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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:

Please find attached Delta Southern Railroad Inc.'s Reply to Lake Providence Port
Commission's Emergency Motion to Compel.

Sincerely,

John M. Scheib

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Attorney for:
Delta Southern Railroad, Inc.

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 REPLY TO LAKE PROVIDENCE PORT
COMMISSION’S EMERGENCY MOTION TO COMPEL**

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Dated: February 28, 2023

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 REPLY TO LAKE PROVIDENCE PORT
COMMISSION’S EMERGENCY MOTION TO COMPEL**

DSRR respectfully requests that the Surface Transportation Board (“STB”) deny Lake Providence Port Commission’s (“LPPC”) Emergency Motion to Compel filed in this proceeding on February 9, 2023 (“Motion to Compel”).

LPPC’s Motion to Compel asks the STB to disregard its decision of August 23, 2022 (“Decision”) and the regulations governing feeder-line cases. The Decision presented two procedural paths for LPPC to amend its application. On the one hand, LPPC could file a complete application, including “all evidence and argument” on which it will rely. Decision at 5. On the other hand, LPPC could file an incomplete application and seek discovery in accordance with 49 C.F.R. § 1151.2(d)(2) for information needed to complete the application. Decision at 7. LPPC filed its amended application on January 4, 2023 (“Amended Application”) and unequivocally stated that the Amended Application “is complete” as recently as January 20, 2023.¹ Nevertheless,

¹ See LPPC’s Response to Motion to Reject Lake Providence Port Commission’s Incomplete Feeder Line Application and for Action to Terminate this Proceeding, *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison, Parishes, Louisiana*, STB FD 36447 at 11 (Jan. 20, 2023)(“LPPC’s Response to Motion to Reject”). DSRR has moved to reject the amended application as incomplete and failing to state a public convenience and necessity case (*i.e.* issues unrelated to constitutional minimum value) and to terminate this proceeding. Motion to Reject Lake Providence Port Commission’s Incomplete Feeder Line Application and for Action to Terminate this Proceeding, *Lake Providence Port Commission – Feeder Line Application – Line*

LPPC now is pursuing a third option not provided for in the Decision’s plain language – to have the STB consider its Amended Application to be complete and still get discovery into information that LPPC could only use to further amend its already “complete” application. If permitted, LPPC’s case would become another moving target, which prejudices DSRR’s right to defend against LPPC’s claims.

LPPC’s attempt to have it both ways is prohibited by the Decision and the STB’s regulations. The STB stated clearly in the Decision: “Insofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR ***that is required to prepare a complete application***, LPPC ***may*** file a concurrent request for discovery, ***with*** its amended application, to obtain the information from DSR. Any such request will be resolved in accordance with the procedures specified in 49 CFR 1151.2(d)(2).” Decision at 7 (emphasis added). LPPC alleges its application is complete; LPPC must stand with its representations that its Amended Application “is complete” (albeit failing to make a public convenience and necessity showing and substantially understating constitutional minimum value). By the explicit terms of the Decision, LPPC’s 63 discovery requests are improper.

From an additional procedural standpoint, the STB stated unequivocally in the Decision that discovery by LPPC would be subject to 49 C.F.R. 1151.2(d)(2). That provision requires the Director of the Office of Proceedings (“Director”) to determine that the requested discovery is necessary. LPPC has not sought such a determination nor has the Director made such determination. Therefore, it is improper for LPPC to insist on discovery responses from DSRR when it has failed to follow the required procedures.

of Delta Southern Railroad Located in East Carroll and Madison, Parishes, Louisiana, STB FD 36447 (filed Jan. 13, 2023)(“DSRR’s Motion to Reject”).

Even if LPPC had chosen to file an incomplete application and follow the proper process to seek discovery necessary to complete the application, the burden and expense of the discovery sought is not justified given LPPC's clear failure to make a public convenience and necessity showing in the Amended Application. More than two years after invoking the STB's processes, LPPC cannot show that service has been or is inadequate to a majority of shippers or show a lack of harm to DSRR to name but two elements of the public convenience and necessity test. Indeed, many of the statements submitted by LPPC prove that service has been and is adequate. 49 C.F.R §1151.3(a)(11).² DSRR's request to terminate this proceeding remains pending and DSRR respectfully asks the STB to grant it.³

This long-running saga, including LPPC's continued disregard for the feeder line process and the Decision, is costly to DSRR. It detracts from DSRR's continuing focus on serving customers with actual needs, integrating operations under new ownership that recently took over the line at issue in this proceeding, elevating its safety culture and commitment, and continuing to work with customers to grow rail freight volume. Beyond this unjustified impairment and drain on DSRR, LPPC's unsupported filings also waste STB resources.

