



GENTRY LOCKE
Attorneys

Noah P. Sullivan

NSullivan@gentrylocke.com

P: (804) 956-2069

F: (540) 983-9400

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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:

Attached for filing in the above-captioned proceeding is Delta Southern Railroad, Inc.'s Motion to Compel Discovery Responses from the Lake Providence Port Commission. We are also providing copies of the same to Administrative Law Judge Thomas McCarthy, per the Board's order regarding discovery matters.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

/s/ Noah P. Sullivan

Noah P. Sullivan
Attorney for: Delta Southern Railroad, Inc.

cc: All Counsel of Record
Judge Thomas McCarthy

**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 COMPEL DISCOVERY
RESPONSES FROM THE LAKE PROVIDENCE PORT COMMISSION**

On January 3, 2024, Delta Southern Railroad, Inc. (“DSRR”) served discovery requests upon the Lake Providence Port Commission (“LPPC”), the applicant in this proceeding which is seeking to force a sale of DSRR’s Lake Providence Branch line to LPPC. LPPC has failed and now refused to respond to DSRR’s discovery requests, all of which address highly relevant and central issues in this case. DSRR accordingly seeks an order compelling LPPC to respond fully and completely to DSRR’s discovery requests, pursuant to 49 C.F.R. §§ 1114.21, *et seq.*, and 49 C.F.R. § 1117.1.

LPPC’s sole basis for refusing to conduct discovery is a strained reading of the Board’s orders as somehow limiting *DSRR’s* discovery. That contention is meritless. The Board’s regulations permit discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding,” 49 C.F.R. § 1114.21(a)(1); which discovery “may be used by parties *without* filing a petition and obtaining prior Board approval, 49 C.F.R. § 1114.21(b) (emphasis added). Moreover, the Board’s regulations require the opposite of what LPPC now contends is the law of the case: “methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party’s discovery,” unless otherwise ordered by the Board. 49 C.F.R. § 1114.21(d).

The Board has not issued any order limiting, much less addressing, what discovery DSRR may conduct at this time. The only discovery-related matters before the Board have been disputes about what limits exist on *LPPC's* discovery. Thus, the Board's general rules regarding discovery apply in full force to DSRR. Indeed, the Board's order (in appointing the ALJ) specifically contemplated "other discovery matters that may arise in this proceeding," and the Board never limited the sequence or timing of DSRR's discovery. *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, LA.*, FD 36447, slip op. at 17 (Ordering Paragraph 3.b) (STB served Nov. 20, 2023) ("Nov. 20 Order").

LPPC chose to initiate this case. DSRR is entitled to discover relevant evidence to prepare its defense. DSRR engaged in a good-faith effort to resolve this discovery dispute with LPPC. But it is apparent that LPPC is not willing to comply with its discovery obligations. LPPC is obstructing discovery, and the Board should order it to respond fully and completely to DSRR's discovery requests.

BACKGROUND

LPPC's Amended Application

LPPC filed its amended feeder line application on January 4, 2023. LPPC seeks a forced sale of DSRR's Lake Providence Branch line (the "Line"). LPPC is not a rail carrier, and it has entered into an agreement with the North Louisiana and Arkansas Railroad, Inc. ("NLA") to operate the Line, should LPPC prevail. NLA is a regional rail carrier that owns and operates, among other lines, portions of the larger McGehee-Tallulah railroad corridor, of which the Line is

a part. Portions of that corridor are also owned by LPPC as well as the Southeast Arkansas Economic Development District (“SEAEDD”). *See* Nov. 20 Order at 2.¹

As relevant here, LPPC’s amended application alleges that DSRR inadequately serves current or potential shippers, has refused to invest adequately in maintaining the Line, and that LPPC’s acquisition of the Line (and operation of it by NLA) will benefit the public interest. As a central part of LPPC’s amended application, LPPC relies on circumstances surrounding a potential public-private partnership that included LPPC, DSRR, NLA, and SEAEDD in pursuing an INFRA grant from the U.S. Department of Transportation to rehabilitate the McGehee-Tallulah railroad corridor. Indeed, the amended application devotes an entire fifteen-page section and four exhibits to discussing the INFRA grant—including the entire grant application itself. *Am Application* at Ex. B. Each of the verified statements of LPPC, NLA, and SEAEDD representatives submitted with the amended application also make much of the INFRA grant. *See Am. Application* at Exs. D, I, and J. DSRR’s participation in that project ended, and LPPC alleges that prompted LPPC to first file its application in November 2020. *See* Nov. 20 Order at 3. LPPC, NLA, and SEAEDD, as DSRR understands, have continued to pursue and use the INFRA grant monies ultimately awarded.

DSRR Pursues Relevant Discovery from LPPC

In this case, to rule for LPPC, the Board is required to find in LPPC’s favor on each of the statutory factors that comprise the public convenience and necessity test under 49 U.S.C. § 10907(c)(1). Those statutory factors require a finding that:

(A) the rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over

¹ That railroad corridor is from milepost 408.9 to 498.44. DSRR owns milepost 471.0 to 498.44 (the Line, which LPPC seeks to acquire); LPPC owns 454.8 to 471.0; SEAEDD owns 433.0 to 454.8; and LPPC and NLA jointly own 408.9 to 433.0. *See* Nov. 20 Order at 2.

such line; (B) the transportation over the line is inadequate for the majority of shippers who transport traffic over such line; (C) the sale of the line will not have a significantly adverse financial effect on the rail carrier operating such line; (D) the sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and (E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over such line.

Id.; see also STB Decision of Nov, 19, 2023 at n. 10. In considering LPPC’s application, the Board must also find that LPPC is a financially responsible person, defined by statute as a person who is capable of purchasing the Line at its constitutional minimum value, and “is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.” 49 U.S.C. § 10907(a)(2); see *id.* § 10907(a) and (b).²

On January 3, 2024 DSRR served its Third Set of Discovery Requests on LPPC (the “Discovery Requests”), attached hereto as **Exhibit A**. The Discovery Requests targeted precisely these central issues in the case. For instance, DSRR sought documents and communications that LPPC had with a list of rail customers or potential rail customers regarding service by DSRR or NLA. See RFP No. 29. DSRR also sought information and documents regarding the INFRA grant, as well as other governmental grants for rail service or infrastructure pursued by LPPC. See ROGs Nos. 59-64, RFP Nos. 27-28.

LPPC Refuses to Respond to the Discovery Requests

On February 6, 2024, LPPC served its responses to the Discovery Requests, attached hereto as **Exhibit B**. Those responses were four days late. But the extra time LPPC took was not to

² LPPC, as a government entity, is presumed by the Board to be a financially responsible person; however, that presumption is rebuttable. See *Ind. Sw. Ry. Co.—Abandonment Exemption—in Posey & Vanderburgh Cntys., Ind.*, STB AB 1065X, slip op. at 5 (STB served Apr. 8, 2011) (finding government entity was not financially responsible, dismissing its OFA, and stating that the presumption that government entities are responsible, “although entitled to significant weight, is not conclusive”).

produce responsive documents. Indeed, LPPC produced *zero* documents. LPPC served, instead, numerous objections and half-baked answers. LPPC also asserted, for many of the Discovery Requests, that prior discovery responses by LPPC provided the information—ignoring its continuing obligation to supplement all responses to prior discovery under 49 C.F.R. § 1114.29.³ Moreover, the Amended Application initiated a new case, redefining the scope of the line at issue, and rendered prior discovery requests by DSRR and answers by LPPC at least partially if not totally nullified.

On February 9, 2024, DSRR sent to LPPC a detailed letter outlining the serial deficiencies in LPPC’s responses, attached hereto as **Exhibit C**. LPPC sent a response on February 13, 2024 (in a joint letter from LPPC’s counsel who also represents NLA and SEAEDD), attached hereto as **Exhibit D**. That letter failed to address numerous issues raised by DSRR’s deficiency letter. Nonetheless, the parties conducted an approximately 1.5 hour meet-and-confer on February 16, 2024. A memorializing email of that conference is attached hereto as **Exhibit E**.

It was apparent to DSRR that LPPC had not conducted adequate searches for responsive documents. What LPPC has done is not to engage in an attorney-directed and supervised discovery process. Instead, LPPC relied on Wyly Gilfoil—the LPPC Port Director—to self-determine whether LPPC had responsive documents, through his own requests to other LPPC officials. And LPPC could not—and still cannot—confirm that any real searches were done for electronic and hardcopy documents. For instance, LPPC could not state what, if any, search terms were used to find responsive documents (particularly emails or other electronic communications). Based on

³ Of note, LPPC has not Bates stamped any documents produced, which makes it difficult to have useful discussions about particular documents. LPPC should reproduce the limited number of documents produced to date with proper Bates-stamped.

this inadequate “confirm you have nothing” approach, LPPC has played wasteful discovery games—objecting to requests and then claiming they looked and did not have anything anyway.

