub-No. 486), STB Docket No. AB-55 (Sub-No. 579X); STB Finance Docket No. 34019, at 22;

point of interchange with KCS will ease the administrative burdens of having to deal with three (3) distinct railroads to establish contracts, obtain rate quotes, track the location of cars, and settle freight claims in the event of a problem.” Angel VS at 9. Similarly, in his latest verified statement, Jerry J. Melton reveals his real motivation is not to remedy inadequate service but to improve his position with lower rates. Verified Statement of Jerry J. Melton at ¶ 3 (filed with the amended application). In fact, Mr. Melton has testified that “[t]he current rail provider, DSR is providing adequate service.” Verified Statement of Jerry J. Melton (filed Nov. 12, 2020).

E. LPPC Fails to Address the Impact on DSRR’S Financial and Operating Performance of a Forced Sale

The STB could not have been clearer that “the amended application *must* address the impact that a forced sale of DSR’s entire Lake Providence Line would have on DSR’s financial health and overall operational performance.” *Id.* at n.16 (emphasis added). In response to this instruction, LPPC submitted two sentences.

The forced sale of the approximately 28-mile segment of track, will not have a significant adverse financial impact on DSRR. Not only will it allow DSRR to avoid the cost of a thorough rehabilitation of its track that is reflected in its estimates provided to HDR and DOT, but DSRR will also continue to retain the revenues that are derived from the financially successful operations over its Monroe Branch Line.

Amended Application at 66. . LPPC provided no support for this conclusory and incorrect statement. PPC did not even address the fact that DSRR has a new owner in Patriot Rail.

F. The STB Should Dismiss This Case or Have LPPC Show Cause Why It Should Not Be Dismissed

The STB earlier warned LPPC that “standing alone, LPPC’s contentions would not suffice to support acceptance of an amended application to acquire the Lake Providence Line.”

August 23 Decision at n. 14. Instead of heeding this instruction, LPPC has repeated its tired story about a federal grant. It has failed to comply with the STB's three primary directives in the *August 23 Decision*:

- “[T]he contents of the amended application must contain the information specified in 49 C.F.R. § 1151.3, which includes information pertaining to the statutory criteria specified in 49 U.S.C. § 10907(c)(1), . . . and must include detailed evidence that permits the Board to find that all of the criteria stated in 49 C.F.R. § 1151.3(a)(11)(i) are satisfied.” *Id.* at n.14.
- “The amended application should consider all shippers that currently use the Southern Segment of DSR’s line to move traffic between the Madison Parish Port and the DSR-KCS interchange at Tallulah.” *Id.* at n.15.
- “[T]he amended application must address the impact that a forced sale of DSR’s entire Lake Providence Line would have on DSR’s financial health and overall operational performance.” *Id.* at n.16.

Failure to adequately address these standards requires rejection of the Amended Application. LPPC has had sufficient opportunity to allege a case and it is now appropriate to terminate this proceeding to preserve the resources of the STB, DSRR, and other stakeholder.

III. CONCLUSION

LPPC has failed to plead, much less demonstrate by detailed evidence, the basic elements required by 49 C.F.R. 1151.3(11) even after the STB specifically directed LPPC to the appropriate requirements in the *August 23 Decision*. Accordingly, the amended application should be rejected as incomplete. Moreover, it is now abundantly clear, after LPPC’s repeated attempts to file a feeder line application spanning multiple years, that LPPC cannot meet the requirement of 49 C.F.R. 1151.3(11)(i)(B) because LPPC cannot show that the transportation over the line is inadequate for the majority of shippers who transport traffic over the line.

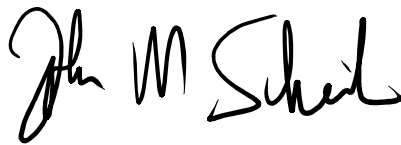
The STB’s finding in the *August 23 Decision* to give LPPC a further opportunity to present a sufficient feeder line application may be understandable given the confusing record

LPPC created with its dozens of supplementary filings in this docket (presumably as LPPC realized the insufficiency of the original application). Indeed, LPPC's record prior to the Amended Application lacks coherence – and the Amended Application simply consolidates this incoherence while failing to state a claim..

It is time to end LPPC's meritless campaign. It is time to stop the waste of STB time and resources. And it is time to end the waste of DSRR's time and resources so that its new owner, Patriot Rail, can focus on the task of bringing its entrepreneurial spirit to all of DSRR and continue the good work exemplified by the new transload facility shown in Exhibit O to the Amended Application.

Accordingly, DSRR respectfully requests that the STB reject the Amended Application as incomplete and terminate this proceeding, or otherwise issue a show cause order as to why it should not terminate this proceeding.

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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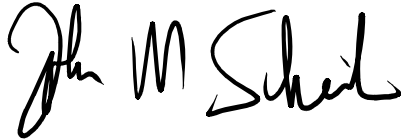
Attorney for:
Delta Southern Railroad Inc.

Dated: January 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email on the following:

Mr. Richard H. Streeter
5255 Partridge Lane, NW
Washington, DC 20016
rhstreeter@gmail.com

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

John M. Scheib

Dated: January 13, 2023