To avoid further wasting of resources, conducting extensive discovery related to constitutional minimum value – if permitted at all – should await an STB decision that LPPC has made a threshold showing of public convenience and necessity that is required for feeder line relief.

² DSRR's Motion to Reject.

³ *Id.* (detailing statements that support finding of adequate service rather than inadequate service).

Finally, DSRR has raised specific objections to LPPC's requests that would have to be addressed – if the discovery requests are permitted at all. LPPC has not attempted to justify any of its specific requests, many of which are overbroad, irrelevant, duplicative, or subject to other specific objections. LPPC did not engage with DSRR on any of those objections before filing its Motion to Compel, and LPPC has not responded to or raised any issues related to those objections in its Motion to Compel. Accordingly, DSRR has focused this reply on the threshold issue of whether LPPC may conduct discovery at this time; however, DSRR does not waive its objections to LPPC's specific requests, and those objections are not ripe for any decision by the STB.

For these reasons, DSRR respectfully requests that LPPC's Motion to Compel be denied.

I. BACKGROUND

A. The STB's August 23, 2022 Decision Clearly Outlined the Required Procedures for LPPC to File Any Amended Application.

This proceeding started in November of 2020 when LPPC filed its first attempt at a feeder line application and long before DSRR's current parent-company acquired the line. After an extended record in which LPPC asserted "various arguments on the merits throughout those filings," the STB issued the Decision on August 23, 2022. Decision at 7. The Decision permitted LPPC essentially a "do-over" for its feeder line application. The Decision outlined a clear path for the proceeding going forward with clear instructions. Specifically, the Decision:

- Directed LPPC "to submit *all* evidence and argument in support of its" amended application "in accordance with the requirements specified in 49 C.F.R. § 1151.3, without incorporation by reference of its previous application or any other filings." Decision at 5 (emphasis added).
- Required that "LPPC *must* include in its amended application *all of the arguments and evidence* on which it will rely" because "LPPC has submitted numerous filings in this proceeding asserting various arguments on the merits throughout those filings" and because of the need "[t]o ensure the fair and orderly resolution of LPPC's feeder line request." Decision at 7 (emphasis added).

- Explained that “[i]nsofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR *that is required to prepare* a complete application, LPPC *may* file a concurrent request for discovery, *with* its amended application, to obtain the information from DSR. Any *such request* will be resolved in accordance with the procedures specified in 49 C.F.R. § 1151.2(d).” Decision at 7 (emphasis added).

The plain language of the Decision set forth the limited circumstances under which LPPC could seek discovery from DSRR and how. LPPC could file a complete application. Or, LPPC could file an incomplete application and seek focused discovery, if needed, pursuant to 49 C.F.R. § 1151.2(d).

B. LPPC Chose to File a Complete Application and Seek Discovery, In Violation of the Plain Language of the Decision and Without Following the Procedures in 49 C.F.R. § 1151.2(d).

On January 4, 2023, LPPC filed what it purported to be a complete amended application. LPPC did not state in the Amended Application that it was an incomplete application. Nor did LPPC note anywhere in the Amended Application that it needed more information to complete the application or that it was seeking to proceed pursuant to 49 C.F.R. § 1151.2(d).

Despite framing its Amended Application as complete (and later iterating to the STB that it was complete), LPPC included with its Amended Application 63 discovery requests (“Discovery Requests”) that it also served on DSRR. LPPC noted in its cover letter to the Amended Application that “because LPPC has been unable to receive needed information to prepare a going concern value assessment based on DSRR’s current revenues a request for discovery under 49 C.F.R. part 1114 is attached hereto.”⁴ But LPPC did not seek the required ruling by the Director permitting the discovery. Nor did LPPC make any argument or provide any justification for the extensive discovery to enable the Director to make the required determination that “the discovery sought is

⁴ In the Motion to Compel, LPPC now claims that the Discovery Requests “are specifically designed to acquire data that would enable LPPC to develop *both* the” NLV and GCV. Motion to Compel at 4 (emphasis added).

necessary for the application and primarily or exclusively within the knowledge of the owning carrier.” 49 C.F.R. 1151.2(d)(2). To date, the Director has made no such determination.