The paltry productions from LPPC lack credibility and, indeed, have been contradicted by LPPC’s own documents. For instance, LPPC’s meeting minutes from November 15, 2023 indicated grants or awards that would be responsive to requests related to other rail infrastructure grants.⁴ Those were not identified by LPPC in their initial responses. And, when called on it, LPPC’s response was to claim that “the LA DOTD award of \$5 million to the Rail Reconstruction Project Tallulah – Newellton is not a grant” (as LPPC apparently defines it), and is irrelevant (as LPPC defines it). See **Exhibit F** (“Response to Noah Sullivan’s emails dated Feb 19 2024,” at 2 (sent to Judge McCarthy Feb. 20, 2024)). This is just one example of the obstruction that has plagued LPPC’s discovery responses since filing its amended application on January 4, 2023, with LPPC refusing to provide straightforward answers to straightforward requests. Moreover, LPPC is under a continuing obligation to supplement all responses to prior discovery and has clearly failed to do so. 49 C.F.R. § 1114.29.

LPPC also relies on other parties’ discovery responses to excuse its own discovery obligations. LPPC, NLA, and SEAEDD are all represented by the same counsel. LPPC’s responses make it clear it is using NLA and SEAEDD’s responses to excuse its own non-performance of reasonable searches for responsive information and records. Indeed, in an email from counsel on February 6, 2024, LPPC indicated that LPPC was relying on the document productions from NLA and would not itself produce the responsive documents in its possession.

⁴ LPPC has refused to produce various public records such as meeting minutes, budgets, and other financial reports, pointing DSRR to the Louisiana Division of Administration website which contains some, but not all, of the requested public records.

This reliance is improper. Each party must conduct independent, thorough searches to respond to DSRR's discovery requests in this matter. Each party must produce all relevant documents regardless of whether another party may have the same or similar documents. Finally, each party must produce all relevant documents in its possession regardless of whether another party may have or produce the same document. Consequently, LPPC must conduct its own search of its own records. Discovery obligations are specific to each party, and LPPC's actions undermine the discovery process and infringe DSRR's right to conduct relevant discovery.

LPPC has shown its unwillingness to engage in meaningful, relevant discovery through its latest delay tactic, which was to run to Judge McCarthy to blow-up, without so much as a courtesy notice to DSRR, the ongoing meet-and-confer process that DSRR had engaged in, in good faith, to find an agreement to remedy the deficiencies in LPPC's responses.

It is clear that LPPC will not voluntarily comply with its discovery obligations. For the reasons set forth below, DSRR is entitled to full responses to the Discovery Requests from LPPC, and the Board should issue an order compelling LPPC to do so.

ARGUMENT

I. The Discovery Requests Seek Highly Relevant Information.

LPPC is seeking a Board order to force DSRR to sell the Line to LPPC. The Line is a going concern, which generates most of the revenue for DSRR.⁵ As described above, Congress established the feeder line remedy that LPPC seeks with very specific criteria that the Board is to consider. *See* 49 U.S.C. § 10907. Those criteria, among other issues (including valuation of the Line), are the central focus of the Discovery Requests.

⁵ DSRR has another, shorter branch—the Sterlington Branch—in Monroe, Louisiana.

In particular, the Discovery Requests target from LPPC information and documents it has—good, bad, or indifferent—regarding the adequacy of rail service by NLA on lines it operates today, what LPPC and NLA’s track record is and plans are for operating the Line, and whether LPPC is financially responsible. As the proposed owner and operator of the Line, this discovery is essential to criteria E, whether the sale of the Line “will be likely to result in improved railroad transportation for shippers that transport traffic over such line.” 49 U.S.C. § 10907(c)(1)(E). And information regarding LPPC’s financial management of rail infrastructure and related government grants certainly is relevant to whether LPPC is financially responsible. 49 U.S.C. § 10907(a). DSRR’s requests also target allegations that DSRR current service is inadequate, asking for documents related to customers. This information is directly relevant to criteria A and B. 49 U.S.C. § 10907(c)(1)(A)-(B).

LPPC cannot seriously contest that these statutory criteria are relevant subject matter for discovery by DSRR. And yet, LPPC has produced *zero* documents in response to the Discovery Requests.

II. DSRR is Entitled to Conduct Discovery at this Time.

LPPC’s main contention, at least at this time, is that the Board has limited discovery to the valuation discovery requested by LPPC.⁶ LPPC has offered various explanations for this position, but all of them lack merit.

⁶ LPPC, during the Feb. 16th meet-and-confer, was initially adamant that it did not believe that it had responsive documents to provide. By the end of the discussion, it was clear that was not the case. And it was only after that point that LPPC decided to stand on its objection to the timing of DSRR’s discovery requests.

A. The Board’s Regulations Grant DSRR the Right to Conduct Discovery at this Time.

First, the Board’s regulations and the feeder line statutes make clear that DSRR is entitled to full discovery on every relevant issue. Pursuant to 49 C.F.R. § 1114.21(a)(1), “Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” Feeder line cases are “required to be determined on the record after hearing,” and thus are not informal proceedings for which the Board does not automatically permit discovery. *See id.*; 49 U.S.C. § 10907(c)(1) (discussing Board consideration of criteria “after a hearing on the record”). Indeed, the Board’s regulations are clear that “[a]ll discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.” 49 C.F.R. § 1114.21(b). Accordingly, there was nothing DSRR required from the Board before serving the Discovery Requests on January 3, 2024.

Second, the Board’s discovery regulations are also clear that DSRR’s conduct of discovery is not limited in anyway by the sequencing or timing of LPPC’s discovery, including as related to valuation issues. The Board’s regulations state that “methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay *any party’s* discovery.” 49 C.F.R. § 1114.21(d) (emphasis added).

In its February 13 letter (Ex. D), LPPC nonetheless argues that the Discovery Requests are “untimely” because, “[u]ntil the Board accepts LPPC’s Amended Feeder Line Application and establishes a procedural schedule, there is no pending formal proceeding that would allow DSRR to seek discovery.” Ex. D at 1. But the Board has explicitly stated that “the Board’s regulations do not prevent parties from starting discovery before a procedural schedule is issued.” *Navajo Transitional Energy Company, LLC v. BNSF Railway Company*, 2023 STB LEXIS 145 at *7 (STB served Aug. 7, 2023).

Indeed, LPPC's own conduct confirms that it hardly believes its own now-adopted contention. LPPC, itself, responded to previous discovery requests from DSRR, after LPPC filed its amended application and *before* the Board set any procedural schedule. *See* Email to ALJ (Feb. 20, 2024) (describing LPPC's responses in February 2024 to DSRR's requests), attached as **Exhibit G** (without attachments); LPPC Responses to Second Set of Discovery Requests, attached as **Exhibit H**. The bottom line is that LPPC initiated a proceeding, for purposes of the discovery rules, when LPPC filed the Amended Application on January 4, 2023. DSRR has been entitled to discovery since that time. *See also* Nov. 20 Order at 1 (Board begins decision, "This proceeding . . .").

B. The Board Has Only Limited LPPC's Conduct of Discovery, not DSRR's.

LPPC also contends that the Board's November 20 Order (as confirmed by subsequent orders) sweeps beyond its plain terms and limits DSRR's right to conduct discovery. That contention is unsupported.

The Board's November 20 Order addressed various pending motions, one of which was a motion to compel filed by LPPC against DSRR. Nov. 20 Order at 4 ("On February 9, 2023, LPPC moved to compel DSR's production of discovery information, and DSR responded on February 28, 2023."). DSRR, nor LPPC had raised any issue with the conduct of discovery by DSRR, and the scope of permissible discovery by DSRR was *not* before the Board for decision.

There, DSRR had contended that, based on the specific regulations for feeder line cases which limit the ability of the *Applicant* (here, LPPC) to conduct discovery, LPPC's valuation discovery was improper. The Board disagreed. *See* Nov. 20 Order at 13-15. The Board, accordingly, ordered that "LPPC's request for discovery relating to valuation may move forward

and the case will proceed, as discussed above and specified below,” including that the parties meet-and-confer and identify any unresolved issues for resolution by Judge McCarthy. *Id.* at 16.

But nowhere did the Board rule upon DSRR’s right to conduct discovery. Indeed, in appointing Judge McCarthy, the Board anticipated that DSRR would, separately, be conducting discovery. The Board ordered that “any other discovery matters that may arise in this proceeding” are “assigned to the administrative law judge for handling and initial resolution as discussed above and below.” *Id.* at 17 (Ordering Paragraph 3.b.). The Board stated “[t]his proceeding is assigned to Judge McCarthy for the handling of all discovery matters and initial resolution of all discovery disputes.” *Id.* at 17 (Ordering Paragraph 6). It would have made no sense for the Board to set up a process for resolving matters *other than* the valuation discovery LPPC is conducting if—without saying so—the Board had limited discovery to only LPPC’s valuation discovery.

Accordingly, LPPC’s objections lack merit, and DSRR is entitled to full discovery under the Board’s regulations to prepare its defense.