C. The Subsequent Background of this Dispute Confirms LPPC’s OnGoing Lack of Gamesmanship.

On January 9, 2023, Patriot Rail Company, Inc.⁵ closed on its acquisition of DSRR and assumed operations of DSRR. Patriot Rail’s acquisition resulted in a change in the owner of the line at issue in this proceeding just over two years after LPPC first requested that exact relief in its original feeder line application. Since then, DSRR’s new leadership has been actively engaged with customers and other stakeholders in the area, including the Northeast Louisiana & Arkansas Railroad.

On January 13, 2023, DSRR filed DSRR’s Motion to Reject the Amended Application as incomplete. In that motion, DSRR also asked the STB to terminate this proceeding or ask LPPC to show cause why this proceeding should not be terminated. DSRR made clear that, after more than two years of wasting the resources of the DSRR and of the STB, LPPC had failed to show that service was inadequate to a majority of shippers on the line or that DSRR would not be harmed by a forced-sale of that line. In fact, many of the statements submitted by LPPC throughout this proceeding proved that service was adequate, including the statement of Mr. Jerry J. Melton who submitted a verified statement that “[t]he current rail provider, DSR is providing adequate service.” LPPC’s Amended Application submitted no other verified statements from rail customers.

On January 20, 2023, LPPC responded to DSRR’s Motion to Reject and unequivocally asserted that its Amended Application “is complete.” LPPC’s Response to DSRR’s Motion to Reject at 11.

⁵ Patriot Rail Company, Inc. (“Patriot Rail”) is not a party to this proceeding.

On February 2, 2023, the STB issued a decision waiving the 30-day regulatory deadline for accepting or rejecting the Amended Application. The STB found that “DSR’s motion to reject and LPPC’s response raise substantive questions about what is necessary to show that a feeder line application is complete under 49 C.F.R. § 1151.2(b)(1).”⁶ The STB has not yet accepted or rejected the Amended Application or ruled on DSRR’s request to terminate this proceeding.

On February 6, 2023, counsel for DSRR sent a letter to counsel for LPPC noting DSRR’s objection to discovery based on the Decision. In addition to quoting from the Decision that discovery was appropriate only “[i]nsofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR *that is required to prepare* a complete application,” DSRR’s letter stated:

The STB explicitly gave LPPC a path to discovery if it was needed to complete the amended application. LPPC chose to file on January 4, 2023, what it purports to be a complete application rather than note anywhere in the application that LPPC required discovery to complete the application. Nowhere in its amended application did LPPC indicate that it required any discovery from DSRR to file a complete application.

The Decision and applicable regulations make clear that the 63 discovery requests served on DSRR by LPPC are improper. It seems clear from the discovery that LPPC served that LPPC knows its estimates of constitutional minimum value are inaccurately low. But, without leave from the STB to deviate from the clear terms of the Decision (and the applicable regulations), LPPC cannot introduce new evidence into this proceeding. Thus, providing the extensive discovery requested by LPPC would serve no purpose for this proceeding.

Exhibit A at 2.

On February 7, 2023, LPPC’s responded to that DSRR letter. LPPC’s letter largely ignored the plain language in the Decision. Exhibit B at 1. In contrast to LPPC’s January 20, 2023, assertion that LPPC’s Amended Application “is complete,” LPPC now argued that its application

⁶ *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison, Parishes, Louisiana*, at 2 (Decided Feb. 2, 2023).

was incomplete and required discovery, that it had “unequivocally alerted the Board to that fact,” and that the discovery was of “essential information that is required for the Board to determine the constitutional minimum value of a particular railroad.” Exhibit B at 2.

On February 8, 2023, and in an abundance of caution, DSRR timely provided responses to LPPC’s interrogatories and discovery requests, which preserved all of its objections including specific objections to specific requests. By cover email, DSRR offered to meet and confer with LPPC on either February 10 or February 16, 2023. Exhibit C.

Rather than respond to DSRR or work to meet and confer, on February 9, 2023, LPPC filed its Motion to Compel.

II. ARGUMENT

The STB should deny the Motion to Compel. First, LPPC refused to comply with the clear directions in the Decision, which required LPPC either (1) to submit all evidence and argument with the Amended Application or (2) to seek discovery in accordance with 49 C.F.R. 1151.2(d), which requires the Director to determine that the discovery is necessary and primarily within the control of the owning carrier, only if LPPC submitted an incomplete application. Second, the deficiencies in the Amended Application render any discovery into constitutional minimum value moot. Granting the Motion to Compel would enable LPPC to continue to make its case a moving target, undoing the fair and orderly process the STB required in the Decision and prejudicing DSRR’s right to defend against LPPC’s claims. It will also unduly burden DSRR with wasteful discovery. The Motion to Compel should be denied.