III. LPPC Should be Compelled to Respond Fully to the Discovery Requests.

To streamline this motion, DSRR has attempted to group relevant requests by subject matter, and address the issues it had previously identified to LPPC.

A. Discovery Requests related to Service by DSRR or NLA

As noted above, DSRR targeted certain discovery requests to LPPC focused on the adequacy of rail service by both DSRR and NLA. LPPC has failed to respond.

RFP No. 29: DSRR sought discovery of documents and communications between LPPC and each of the customers identified in its application or discovery responses concerning rail service by DSRR or NLA, from 2017 to present. Such materials are necessarily and indisputably relevant. NLA is the railroad LPPC claims will provide better service. And, the customers listed

are those identified by LPPC itself. In addition, the public convenience and necessity test requires LPPC to prove that DSRR is the railroad that LPPC claims is currently not providing adequate service to a majority of customers who transport traffic over the line. 49 U.S.C. § 10907(c)(1)(A)-(B). It also requires LPPC to prove that service would be better under its ownership and NLA's operation. 49 U.S.C. § 10907(c)(1)(E). Thus, nothing could be more central to this case than the adequacy of service by DSRR *and* the adequacy of service by NLA as the entity LPPC proposes to take over operations by DSRR.

Despite the clear relevance of RFP No. 29, LPPC produces no documents and states no valid or cognizable objection to the RFP. Indeed, as but one example, DSRR is aware of one incident involving responsive communications involving APEX, a customer that was very upset with poor service by NLA. And LPPC admits it has responsive documents, but refuses to produce them because "DSRR was involved in the incidents that led to the Zoom meeting with APEX officials" and thus DSRR "is in the possession of the information it seeks." This is nonresponsive. It is obvious there are responsive documents that led to this meeting and following from it, and LPPC must search for and produce them.

Furthermore, LPPC's application includes verified statements from customers identified by the RFP. Therefore, it is not credible LPPC has *no* documents or communications related to service by DSRR or NLA from 2017 to the present, particularly given the fact NLA operates the portion of rail line owned by LPPC currently. As shown, this discovery is at the very heart of the matter. LPPC must provide complete discovery responses to DSRR's indisputably relevant request, and the Board should order a full and complete response.

B. Discovery Requests Related to INFRA and Other Grants

LPPC's amended feeder line application prominently featured the INFRA grant and the LPPC, DSRR, NLA, and SEAEDD public-private partnership that pursued it. LPPC devoted an entire section of its amended application to a discussion of that grant alone.⁷ In addition, the verified statements of LPPC, NLA, and SEAEDD representatives submitted with the amended application make much of the INFRA grant. In discovery, DSRR sought information regarding the INFRA grant and any other governmental grants sought by LPPC related to the Line or lines it owns and operates through NLA. This is clearly relevant information. In deciding whether to grant the application, the STB must consider, among other factors, LPPC's financial responsibility and whether "sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line." 49 C.F.R. 1151.3(11)(i)(E). Meeting minutes from LPPC (which LPPC still will not produce to DSRR) reveal that "The Arkansas portion of the Rail, segments A & B, are complete. Categorical exclusion for the Louisiana sections has been completed. We have submitted Final Design to FRA and LA DOTD for their approval." LPPC Meeting Minutes (Nov. 15, 2023) ("November Meeting") at 1, attached as **Exhibit I**. LPPC's pursuit of and expenditure of public grants for purposes of improving rail infrastructure and service is directly relevant to its suitability to acquire and operate the Line. DSRR addresses specific deficiencies in LPPC's responses on this issue below.

RFP No. 27: In RFP No. 27, DSRR sought documents and communications related to any and all INFRA grants regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules. As shown above, such information is highly relevant to

⁷ LPPC may file another amended application and withdraw all references to the INFRA grant if it would like to stand on an objection that the grant information is not relevant.

this proceeding because LPPC itself made it the center piece of its application, and it directly relates to LPPC's financial responsibility and whether a sale of the Line will be likely to result in improved railroad transportation for shippers. Again, LPPC's pursuit of and expenditure of public grants for purposes of improving rail infrastructure and service is *directly relevant* to its suitability to acquire and operate the Line. The grant was either awarded even after DSRR's alleged withdrawal, undermining LPPC's claim about DSRR, or the grant money never flowed for reasons unrelated to DSRR but likely illuminating about LPPC, SEAEDD, NLA, and others. Either way, information about the grant is relevant to the issues raised by LPPC in its amended application.⁸

In its response, LPPC suggests that the requested information is available to DSRR. However, as LPPC made abundantly clear in its application, while DSRR was involved in the INFRA grant process at the beginning, it is not privy to all the relevant communications involving LPPC. LPPC is the one who prominently featured the INFRA grant in its application and recent developments are absolutely relevant to the statutory factors. Thus, LPPC must search for and produce responsive documents, including all communications with the other parties and the Federal Railroad Administration.

RFP No. 28: DSRR sought documents related to other governmental grants involving either the Line or LPPC's rail lines operated by NLA, including those granted or denied. Whether LPPC has the financial resources to receive or provide matching funds for grants is directly relevant to its financial fitness. In its Response, LPPC stated that it has not applied for any such grants. However, given the multiple grant applications referred to in LPPC's meeting minutes, LPPC must

⁸ DSRR is willing to limit the scope of this request to exclude communications with consultant HDR about technical details of completing the grant application, provided LPPC agrees that it may not use as evidence any such documents not produced to DSRR.

conduct a further inquiry to determine whether responsive documents exist and produce them promptly.

Interrogatory Nos. 59-62: DSRR sought specific information on the INFRA grant money received for rehabilitating the Lake Providence Branch line. LPPC disclaims any knowledge of information regarding work performed under the INFRA grant in Arkansas, and further responds that no funds have been spent for the 16.2 miles of track in Louisiana owned by LPPC nor on tracks located within Lake Providence Port.

However, as noted above, LPPC meeting minutes indicate that LPPC does have knowledge regarding the current status of funding under the INFRA grant. Given the joint nature of the INFRA grant and its disbursement, it is not credible that LPPC (including all of its members and employees) has no information regarding exactly what amounts have been disbursed, to whom, for what purpose, and what work has been performed. Thus, the Board should order full and complete responses to Interrogatory Nos. 59-62.

Interrogatory Nos. 62-64: Similarly, DSRR sought information related to other governmental grants for rail infrastructure or rail service. In its Response, LPPC claims not to have received any other grants—from any source. Again, the most recent LPPC meeting minutes raise questions about that response. For instance, and as noted above, minutes from November 15, 2022 indicate an award of \$5 million to the “Rail Reconstruction Project Tallulah – Newellton,” which appears responsive. November Meeting at 1. LPPC’s response was to say that this was not a grant. In addition, the January 18, 2023 minutes discuss approval to engage SEAEDD to pursue a RAISE grant application and another MARAD Port Infrastructure Development Program grant application. LPPC Meeting Minutes (Jan. 18, 2023) (“January Meeting”) at 1, attached as **Exhibit**

J. Thus, it appears LPPC's responses are incomplete at best, and the Board should order full and complete responses to Interrogatory Nos. 62-64.

C. Other Relevant Discovery Requests

RFP No. 30: DSRR sought documents related to and communications with the Northeast Louisiana Railroad Development District ("NLRDD") regarding rail property owned by DSRR, including the Line. In its Response, LPPC objected on relevance grounds. Given that NLRDD is seeking to condemn track immediately adjoining the Line (including valuing that track segment), communications with NLRDD or documents related to that proceeding and/or to the Line itself, at a minimum, are relevant to the subject matter of this case, including valuation of the Line. LPPC must conduct a thorough search for responsive documents and produce them.

RFP No. 31: DSRR sought public notices of LPPC meetings. In Response, LPPC refused to produce any notices, claiming they are available from the Louisiana Division of Administration. However, it is unclear if the publicly available notices constitute all the public notices that exist for the relevant time period. LPPC has not confirmed whether or not this is the case, despite explicit questioning from DSRR.

Moreover, the website appears to be out of date and insufficient. This is not the first time LPPC has used the Louisiana Division of Administration to refuse to respond to relevant discovery. LPPC previously referred DSRR to the website in response to prior discovery requests for financial statements, budgets, and meeting minutes. LPPC also indicated it would be producing updated financial information and meeting minutes. It has not done so. It must produce information that it has in its possession, and it cannot hide behind another agency's website. It is beyond belief that LPPC does not have budget materials presented to its members given that the Commission's minutes reference financial reports.

RFP Nos. 33-35: Throughout this proceeding, various elected officials have submitted letters urging the Board to take action on this matter. DSRR sought discovery of communications with certain elected officials (or their staff), concerning this case (RFP 33), DSRR's service over the Line (RFP 34), and LPPC's ability to purchase the Line (i.e. its financial condition, RFP 35). Such materials are necessarily and indisputably relevant—what LPPC tells to third parties that it is seeking assistance from about these topics is relevant and therefore within the scope of permissible discovery.