A. LPPC Refused to Follow the Decision’s Requirements for Seeking Discovery from DSRR, and the Discovery Requests Are Improper.

1. The STB Requires Feeder Line Applicants to Present Their Case Fully to Allow Respondents Fair Notice and an Opportunity to Respond.

The STB’s regulations set forth the process for seeking feeder line relief. *See generally*, 49 C.F.R. § 1151.2. In general, an applicant files an application. If the application is complete, then the STB publishes notice and sets a procedural schedule for competing applications and for comments to the initial and any competing applications. This opportunity for comment constitutes the owning carrier’s opportunity to defend against the initial and competing feeder line applications. Replies are permitted to the owning railroad’s comments – but not new evidence. The STB then decides based on the record developed.

Recognizing that an applicant may not have access to necessary information to file a complete application, the regulations allow an applicant to file an incomplete application and provide a process to obtain discovery from an owning carrier. *See* 49 C.F.R. § 1151.2(d). But under that process, the application remains pending until complete, and only *then* is the notice published and a procedural schedule set for further proceedings. *See* 49 C.F.R. § 1151.2(d)(3) and (4).

The feeder line process cannot work fairly if the initial application is treated *both* as complete and as a “starting point” for the applicant’s case that is to be supplemented and amended liberally throughout a proceeding. If the application is both complete and subject to ongoing supplement and amendment, the due process rights of the owning carrier – whose property could be seized through a governmentally-forced sale – and other interested parties to comment effectively are not protected, and the STB cannot efficiently evaluate the merits.

2. The Decision Reinforced This Required Procedure, and LPPC Refused to Follow the Decision's Clear Direction.

Based on LPPC's litigation record prior to the Decision, the Decision reset the STB's procedures for a feeder line application. Nevertheless, LPPC continues to ignore the STB's explicit instructions. Prior to the Decision, LPPC routinely attempted to circumvent the proper process by "submit[ing] numerous filings in this proceeding asserting various arguments on the merits throughout those filings." Decision at 7. The target was constantly moving on DSRR. Although the STB granted LPPC its requested opportunity to file an amended feeder line application, the Decision also reset the orderly process for adjudicating LPPC's Amended Application.

Specifically, the STB explained that "[t]o 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." Decision at 7 (emphasis added). The STB further limited LPPC's right to discovery -- "[i]nsofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR *that is required to prepare a complete* application, LPPC *may* file a concurrent request for discovery, *with* its amended application, to obtain the information from DSR. *Any such request* will be resolved in accordance with the procedures specified in 49 CFR 1151.2(d)(2)." Decision at 7 (emphasis added).

Thus, the Decision explicitly provided LPPC two options: (1) LPPC could file a complete application with all its evidence and argument; or (2) if it could not do so, LPPC could file an incomplete application and seek discovery pursuant to the procedures for filing an incomplete application. *See* 49 C.F.R. § 1151.2(d)(2). LPPC did neither. In contravention of the Decision,

LPPC seeks to create a third option – to have the STB consider its Amended Application complete *and* still get discovery from DSRR to later amend or supplement its purportedly “complete” application.

LPPC must be held to its representations that its Amended Application is complete, despite the fact that it is also insufficient. The STB stated clearly—twice—that if LPPC filed a complete application, then the amended application had to include “all evidence and argument[.]” Decision at 5; Decision at 7 (LPPC must “include in its amended application all of the arguments and evidence on which it will rely”). LPPC chose to file on January 4, 2023, what it purports to be a complete application, a position it has maintained before the STB as recently as January 20, 2023. See LPPC Reply to DSRR Motion to Reject Amended Application, at 11 (claiming the Amended Application “is complete.”). Indeed, regarding constitutional minimum value—the sole topic about which LPPC argues it requires information from DSRR—LPPC submitted a verified statement from L.E. Peabody & Associates, Inc., and asserted that “the NLV of the entire line equals \$168,470 and the GCV of the entire line equals \$778,451.” Amended Application at 58. At most, the Amended Application suggested that “[i]n the event that DSRR chooses to provide access to inspect the line, these values may be updated.” *Id.* Moreover, LPPC made the required “offer to purchase the line” at its going concern value calculation (albeit at an indefensibly low amount),⁷ pursuant to 49 C.F.R. § 1151.3(a)(5), which further indicates that its intent in filing the Amended Application was to file a complete application. *Id.*

Despite representation to the STB that its Amended Application is complete, LPPC now apparently suggests that what it submitted in its Amended Application regarding constitutional

⁷ DSRR agrees with LPPC that its asserted values are inaccurately low; DSRR will respond fully to LPPC’s inaccurately low estimates if the proceeding gets that far.

minimum value was unsupported and incomplete. LPPC claims that DSRR is preventing LPPC from “provid[ing] the Board with its determination of the constitutional minimum value.” Motion to Compel at 1. That statement contradicts LPPC’s affirmative representations to the STB that the Amended Application was complete. *See e.g.*, LPPC Response to DSRR’s Motion to Reject at 11.

LPPC surely knew the proper way to proceed if it wanted to file an incomplete application and seek discovery from DSRR because LPPC quoted in its Motion to Compel from the Decision’s requirement that any “concurrent request for discovery . . . will be resolved in accordance with the procedures specified in 49 C.F.R. § 1151.2(d).” Motion to Compel, at 2 (quoting Decision at 7). Yet, LPPC ignored what 49 C.F.R. § 1151.2(d) actually requires, and has insisted that DSRR provide it discovery both while claiming its Amended Application is complete *and* without any finding by the Director of the Office of Proceedings permitting the requested discovery.

The regulations and the Decision do not permit LPPC’s procedural sleight-of-hand. LPPC filed what it represented is a complete Amended Application and has later represented to the STB that LPPC intended the Amended Application to be complete. LPPC did not claim that its Amended Application was incomplete. LPPC did not seek the required determination from the Director that “the discovery sought is necessary for the application and primarily or exclusively within the knowledge of” DSRR. 49 C.F.R. § 1151.2(d)(2). LPPC explicitly did not proceed pursuant to 49 C.F.R. § 1151.2(d). LPPC must live with its representations that the Amended Application was complete (as far as LPPC was concerned), despite all its fundamental shortcomings.

For these reasons, LPPC’s discovery is improper, and the Motion to Compel should be denied.

3. If Permitted, LPPC's Tactics Would Prejudice DSRR's Rights.

DSRR's objection to LPPC's procedural violation is not just a technicality, but goes to the heart of ensuring that DSRR receives the "fair and orderly resolution of LPPC's feeder line request[.]" Decision at 7. LPPC's position would put DSRR in an untenable position of having to respond to the Amended Application while LPPC seeks information and opportunities to fill in gaps or deviate from the Amended Application along the way. That is not how the process works because that deprives DSRR of the opportunity to respond to LPPC's completed application.

The Decision was explicit that in a complete application LPPC had to file "all evidence and argument," which would result in reestablishment of the process provided for in the regulations so that DSRR's comments could address all the information that the feeder line applicant claims justify a governmentally-forced sale of the owning carrier's assets. Decision at 5. DSRR made its threshold objection to the Discovery Requests because LPPC represented that it had filed a complete (albeit weak) Amended Application. LPPC's view of the case – that the STB should accept the Amended Application as complete, seek further discovery, and continue to move the ball by changing the application or evidence provided later – is not a fair process to DSRR.

LPPC's desire for extensive discovery "that will allow L.E. Peabody, Inc. to verify or adjust its calculation of the constitutional minimum value" of the line is just a continuation of LPPC's behavior prior to the Decision. Motion to Compel at 5. This continued effort to move the target is in addition to LPPC's other efforts already to supplement the "complete" Amended Application. Indeed, it took LPPC all of *three* weeks from the filing of its Amended Application to attempt improperly to file supplemental evidence. See LPPC Motion to Supplement Amended Application (Jan. 25, 2023). LPPC is already unraveling the fair and orderly process demanded by the Decision.

Again, the Decision required LPPC to “include in its amended application *all* of the arguments and evidence on which it will rely.” Decision at 7 (emphasis added). Thus, absent separate permission from the STB to further supplement its Amended Application—which the Decision’s clear direction makes unlikely—LPPC cannot even use the information it now claims to need. LPPC cannot have it both ways, and LPPC’s claim that enforcing the Decision “would arbitrarily deprive LPPC of due process” rings hollow. Motion to Compel at 5. Indeed, it is DSRR that would be harmed by allowing LPPC to make its feeder line application a moving target.

B. LPPC’s Discovery Requests, Even if Procedurally Permitted, Would Subject DSRR to an Undue Burden Because LPPC Has An Insufficient Case for Feeder Line Relief.

Regardless of LPPC’s violations of the Decision and a fair and orderly process, the STB should deny the Motion to Compel because the discovery sought is wasteful and burdensome given that LPPC has failed in the Amended Application to make out a case for feeder line relief after more than two years, and the proceeding should be terminated.