For RFP No. 33, and based on the parties' meet-and-confer, it appears that LPPC largely relies on its general objection that its communications with elected officials are privileged under the First Amendment. As an initial matter, privilege claims cannot be made generally but must be made with specificity. See *Kerr v. United States Dist. Court for Northern Dist.*, 426 U.S. 394, 399-400 (1976). That is often accomplished, in modern discovery, through a privilege log that describes the document, the author, recipients, and sufficient information to demonstrate that whatever privilege claim is made, applies. Thus, LPPC cannot claim blanket privilege on untold numbers of documents, especially by generally referring to a "General Objection" that lists at least three possible privileges. See Ex. B, LPPC General Objection No. 2 (objecting to each request "to the extent it seeks materials protected by the attorney-client privilege, the attorney work-product doctrine, the First Amendment privilege to petition the government for redress of grievances, or any other applicable privilege, protection or exception from discovery or disclosure").

But more substantively, it is LPPC's burden to show the privilege applies. That any First Amendment protection would apply to the records of a *public body* subject to its state's public records laws and mandatory disclosure requirements, with regard to its advocacy before other branches of government concerning public affairs, appears unlikely. LPPC's resistance to

producing such public records in discovery only indicates to DSRR that these materials contain admissions that it is entitled to discover.

For RFP Nos. 34 and 35, LPPC claims that it has no responsive documents, notwithstanding its objections. Here, again, the sufficiency of LPPC's searches lacks credibility. The Board should order full and complete responses and if there are, in reality, no responsive documents, then LPPC can so state.

CONCLUSION

In sum, LPPC's discovery responses to DSRR's Third Set of Discovery Requests are wholly unacceptable. They do not provide the full and complete discovery that DSRR is entitled to in a proceeding in which LPPC attempts to wield the STB's authority to seize DSRR's assets. Accordingly, DSRR respectfully requests that the Board grant its Motion to Compel.

Respectfully submitted,

/s/ Noah P. Sullivan
John M. Scheib
Noah P. Sullivan
Jasdeep Khaira
Gentry Locke
919 Main Street, Suite 1130
Richmond, VA 23219
757-916-3511

Attorneys for: Delta Southern Railroad, Inc.
Dated: March 8, 2024

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

Mr. Michael F. McBride
Van Ness Feldman
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
mfm@vnf.com

/s/ Noah P. Sullivan
Noah P. Sullivan
Dated: March 8, 2024

EXHIBIT A

**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 THIRD SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO
LAKE PROVIDENCE PORT COMMISSION**

Delta Southern Railroad Inc. (“DSRR”), through counsel, hereby serves its Third Set of Interrogatories and Requests for Production of Documents upon the Lake Providence Port Commission (“LPPC”), in the above-captioned matter, pursuant to 49 C.F.R §§ 1114.26 and 1114.30. LPPC’s responses and any objections are due to be served on DSRR within 30 days of service of these discovery requests.

INSTRUCTIONS AND DEFINITIONS

1. “Document(s)” shall mean anything on or in which data or information is recorded or stored, including, but not limited to: writings or representations of every kind, correspondence, electronic mail and files, text messages, memoranda, notes, statements, paraphrases or summaries of statements, drawings, tabulations, charts, graphs, plans, maps, sketches, photographs, brochures, diaries, records, rules, regulations, summaries, reports, report forms, studies, papers, work papers, letters, books, notebooks, schedules, lists, worksheets, agreements, contracts, records of telephone calls or any other communications or conversations, telegrams, teletypes, radiograms, cables, discs, tapes or any other forms of mechanical recordings of all statements not reduced to writing, film, microfilm, computer printouts and computations potentially generated to summarize

information stored in computer storage by whatever means. The word “Document(s)” also includes, but is not limited to, all handwritten, typed, printed and photocopied matter, including all marginal notations and drafts, duplicates, carbon copies and any other copies thereof, all electronically stored documents such as information stored on computer drives, hard discs, diskettes, floppy discs, DVD, CD, memory sticks, cloud storage, any other means of electronic storage, and all information posted online such as information posted on social media or a blog, even if such information was later edited or deleted.

2. When asked to “describe” or “explain in detail” or “describe in detail” an act, occurrence, event, transaction or communication, the description or explanation should include, but is not limited to, the following:

- a. The date, time and place;
- b. The name of each person present, whether or not a participant;
- c. The explanation or description should reference underlying facts rather than ultimate facts or conclusions of fact or law.

3. If any of the information included in the answers to these interrogatories is not within the personal knowledge of the person certifying the answers to these interrogatories, so indicate in each instance where such information is included, and identify each person and/or document from whom/which such information was obtained.

4. The connectors “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests any information that might otherwise be construed to be outside the scope of the interrogatory or request.

5. “Identify” with respect to a document means set forth the following information, if known: a general description (e.g., letter, memorandum, report, etc.); a brief summary of its contents, or a description of the subject matter it concerns; the name and address of the persons, if any, who drafted, prepared, compiled or signed it; and any other descriptive information necessary in order to adequately describe it in a subpoena *duces tecum* or in a motion or request for production.

6. “Identify” with respect to a person means set forth the person’s full name, last known home address and telephone number, cellphone number, email address, current occupation and position, the last known address and telephone number of the person's place of employment and his job title.

7. “Identify,” when referring to any communication, means to state the date of the communication; the nature of the communication (oral, written, etc.); the identity of the parties to the communication; the subject matter of the communication; and the identity of any documents arising from, reflecting, recording, or relating to the communication.

8. The word “person” shall mean any individual, firm partnership, corporation, association, business or governmental entity or subdivision, agency, department, and any “person” acting by or through, directly or indirectly, and other “person” as well as any “person” by whom such “person” was controlled with respect to the matter in question.

9. The word “Including” shall mean “including but not limited to.”

10. “LPPC,” “You,” and “Your” shall mean the Applicant Lake Providence Port Commission, and each of its agents, attorneys, accountants, consultants, officers, commissioners, employees, independent contractors, and any other individual or entity associated or affiliated with it or purporting to act on its behalf.

11. “DSRR” shall mean line-owner Delta Southern Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

12. “NLA” shall mean the North Louisiana and Arkansas Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

13. The “Line” means the portion from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana, which is the complete and only subject of the amended feeder line application filed on January 3, 2023.

14. “SEAEDD” shall mean the Southeast Arkansas Economic Development District, and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

15. “MPPC” shall mean Madison Parish Port Commission and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

16. The interrogatories herein are to be answered under oath within thirty (30) days of service. The documents and things requested are to be produced within thirty (30) days of service

at the offices of Gentry Locke, 919 E. Main St. Suite 1130, Richmond, VA 23219. You may produce documents electronically, via email to scheib@gentrylocke.com

17. These discovery requests are continuing, and you must supplement your responses if you obtain further or different information.

18. Unless otherwise specified in the Interrogatory or Request for Production of Documents, the time period for these requests is January 1, 2017 to the present.

INTERROGATORIES

INTERROGATORY NO. 53

Please Identify each commissioner or employee of LPPC whose Documents have been searched to respond to the first, second, or third set of interrogatories and RFPs (“discovery requests”) served on LPPC by DSRR in Surface Transportation Board FD No. 36447.

INTERROGATORY NO. 54

For each commissioner or employee listed in response to Interrogatory No. 53, provide the dates on which that person’s personal email was searched for documents responsive to DSRR’s discovery requests and the name of the person who conducted the search.

INTERROGATORY NO. 55

For each commissioner or employee of LPPC listed in response to Interrogatory No. 53, provide the dates on which that person’s work email, work hard drive, work corporate drive, or work cloud drive was searched for documents responsive to DSRR’s discovery requests and the name of the person who conducted the search.

INTERROGATORY NO. 56

For each commissioner or employee of LPPC listed in response to Interrogatory No. 53, please provide the dates on which that person’s hardcopy documents were searched for

responsive documents to DSRR's discovery requests and the name of the person who conducted the search..

INTERROGATORY NO. 57

For each commissioner or employee listed in response to Interrogatory No. 53, please provide the date on which that person's email was last purged or deleted.

INTERROGATORY NO. 58

Please describe where, how often, and the software used by LPPC to backup and retain work emails and other electronic documents.

INTERROGATORY NO. 59

Please describe the status of all work performed pursuant to the INFRA grant, which was attached as Exhibit A to LPPC's filing of January 4, 2023 in STB Finance Docket No. 36447.

INTERROGATORY NO. 60

Please list the amount of INFRA grant funds received from the federal government to date and the date(s) on which the funds were received.

INTERROGATORY NO. 61

Please list the amounts of the INFRA grant money received that have been expended to date and on what activity each amount was expended.

INTERROGATORY NO. 62

Please list the names and amounts of any other governmental grants received for rail infrastructure or rail service by LPPC, whether for the Line or lines owned by LPPC and operated by NLA.

INTERROGATORY NO. 63

For each grant identified in response to Interrogatory No. 62, please list the amount of grant funds received, the governmental entity awarding the funds, and the date(s) on which the funds were received.

INTERROGATORY NO. 64

For each grant identified in response to Interrogatory No. 62, please list the amounts of the grant money received that have been expended to date and on what activity each amount was expended.

INTERROGATORY NO. 65

Please describe in detail the legal basis for LPPC's authority to acquire and/or operate the Line, including the portion outside of East Carroll Parish, Louisiana. Include in your response specific citation to Louisiana statutory or constitutional provisions that provide such claimed authority.

INTERROGATORY NO. 66

Please describe in detail the legal basis for LPPC's authority to file and pursue a feeder line application before the Surface Transportation Board. Include in your response specific citation to Louisiana statutory or constitutional provisions that provide such claimed authority.

INTERROGATORY NO. 67

Please state what You estimate the costs of operating the Line will be on an annual basis.

INTERROGATORY NO. 68

Please state whether Your operating lease with NLA is exclusive.

REQUESTS FOR PRODUCTION OF DOCUMENTS ("RFPs")

RFP NO. 27

Please produce all Documents and communications related to any and all INFRA grants (including but not limited to Exhibit A submitted by LPPC on January 4, 2023 in STB Finance Docket No. 36447, including Documents regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules.

RFP NO. 28

Please produce all Documents and communications related to any governmental grants applied for (whether granted or denied) involving the LPPC lines currently operated by NLA or the Line, including for each documents regarding the award or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules.

RFP NO. 29

Produce all Documents and communications between LPPC and each of the following rail customers or potential rail customers that discuss or relate to rail service provided by either DSRR or NLA from 2017 to present:

- a. Complex Chemical Co.
- b. Terral River Services
- c. Helena/South Delta Fertilizer
- d. Railcar Co.
- e. Stepan Company
- f. Clearwater Paper Corp.
- g. Livingston Pecan and Metal
- h. Epstein Gin & Transloading Co.
- i. Hollybrook Gin & Warehouse
- j. Riceland Foods
- k. Sullivan Log Yard
- l. Anderson Trade Group
- m. Hensley Farms (f/ka/ Big River Grain)
- n. Rail Vehicle Services
- o. Helena Chemical
- p. Nutrien (f/k/a CPS)
- q. MD Power
- r. Slipknot (f/k/a Lake Village Seed)
- s. Gavilon (f/k/a CHS)
- t. APEX

- u. Scott Petroleum
- v. Bayou Energy, LLC
- w. John Deere

RFP NO. 30

Please produce all Documents related to and communications with Northeast Louisiana Railroad Development District regarding any rail property owned by DSRR, including the Line.

RFP NO. 31

Please produce all public notices of LPPC meetings.

RFP NO. 32

Please produce all agreements entered into between LPPC and any rail carrier, including NLA.

RFP NO. 33

Please produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or the Governor of Louisiana concerning LPPC's feeder line application.

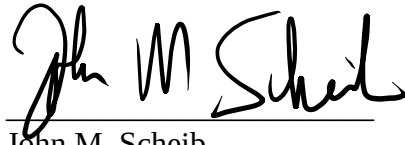
RFP NO. 34

Produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning DSRR's service over the Line.

RFP NO. 35

Produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning LPPC's ability to purchase the Line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Scheib", written over a horizontal line.

John M. Scheib
Noah P. Sullivan
Jasdeep S. Khaira
GENTRY LOCKE ATTORNEYS
919 E Main St Ste 1130 Richmond,
VA 23219
757-916-3511

Attorneys for:
Delta Southern Railroad Inc.

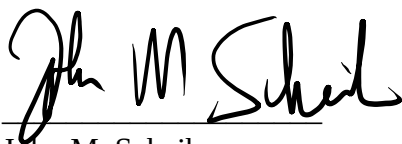
Dated: January 3, 2024

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

Mr. Michael F. McBride
Van Ness Feldman
1050 Thomas Jefferson Street NW
Seventh Floor
Washington, DC 20007 202-298-1800
mfm@vnf.com

A handwritten signature in black ink, appearing to read "John M. Scheib". The signature is written in a cursive, flowing style with a horizontal line underneath.

John M. Scheib

Dated: January 3, 2024

EXHIBIT B

Lake Providence Port Commission Response to Third Set of Discovery
Requests Propounded by Delta Southern Railroad

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Lake Providence Port Commission (“LPPC”), by counsel, responds as follows to Delta Southern Railroad, Inc.’s (“DSRR”) Third Set of Interrogatories and Requests for Production of Documents propounded on January 3, 2024.

GENERAL OBJECTIONS

LPPC’s General Objections, set forth herein, apply to each and every one of the specific Interrogatories and Discovery requests that follow. These general objections are not exhaustive and, where appropriate, LPPC will also state specific objections. LPPC’s objections shall not waive, limit, or prejudice any objections it may later assert.

1. LPPC objects to each and every Interrogatory and Request of Production of Documents (“RFP”) to the extent they seek to impose obligations on LPPC greater than or inconsistent with those imposed under 49 CFR Part 1114 Subpart B. LPPC further objects to any and all definitions and or instructions to the extent they either expand upon or conflict with 49 CFR Part 1114 Subpart B.

2. LPPC objects to each and every Interrogatory and RFP to the extent it seeks materials protected by the attorney-client privilege, the attorney work-product doctrine, the First Amendment privilege to petition the government for redress of grievances, or any other applicable privilege, protection or exception from discovery or disclosure. In the event that any such privileged, protected,

or exempt information is inadvertently produced or provided, such disclosure or production is not intended as, and should not be construed as, a waiver of any applicable privilege, protection or exemption.

3. LPPC objects to each and every interrogatory and RFP to the extent they seek information or data that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence.

4. LPPC objects to each and every Interrogatory to the extent they ask for inappropriate legal conclusions, including conclusions as to the legal significance of underlying facts.

5. LPPC objects to each and every Interrogatory and RFP to the extent that they are: (a) overly broad; (b) vague or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody, or control of LPPC; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding.

6. LPPC objects to each and every Interrogatory and RFP to the extent they are duplicative.

7. LPPC objects to each and every Interrogatory and RFP to the extent they request information or material that is: (a) already in the possession of DSRR; (b) publicly available or otherwise readily available or accessible to DSRR from other sources; or (c) as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as it would impose on DSRR.

8. LPPC objects to each and every Interrogatory and RFP to the extent that they request information or material that relates to: (a) the use of funds from any government grant that has recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure; or (b) the use of such funds to fulfill the objectives of the grant.

9. LPPC objects to each and every Interrogatory and RFP to the extent that they are not relevant to the issue of valuation, which is the only subject as to which the Surface Transportation Board (“STB”) ordered further discovery in its Decision served herein on November 20, 2023, slip op. at 16; see also, Decision served herein on December 11, 2023, at 1, citing Decision served herein on November 20, 2023, Decision at 16.

10. These general objections are incorporated by reference into the following responses.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 53

Please Identify each commissioner or employee of LPPC whose Documents have been searched to respond to the first, second, or third set of interrogatories and RFPs (“discovery requests”) served on LPPC by DSRR in Surface Transportation Board FD No. 36447.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing stated objection, LPPC responds that Wyly Gilfoil, Port Director, Lake

Providence Port; Bryant Killen, Deputy Director, and Commissioners Jerry King, Roger Clement, James Thron, IV, Mark Buntyn, Francis Lensing and Karvan Powell have searched their records.

INTERROGATORY NO. 54

For each commissioner or employee listed in response to Interrogatory No. 53, provide the dates on which that person's personal email was searched for documents responsive to DSRR's discovery requests and the name of the person who conducted the search.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing stated objection, LPPC responds that the searches for documents responsive to DSRR's discovery requests were conducted immediately following the receipt of the DSRR's discovery requests.

INTERROGATORY NO. 55

For each commissioner or employee of LPPC listed in response to Interrogatory No. 53, provide the dates on which that person's work email, work hard drive, work corporate drive, or work cloud drive was searched for documents responsive to DSRR's discovery requests and the name of the person who conducted the search.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing

stated objection, LPPC responds that the searches for documents responsive to DSRR's discovery requests were conducted promptly following the receipt of the DSRR's discovery requests.

INTERROGATORY NO. 56

For each commissioner or employee of LPPC listed in response to Interrogatory No. 53, please provide the dates on which that person's hardcopy documents were searched for responsive documents to DSRR's discovery requests and the name of the person who conducted the search.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing stated objection, LPPC responds that searches were conducted promptly albeit intermittently during normal working hours.

INTERROGATORY NO. 57

For each commissioner or employee listed in response to Interrogatory No. 53, please provide the date on which that person's email was last purged or deleted.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing stated objection, LPPC responds that this Interrogatory is irrelevant and will not lead to admissible evidence. Moreover, it is overly broad in scope and does not relate to matters involved in this proceeding.

INTERROGATORY NO. 58

Please describe where, how often, and the software used by LPPC to backup and retain work emails and other electronic documents.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. LPPC further objects on the grounds that the information sought is irrelevant and will not lead to evidence that is admissible.