Pending before the STB is *Delta Southern Railroad, Inc.’s Motion to Reject Lake Providence Port Authority’s Incomplete Feeder Line Application and for Action to Terminate This Proceeding*, which was filed January 13, 2023. That motion raised serious deficiencies in LPPC’s Amended Application related to at least two of the elements of the required public convenience and necessity inquiry. 49 C.F.R. § 1151.3(a)(11).

LPPC has not provided “detailed evidence that permits the [STB] to find” that the public convenience and necessity factors are met. Decision at 6 (citing 49 C.F.R. § 1151.3(a)(11)(i)). In particular, after more than two years pursuing its feeder line case, LPPC failed to show in the Amended Application that service has been or is inadequate to a majority of shippers on the Line or that there would be no adverse impact on DSRR. LPPC submitted no verified statement from an actual customer that justifies a finding of inadequate service. In fact, many of the verified

statements submitted in this proceeding prove exactly the opposite -- that service was adequate. For example, Mr. Jerry J. Melton submitted a verified statement that “[t]he current rail provider, DSR is providing adequate service.” Verified Statement of Jerry J. Melton (filed Nov. 12, 2020). Other examples are cited in DSRR’s Motion to Reject. Indeed, many of the verified statements submitted with the Amended Application are not even from rail customers and include at best hearsay about “potential” opportunities. If those opportunities exist, DSRR stands ready to work with those customers.

Moreover, as the Board is aware, DSRR has new ownership as of January 9, 2023. Of course, the remedy for a feeder line dispute is a new owner. And the new owner, Patriot Rail, acquired the line at issue in this proceeding long after the feeder line case was filed in 2020. DSRR’s new leadership has been on the ground for less than two months and has actively engaged with customers and other stakeholders in the area. DSRR is focused on the future and on continuing to serve customers. In contrast, LPPC continues to demonstrate that it cannot make out a feeder line case, fights an old fight about a grant application that has nothing to do with the STB, fixates on historical events, and ignores the realities on the ground today.

In short, after two years of trying, LPPC has failed to provide the STB with “detailed evidence” supporting feeder line relief, even at a threshold level. Decision at 6. Given the failure to make that showing, conducting extensive discovery and litigating constitutional minimum value is unsupported and would constitute an undue burden on DSRR. Thus, the STB should deny the Motion to Compel and grant DSRR’s request to terminate this proceeding.

C. The Discovery Requests are Objectionable on Other Grounds.

For the above stated reasons, the Motion to Compel should be denied. But even if the STB were to disagree, the STB should not order DSRR to respond to all of the Discovery Requests. As explained above, the Discovery Requests are incredibly broad, consisting of 63 discovery requests,

some of which have subparts going to “nn.” or “oo.” LPPC admits that its requests go beyond “the primary evidence” required, though it does not articulate what that “primary evidence” is, specifically. Motion to Compel at 6. LPPC has not responded to any of DSRR’s specific objections. Therefore, if LPPC is even entitled to seek discovery from DSRR regarding constitutional minimum value, the STB should order the parties to meet and confer on the scope of any necessary discovery and on DSRR’s other specific objections to specific requests. LPPC has not responded to and abandoned any attempt to rebut DSRR’s specific objections to the Discovery Requests. So DSRR does not litigate them at this time, without prejudice to its position as to any particular request.

III. CONCLUSION

In sum, LPPC’s discovery is not permitted because LPPC claims to have a filed a complete application, including its substantially understated constitutional minimum value. LPPC chose not to file an incomplete application and seek discovery. There is no opportunity for LPPC to use any information gained in discovery since LPPC was required to file all evidence and argument with the Amended Application, and LPPC cannot have it both ways. Decision at 7. LPPC’s Discovery Requests are therefore procedurally improper.

LPPC further has not made a case that can support a public convenience and necessity finding that justifies a governmentally-forced sale of DSRR’s asset. Since it has not, there is no need to pursue discovery related to constitutional minimum value, and this proceeding should be concluded. The time and resources already expended on this proceeding are substantial, and DSRR respectfully submits that the STB should deny LPPC’s Motion to Compel.

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".