INTERROGATORY NO. 59

Please describe the status of all work performed pursuant to the INFRA grant, which was attached as Exhibit A to LPPC's filing of January 4, 2023, in STB Finance Docket No. 36447.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it requests information or material that relates to (a) the use of funds from any government grant that has recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure; and (b) the use of such funds to fulfill the objectives of the grant. LPPC further objects to the Interrogatory because it seeks irrelevant information. Because

work performed on track between MP 408.9 to 471.0 pursuant to the 2019 INFRA Grant is not relevant to DSRR's failure within a reasonable time to make the necessary efforts to provide service after January 1, 2017, such information would not affect the outcome of this proceeding. Notwithstanding the foregoing stated objections, LPPC has no information that would permit it to provide information of the status of all work that has been performed pursuant to the INFRA Grant on the segments of the Line that are located in Arkansas. Pursuant to the terms of the Agreement between the Southeast Arkansas Economic Development District ("SEAEDD") and the Federal Railroad Administration ("FRA"), all funds are received by the Grantee, namely SEAEDD. To date, no Grant funds have been spent on the 16.2 miles of the Line that are located in the State of Louisiana that are owned by LPPC. In addition, no funds have been spent on tracks that are located within the Lake Providence Port.

INTERROGATORY NO. 60

Please list the amount of INFRA grant funds received from the federal government to date and the date(s) on which the funds were received.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it is not relevant to DSRR's failure within a reasonable

time to make the necessary efforts to provide adequate service to shippers that were unable to transport traffic in interchange operations with North Louisiana & Arkansas Railroad (“NLA”) after January 1, 2017. The expenditure of INFRA Grant funds would not lead to the production of admissible evidence that would affect the outcome of this proceeding. Notwithstanding the foregoing stated objections, LPPC has no information that would permit it to provide information regarding the amount of INFRA grant funds received from the federal government to date and the date(s) on which the funds were received.

INTERROGATORY NO. 61

Please list the amounts of the INFRA grant money received that have been expended to date and on what activity each amount was expended.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it seeks information that is not relevant to this proceeding or to DSRR’s failure within a reasonable time to make the necessary efforts to provide adequate service to shippers that were unable to transport traffic in interchange operations with NLA after January 1, 2017. The expenditure of INFRA Grant funds would not lead to the production of admissible evidence that would affect the outcome of this proceeding.

Notwithstanding the foregoing stated objections, LPPC has no information that would permit it to provide information regarding the amount of INFRA grant money received or the activity for which each amount was expended.

INTERROGATORY NO. 62

Please list the names and amounts of any other governmental grants received for rail infrastructure or rail service by LPPC, whether for the Line or lines owned by LPPC and operated by NLA.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because the use of governmental grants that have recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure have no relevance to this proceeding or to DSRR's failure within a reasonable time to make the necessary efforts to provide adequate service to shippers that were unable to transport traffic in interchange operations with NLA after January 1, 2017. Hence, the expenditure of any other governmental grants would not lead to the production of admissible evidence that would affect the outcome of this proceeding. Notwithstanding the foregoing, no other grants have been received by LPPC for rail infrastructure or rail service since January 1, 2017.

INTERROGATORY NO. 63

For each grant identified in response to Interrogatory No. 62, please list the amount of grant funds received, the governmental entity awarding the funds, and the date(s) on which the funds were received.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it requests information or material that relates to governmental grants that have recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure that have no relevance to this proceeding or to DSRR's failure within a reasonable time to make the necessary efforts to provide adequate service to shippers that were unable to transport traffic in interchange operations with NLA after January 1, 2017. The expenditure of such governmental grant funds would not lead to the production of admissible evidence that would affect the outcome of this proceeding. Notwithstanding the foregoing, no grant funds have been received by LPPC from any governmental entity since January 1, 2017.

INTERROGATORY NO. 64

For each grant identified in response to Interrogatory No. 62, please list the amounts of the grant money received that have been expended to date and on what activity each amount was expended.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it requests information or material that relates to any government grant that has recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure because such government grants have no relevance to this proceeding or to DSRR's failure within a reasonable time to make the necessary efforts to provide adequate service to shippers that were unable to transport traffic in interchange operations with NLA after January 1, 2017. The expenditure of such funds would not lead to the production of admissible evidence and would not affect the outcome of this proceeding. Notwithstanding the foregoing, no amount of grant money has been received by LPPC since January 1, 2017.

INTERROGATORY NO. 65

Please describe in detail the legal basis for LPPC's authority to acquire and/or operate the Line, including the portion outside of East Carroll Parish,

Louisiana. Include in your response specific citation to Louisiana statutory or constitutional provisions that provide such claimed authority.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, Louisiana Revised Statutes 34:1503 authorizes LPPC to “construct, own, operate and maintain terminal rail facilities and other common carrier rail facilities for the purpose of rendering rail transportation to and from the facilities to be erected, owned and operated by the commission in both intrastate and interstate commerce.”

INTERROGATORY NO. 66

Please describe in detail the legal basis for LPPC’s authority to file and pursue a feeder line application before the Surface Transportation Board. Include in your response specific citation to Louisiana statutory or constitutional provisions that provide such claimed authority.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, LPPC states that the legal authority for LPPC’s filing of a feeder line application before the STB is recognized by 49 U.S.C. § 10907(a). Furthermore, the Board has recognized LPPC’s authority to acquire segments of the Lake Providence Branch from DSRR on multiple occasions. Such proceedings are set forth in the expanded Feeder Line Application that was filed on January 4, 2023. *Also*

see Response to Interrogatory No. 65, which is incorporated herein by reference.

INTERROGATORY NO. 67

Please state what You estimate the costs of operating the Line will be on an annual basis.

Response: LPPC objects to this Interrogatory on the grounds that because it is not a rail carrier, it has no ability to estimate the future costs of operating the Line on any annual basis.

INTERROGATORY NO. 68

Please state whether Your operating lease with NLA is exclusive.

Response: LPPC states that the operating lease with NLA is exclusive.

REQUESTS FOR PRODUCTION OF DOCUMENTS (“RFPs”)

RFP NO. 27

Please produce all Documents and communications related to any and all INFRA grants (including but not limited to Exhibit A submitted by LPPC on January 4, 2023, in STB Finance Docket No. 36447, including Documents regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules.

Response: LPPC objects to RFP No. 27 on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP

498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it requests information or material that relates to the use of INFRA Grant funds to construct or rehabilitate rail infrastructure, because the INFRA Grant, which was approved in 2019, is not the subject of review by the STB and that information, including communications and documents related to the INFRA Grants which were submitted by SEAEDD on behalf of NLA, LPPC, Madison Parish Port Commission ("MPPC"), SEAEDD, and DSRR to the United States Department of Transportation ("US DOT"), is not relevant to this proceeding and would not likely lead to admissible evidence that would affect the outcome of this proceeding. LPPC further objects to this RFP on the grounds that it would be unduly burdensome in relation to the likely value of the information sought and because DSRR was an active participant in the INFRA Grant process the requested information is already available to DSRR.

RFP NO. 28

Please produce all Documents and communications related to any governmental grants applied for (whether granted or denied) involving the LPPC lines currently operated by NLA or the Line, including for each document regarding the award or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules.

Response: LPPC objects to RFP No. 28 on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation

of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to RFP No. 28 because the production of all Documents and communications would not likely lead to admissible evidence that would affect the outcome of this proceeding. LPPC further objects on the grounds that it would be unduly burdensome in relation to the likely value of the information sought. Notwithstanding the foregoing, LPPC further states that it is not aware of any government grants that have been applied for that involve the LPPC Lines currently operated by NLA or the Line.

RFP NO. 29

Produce all Documents and communications between LPPC and each of the following rail customers or potential rail customers that discuss or relate to rail service provided by either DSRR or NLA from 2017 to present:

- a. Complex Chemical Co.
- b. Terral River Services
- c. Helena/South Delta Fertilizer
- d. Railcar Co.
- e. Stepan Company
- f. Clearwater Paper Corp.
- g. Livingston Pecan and Metal
- h. Epstein Gin & Transloading Co.
- i. Hollybrook Gin & Warehouse
- j. Riceland Foods
- k. Sullivan Log Yard
- l. Anderson Trade Group
- m. Hensley Farms (f/ka/ Big River Grain)
- n. Rail Vehicle Services
- o. Helena Chemical
- p. Nutrien (f/k/a CPS)
- q. MD Power

- r. Slipknot (f/k/a Lake Village Seed)
- s. Gavilon (f/k/a CHS)
- t. APEX
- u. Scott Petroleum
- v. Bayou Energy, LLC
- w. John Deere

Response: LPPC objects to RFP No. 11 on the grounds that LPPC, with the exception of APEX, has had no communications with any of the foregoing entities that relate to rail service provided by either DSRR or NLA from 2017 to the present date. Because DSRR was involved in the incidents that led to the Zoom meeting with APEX officials regarding rail service provided by both NLA and DSRR, DSRR is in possession of the information it seeks. In addition, LPPC does not have any documents from any of the other foregoing entities that relate to rail service provided by either DSRR or NLA from 2017 to the present date.