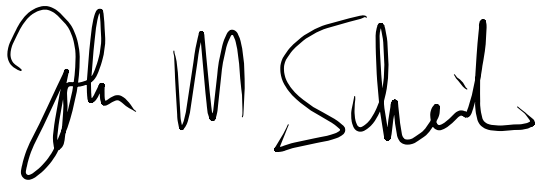
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757-916-3511

Attorney for: Delta Southern Railroad Inc.
Dated: February 28, 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: February 28, 2023

EXHIBIT A



GENTRY LOCKE
Attorneys

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February 6, 2023

VIA ELECTRONIC MAIL (rhstreeter@gmail.com)

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5255 Partridge Lane, N.W.
Washington, DC 20016

**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 Mr. Streeter:

This letter, on behalf of Delta Southern Railroad, Inc. ("DSRR"), concerns the 63 discovery requests served by the Lake Providence Port Commission ("LPPC") on January 4, 2023, on DSRR (the "Requests").

By agreement, DSRR's responses and objections are due to be served February 8, 2023. Upon further review of the STB's August 23, 2022, Decision (the "Decision") and the extensive discovery propounded by LPPC, it is clear that the Requests are altogether improper and serve no useful or legitimate purpose in this matter.

In the Decision, the STB granted LPPC its requested opportunity to file an amended feeder line application; however, it also demanded an orderly and expeditious process for adjudicating LPPC's amended application. Specifically, the STB directed LPPC "to submit *all* evidence and argument in support of its" amended application "in accordance with the requirements specified in 49 C.F.R. § 1151.3, without incorporation by reference of its previous application or any other filings." Decision at 5 (emphasis added). The STB further explained that "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." Decision at 7 (emphasis added).

In addition, the STB explained to LPPC that "[i]nsofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR that is required to prepare a complete application, LPPC *may* file a concurrent request for discovery, *with* its amended application, to obtain the information from DSR. Any *such request* will be resolved in accordance with the procedures specified in 49 C.F.R. § 1151.2(d)." Decision at 7 (emphasis added).

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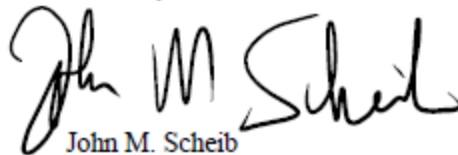
The STB explicitly gave LPPC a path to discovery but only if it was needed to complete the amended application. LPPC chose to file on January 4, 2023, what it purports to be a complete application. Nowhere in its amended application did LPPC indicate that it required any discovery from DSRR to file a complete application.

The Decision and applicable regulations make clear that the 63 discovery requests served on DSRR by LPPC are improper. It seems clear from the discovery that LPPC served that LPPC knows its estimates of constitutional minimum value are inaccurately low. But, without leave from the STB to deviate from the clear terms of the Decision (and the applicable regulations), LPPC cannot introduce new evidence into this proceeding. Thus, providing the extensive discovery requested by LPPC is not likely to lead to admissible evidence and is overly burdensome.

DSRR is entitled to the “fair and orderly” process that the Board has established for this feeder line case. Decision at 7. If the STB accepts the amended application, DSRR will respond to the low estimate and point out the myriad of flaws in those estimates – in addition to responding to the lack of merit of the amended application generally.

Given the clear impropriety of LPPC’s Requests, DSRR requests that LPPC withdraw them. If LPPC does not agree to do so, please provide your availability for a meet and confer to occur by Thursday, February 16. DSRR reserves its right to seek relief, including sanctions, and waives no other general or specific objections it may have to the Requests.

Sincerely,

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

GENTRY LOCKE ATTORNEYS

EXHIBIT B

RICHARD H. STREETER

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5255 Partridge Lane, N.W.
Washington, D.C. 20016
tele: 202-363-2011 fax: 202-363-2012
rhstreeter@gmail.com

February 7, 2023

Via email (Scheib@gentrylocke.com)

John M. Scheib
Gentry Locke Attorneys
919 E Main Street
Suite 1130
Richmond, VA 23219

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 Mr. Scheib:

This letter responds to your letter dated February 6, 2023. I respectfully suggest that the pleadings that the Lake Providence Port Commission (“LPPC”) has filed are in full compliance with the Board’s directives set out in its decision, dated August 23, 2022. Because DSRR has never provided any documents that could be used to establish the going concern value (“GCV”) of the Line that LPPC seeks to acquire, the value that L. E. Peabody & Associates, Inc. placed on the Line was based on the limited evidence that was publicly available or provided by various shippers.