RFP NO. 30

Please produce all Documents related to and communications with Northeast Louisiana Railroad Development District regarding any rail property owned by DSRR, including the Line.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Because the Northeast Louisiana Railroad Development District ("NLRDD") is not a party to this proceeding and because it is not involved with the Line, which is the only rail property involved in this proceeding, information regarding NLRDD is outside the scope of the

issues presented, and is neither relevant nor likely to lead to discovery of admissible evidence.

RFP NO. 31

Please produce all public notices of LPPC meetings.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, all public notices of LPPC meetings that have not already been provided to DSRR, can be found at the Louisiana Division of Administration.

RFP NO. 32

Please produce all agreements entered into between LPPC and any rail carrier, including NLA.

Response: A copy of the Second Amended Railway Lease Agreement By and Between LPPC and NLA was filed herein with the Board on November 30, 2023.

RFP NO. 33

Please produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or the Governor of Louisiana concerning LPPC's feeder line application.

Response: LPPC objects to RFP No. 33 on the grounds that the request for such communications and Documents is not relevant to the issue of

valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, LPPC further states that its communications with any of the listed governmental entities, if any, are of no substantive relevance to the issues in this case and are subject to its General Objection No. 2. Furthermore, this request is unduly burdensome because all relevant governmental elected officials in both Louisiana and Arkansas have supported the rehabilitation of the entire Lake Providence Branch Line for many years that predate the filing of LPPC's initial Feeder Line Application on November 12, 2020. Furthermore, the STB's website does not reflect any attempt by any of the elected officials to pressure the STB to take any result on the merits. Instead, Congressional communications have been limited to repeated requests that the STB establish a new procedural schedule consistent with the requirement that the sufficiency of Feeder Line Applications be decided within 30 days of filing and with the National Rail Transportation Policy that requires the STB "to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part." 49 U.S.C. § 10101(15).

RFP NO. 34

Produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning DSRR's service over the Line.

Response: LPPC objects to RFP No. 34 on the grounds that the request for such communications and Documents is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, LPPC further states that it has had no communications with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning DSRR's service over the Line.

RFP NO. 35

Produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning LPPC's ability to purchase the Line.

Response: LPPC objects to RFP No. 35 on the grounds that the request for such communications and Documents is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, LPPC further states that it has had no communications with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning LPPC's ability to purchase the Line.

EXHIBIT C



GENTRY LOCKE
Attorneys

Noah P. Sullivan

NSullivan@gentrylocke.com

P: (804) 956-2069

F: (540) 983-9400

February 9, 2024

VIA ELECTRONIC MAIL

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

Michael F. McBride
Van Ness Feldman LLP
1050 Thomas Jefferson Street NW
Washington, DC 20007
mfm@vnf.com

Re: LPPC Discovery Responses to DSRR's Third Set of Discovery Requests, FD No. 36447

Dear Counsel for LPPC:

This letter identifies serial deficiencies in the responses provided by your client the Lake Providence Port Commission ("LPPC"), to discovery requests served by DSRR on January 3, 2024.

DSRR provided 30 days for a response—15 days longer than required under STB rules. And even though LPPC did not request any extension ahead of time, DSRR made no issue of receiving the responses four days after they were due. It did so on the assumption that what it would receive would be substantive and thorough responses.

What DSRR received, instead, were responses raising frivolous objections, providing almost no substantive information, no documents, and evidencing no diligence or completeness in searching for responsive documents or information. Moreover, LPPC is under a continuing obligation to supplement all responses to prior discovery and has failed to do so. 49 C.F.R. § 1114.29. This letter identifies the issues requiring your immediate attention that must be remedied. Please let me know when you are available to meet-and-confer. DSRR will not hesitate to raise these issues in a motion to compel, if these issues are not resolved promptly.

Deficiencies Generally Applicable to Responses by LPPC

DSRR Is Not Limited to Valuation Discovery

First, LPPC raised general and specific objections to DSRR's discovery requests that claimed that the STB had limited discovery to valuation issues only. That is incorrect. The STB's November 20, 2023 order addressed LPPC's motion to compel discovery responses from DSRR. The STB regulations governing feeder line cases address, specifically, how and under what circumstances the Applicant—here, LPPC—can request discovery. The STB found that LPPC

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could conduct discovery at this stage, on the limited issue of valuation of the line—which was the only subject LPPC sought discovery regarding to complete its application.

Nowhere did the STB limit what discovery *DSRR* could pursue, and the issue was not before the STB. Indeed, the STB contemplated that *DSRR* could proceed with discovery of relevant issues in LPPC’s application because it assigned, not only the valuation-discovery issues to the administrative law judge, but also “any other discovery matters that may arise in this proceeding,” which would be meaningless if the STB had limited *DSRR* to the valuation discovery LPPC was pursuing. Nov. 20 Order at 17 (Ordering Paragraph 3.b.). Here, LPPC is attempting a forced sale of *DSRR*’s property, and *DSRR* is entitled to full discovery on every relevant topic in a feeder line case in order to prepare its defense.

In short, there is no basis for this objection, and LPPC must withdraw it. LPPC must also address, as noted below, whether it either limited its searches for responsive information or documents, or withheld any responsive information or documents on the basis of this improper objection.¹

Objections are Improperly Formed to Confuse whether the Objections are Limiting the Responses or Not.

Second, and this is not the first time *DSRR* has raised this issue, but the responding parties have all combined objections with some semblance of an answer or response. *See e.g.*, RFP No. 28 Response (Listing objections on scope and burden, but stating that LPPC is “not aware of any government grants that have been applied for that” would implicate responsive documents). This leaves *DSRR* uncertain as to whether LPPC is completely responding to the request, providing a partial response (and for which part), or standing on an objection.

LPPC needs to state specifically whether they are objecting in whole or in part, and, if in part, what part. It must also clarify whether, for any of its objections, LPPC either limited its search for responsive information and documents or withheld responsive information or documents on the basis of those objections.

LPPC Cannot Vaguely Rely on Other Parties’ Discovery Responses to Excuse its Own Discovery Obligations

We will address deficiencies in the responses from NLA and SEAEDD in separate correspondence, but it appears clear that LPPC, NLA, and SEAEDD—each represented by Mr. Streeter—are using each other’s responses to excuse their own non-performance of reasonable searches for responsive information and records. Indeed, in an email from Mr. Streeter on

¹ *DSRR* also notes that LPPC’s counsel did not sign the responses, nor attest specifically to the objections stated. This is itself a deficiency that renders the objections not validly made. *See e.g.*, 49 C.F.R. § 1114.26(a) (“Objections are to be signed by the representative or counsel making them.”).

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February 6, 2024, LPPC indicated that LPPC was relying only on the document productions from NLA and would not itself produce the responsive documents that are in LPPC's possession. It is unclear whether NLA is withholding information on the improper assumption that another party subject to discovery has responsive documents.

That is improper—particularly insofar as LPPC is not itself conducting its own search of its own records, but relying on NLA to produce any responsive documents as a short-cut—and vice versa. Each party must conduct independent, thorough searches to respond to DSRR's discovery requests in this matter. Each party to discovery must produce all relevant documents regardless of whether another party may have the same or similar documents. And each party must produce all relevant documents in its possession regardless of whether another party may have or produce the same document. Discovery obligations are specific to each party.

Specific Deficiencies in LPPC's Discovery Responses

In addition to the generally applicable deficiencies, which must be promptly addressed, DSRR identifies below specific issues that require immediate resolution by LPPC.

LPPC Must Produce Documents and Communications Related to Rail Service by DSRR or NLA with Customers LPPC Claims are Inadequately Served by DSRR

RFP No. 29—this request seeks documents and communications between LPPC and each of the customers identified in its application or discovery responses concerning rail service by DSRR or NLA, from 2017 to present. LPPC objects because it has had “no communications” with any of the entities except APEX, and further states it otherwise has no responsive documents. LPPC states no valid or cognizable objection to the RFP, and LPPC's response is otherwise improper.

LPPC admits that there are responsive documents (involving APEX). But LPPC refuses to produce them because “DSRR was involved in the incidents that led to the Zoom meeting with APEX officials” and thus DSRR “is in possession of the information it seeks.” That is non-responsive. As you know, the failures by NLA to provide adequate service to APEX, which included the very tense Zoom meeting you reference (in which NLA and not DSRR was the object of APEX's ire), is no substitute for searching for and producing all responsive documents. No doubt, the events leading to that meeting and following from it resulted in documents and communications that are responsive to the request. It is of no moment whether DSRR was included on some responsive communications. LPPC must look for and produce responsive documents, as it has admitted they exist.

Furthermore, and given LPPC's voluminous application with verified statements, including from some of the customers identified in the RFP, it is not credible that LPPC has *no* documents or communications related to service by DSRR or NLA from 2017 to the present, particularly given the fact that NLA operates the portion of rail line owned by LPPC currently.