As the Board noted at page 7 of its decision, dated August 23, 2020, LPPC, in its March 4, 2022 *Motion to File a Supplemental Application*, asked the Board “to require DSR to provide LPPC verified data that will allow LPPC to prepare its valuation of the Line.” According to the Board, LPPC’s request was:

premature and misplaced under the governing regulations. See 49 C.F.R. § 1151.2(d). The regulation provides that “[i]f an applicant seeking to file an initial or competing application is unable to obtain required information that is primarily or exclusively within the personal knowledge of the owning carrier, the application *may* file an incomplete application *if it files at the same time a request for discovery under 49 C.F.R part 1114 to obtain the needed information from the owning carrier*” (emphasis added). See § 1151.2(d)(1).

As the Board then explained, “[i]nsofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR that is required to prepare a complete application, LPPC may file a concurrent request for discovery, with its amended application, to obtain the information from DSR. Any such request will be resolved in accordance with the procedures specified in 49 C.F.R. § 1151.2(d)(2).” As your letter of February 6 confirms, LPPC’s discovery was served January 4, 2023.

Given the Board’s subsequent decision, LPPC honored its commitment to the Board, expressed at page 15 of its *Motion to File a Supplement Application*, that “[s]hould the Board allow LPPC to supplement its Feeder Application, LPPC will immediately provide DSR’s counsel with a detailed list of the data that should be produced.”

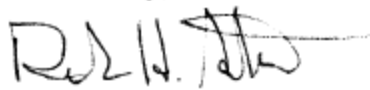
Based on the foregoing, your assertions that LPPC has deviated from the explicit “path to discovery” that the Board gave to LPPC are baseless. By seeking discovery, LPPC unequivocally alerted the Board to the fact that the GCV set out in its Supplemental Feeder Line Application was *not* based on verifiable data received from DSRR. Therefore, it would be necessary to obtain the information set out in the tendered requests for discovery. There is absolutely nothing that LPPC has done that is inappropriate.

While you assert that this will deprive DSRR of the “fair and orderly” process that the Board has established for this feeder line case, that claim is belied by actions taken by LPPC soon after it filed its *Motion to File a Supplemental Application*. On March 21, 2022, LPPC served interrogatories and requests for documents on DSRR that sought information that would allow LPPC to compute the GCV. On that same date, I spoke with Thomas J. Healey, who was then DSRR’s counsel, and explained that the discovery was forwarded at that time “to provide [him] with ample time to respond to discovery” should the Board deny DSRR’s pending motion to dismiss. Thereafter, on April 11, 2022, that understanding was confirmed following receipt of an email from Mr. Healey on behalf of DSRR that “DSR will not respond to LPPC’s Discovery unless and until the Surface Transportation Board (the “Board”) were to rule that LPPC’s renewed and expanded feeder line efforts are appropriate and otherwise are timely.” As this demonstrates, LPPC went out of its way to ensure that DSRR would not be deprived of a full opportunity to respond to discovery of essential information that is required for the Board to determine the constitutional minimum value of a particular railroad line in the context of a feeder application filed pursuant to 49 U.S.C. § 10907.

John Scheib
February 7, 2023
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Given the foregoing, LPPC will not withdraw its Requests. However, it will agree to "meet and confer" at the offices of L. E. Peabody & Associates on Monday, February 13, 2023. The meeting can be held on Zoom. Given the fact that Patriot Rail entered into a Stock Purchase Agreement to buy the shares of DSRR from West Branch on September 9, 2022, it is likely that much of the information that LPPC is seeking is readily available in the highly redacted document that was filed in FD No. 36642.

Yours truly,

A handwritten signature in black ink, appearing to read "R.H. Streeter", with a long horizontal flourish extending to the right.

Richard H. Streeter

RHS:rs

Cc: L. E. Peabody & Associates, Inc.

Wyly Gilfoil, Lake Providence Port Commission

EXHIBIT C

From: Scheib, John M.
Sent: Wednesday, February 8, 2023 4:48 PM
To: Richard Streeter <rhstreeter@gmail.com>
Subject: FD 36447 Responses to LPPC Discovery

Mr. Streeter:

Pursuant to our prior agreement in which you granted DSRR an extension until February 8, 2023, to formally respond to the most recently served discovery, please see DSRR's timely provided responses and objections, which are attached.

In addition, in your letter on February 7, 2023, you have offered February 13 for a meet and confer regarding DSRR's letter of February 6, 2023, in which DSRR objected to LPPC's discovery based on the plain language of the August 23, 2022 decision. That decision expressly required LPPC to file either a complete application with all evidence or an incomplete application along with a request to the STB outlining any needed discovery, to be resolved in accordance with 49 CFR § 1151.2(d)(2). Regrettably, I am traveling February 13-15, but could meet by phone on February 10 or February 16. Please let me know if either of those dates works for you.

Best regards,

John