Nothing could be more central to this case than the adequacy of service by DSRR *and* the adequacy of service by NLA²—the entity LPPC proposes to take over operations by DSRR. Thus, this discovery is at the very heart of the matter, and LPPC must provide complete discovery responses.

Discovery Regarding LPPC's Efforts to Respond to Discovery Must be Answered

Interrogatories 53-58 seek information regarding LPPC's search for responsive documents and information, as well as regarding basic document retention policies. LPPC objects to these as irrelevant; however, discovery regarding the sufficiency of discovery responses is beyond standard in litigation. There is no basis to object to answering basic questions about what steps LPPC has taken to respond to discovery, particularly here, where LPPC has produced *zero* documents in response to these requests, produced *zero* documents supplementing DSRR's prior requests, and initially produced very limited documents in response to DSRR's prior requests.³

And, to the extent LPPC does claim that it responded to the requests notwithstanding the objections, those responses are deficient.

Interrogatory No. 54-56—these seek information regarding when searches were conducted and by whom, of personal-electronic, work-electronic, and hardcopy documents for the individuals identified as custodians in ROG 53 response. LPPC provided no date—only “promptly” or “immediately” after receiving the requests. LPPC also did not identify who conducted any searches. In addition, the responses beg questions whether any supplemental searches have been conducted to identify additional responsive documents since LPPC's responses long ago.

Interrogatory No. 56—same issue as with ROG 55, the response does not state when and who conducted the searches of hardcopy documents.

Interrogatory No. 57 and 58—these seek basic document retention information about any purges or deletions of emails, and what system back-ups are used by LPPC to retain documents. LPPC refuses to respond, but, as addressed above, this kind of basic discovery question is relevant and appropriate.

LPPC Must Provide Complete Responses on the INFRA Grants and Other Governmental Grants Related to this Case.

² One prong of the public convenience and necessity test requires LPPC to show that service would be better under its ownership and NLA's operation. 49 U.S.C. § 10907(c)(1). DSRR is entitled to discovery to probe this point.

³ As detailed further herein, there are clear instances where documents are known to exist, but LPPC still has not provided them. This only further highlights that LPPC has not met its discovery obligations to conduct a reasonable search for responsive documents and information.

Interrogatory Nos. 59 through 64 seek information regarding the INFRA grant and any other governmental grants sought by LPPC related to the Line or lines it owns and operates through NLA. This information is highly relevant to the case because LPPC itself made it the center piece of its application,. LPPC is seeking to acquire from DSRR the remainder of the Lake Providence Branch line. In deciding whether to grant the application, the STB must consider, among other factors, LPPC's financial responsibility, but also whether "sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line." 49 C.F.R. 1151.4(11)(i)(E). LPPC's pursuit of and expenditure of public grants for purposes of improving rail infrastructure and service is directly relevant to its suitability to acquire and operate the Line. It is inconceivable that the parties that applied for the grant have had no subsequent communication about the grant. There is no question that the requests are relevant and within the scope of discovery, and must be answered in full. We address more specific deficiencies below.

Interrogatory Nos. 59-62—These seek specific information on the INFRA grant money received for rehabilitating the Lake Providence Branch line. LPPC disclaims any knowledge of information regarding work performed under the INFRA grant in Arkansas, and further responds that, for the 16.2 miles of track in Louisiana owned by LPPC, no funds have been spent, nor on tracks located within Lake Providence Port. First, as evidenced by the most recent Board of Commissioners' minutes produced by LPPC (which have not been supplemented for any more recent minutes than February 15, 2023), there are consistent notes of discussion regarding the INFRA-grant projects, including as related to the Arkansas segment. Given the joint nature of the INFRA grant and its disbursement, it is not credible that LPPC (including all of its members and employees) has no information regarding *exactly* what amounts have been disbursed, to whom, for what purpose, and what work has been performed.

RFP No. 27—similar to the above-described interrogatories, this RFP sought documents and communications related to any and all INFRA grants regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules. As LPPC made abundantly clear in its application, DSRR, while it was involved in the INFRA grant process at the beginning, was not privy to all the relevant communications involving LPPC. That LPPC made the INFRA grant so prominent in its application makes discovery regarding it completely appropriate, and LPPC must search for and produce responsive documents.

Interrogatory Nos. 62-64—similarly, these seek information related to other governmental grants for rail infrastructure or rail service. LPPC claims not to have received any other grants – from any source. Again, the most recent LPPC meeting minutes raise questions about that response. For instance, minutes from November 16, 2022 indicate a new application to the Louisiana Port Construction & Development Priority Program. The January 18, 2023 minutes discuss approval to engage SEAEDD to pursue a RAISE grant application and another MARAD Port Infrastructure Development Program grant application, also with SEAEDD taking the lead.

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RFP No. 28—this RFP seeks documents related to other governmental grants involving either the Line or LPPC’s rail lines operated by NLA, including those granted or denied. LPPC again states, subject to its objections, that it has not applied for any such grants. Given the multiple grant applications referred to in LPPC’s meeting minutes, LPPC should conduct a further inquiry to determine whether responsive documents exist and produce them promptly.

Other Discovery Requests Require Further Responses

In addition to the above topics, LPPC has failed to properly respond to DSRR’s discovery requests on other topics, as detailed below.

Interrogatory Nos. 65-66—LPPC answered these, but subject to objection. We assume the answers are complete, but if LPPC is not fully responding on the basis of its objections, please let us know.

Interrogatory No. 67—LPPC’s objects to providing its estimate of the costs of operating the Line on an annual basis because LPPC is not a “rail carrier” and therefore “has no ability to estimate the future costs of operating the Line on any annual basis.” That is not a valid objection to the requested information. We therefore take LPPC’s objection to be its substantive, sworn answer to the Interrogatory.

RFP No. 30—this request seeks documents related to and communications with the Northeast Louisiana Railroad Development District (“NLRDD”) regarding rail property owned by DSRR, including the Line. LPPC objects on relevance grounds. Given that NLRDD is seeking to condemn track immediately adjoining the Line (including valuing that track segment), communications with NLRDD or documents related to that proceeding and/or to the Line itself, at a minimum, are relevant to the subject matter of this case, including valuation of the Line. LPPC must conduct a thorough search for responsive documents and produce them.

RFP No. 31—LPPC also refuses to produce all public notices of LPPC meetings, claiming they are available from the Louisiana Division of Administration. If the publicly available notices posted there are all the public notices that exist for the relevant time period, then please confirm that. Regarding prior discovery requests for financial statements, budgets, and meeting minutes, LPPC also referred DSRR to this source to answer; however, the website remains out of date and insufficient. LPPC also indicated it would be producing updated financial information and meeting minutes. It has not done so. It must produce information that it has in its possession, and it cannot hide behind another agencies’ website. It is beyond belief that LPPC does not have budget materials presented to its members given that the Commission’s minutes reference financial reports.

RFP Nos. 33-35—these request communications with certain elected officials concerning LPPC’s feeder line case, DSRR’s service over the Line, and LPPC’s ability to purchase the Line. LPPC’s communications regarding these topics are necessarily and facially relevant to this case,

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and LPPC's convoluted objections are invalid. LPPC further cites no reason these documents may be withheld on any legal basis. LPPC clearly communicated with certain elected officials regarding relevant topics; LPPC must conduct a thorough search for responsive documents and produce them.

* * *

LPPC's discovery responses to DSRR's Third Set of Discovery Requests are wholly unacceptable. They do not provide the full and complete discovery that DSRR is entitled to in a proceeding in which LPPC attempts to wield the STB's authority to seize DSRR's assets. LPPC must immediately remedy its responses. Please let me know when you are available to meet and confer, no later than February 16.

Sincerely,

GENTRY LOCKE

/s/ Noah P. Sullivan

Noah P. Sullivan

cc: John M. Scheib
Jasdeep S. Khaira

EXHIBIT D

RICHARD H. STREETER
ATTORNEY AT LAW
5255 Partridge Lane, N.W.
Washington, D.C. 20016
tele: 202-363-2011 fax: 202-363-2012
rhstreeter@gmail.com

February 13, 2024

VIA ELECTRONIC MAIL NSullivan@gentrylocke.com

Noah P. Sullivan, Esq.
Gentry Locke
919 E Main Street, Suite 1130
Richmond, VA 23219

Re: DSRR' s Second and Third Sets of Discovery Requests, FD No. 36447

Dear Mr. Sullivan:

We have received and reviewed the letters, dated February 9, 2024 and February 12, 2024, that are addressed to me and Michael F. McBride, which purport to identify "serial deficiencies" in the responses provided by our clients, Lake Providence Port Commission ("LPPC"), North Louisiana & Arkansas Railroad ("NLA") and the Southeast Arkansas Economic Development District ("SEAEDD")(collectively "our Clients") to discovery requests served by DSRR on January 3, 2024. We must state our general disagreement with your stated positions and believe that the following issues must be resolved as soon as possible:

1. DSRR Discovery Requests are Untimely;
2. Applicability of Grant Funds;
3. Correspondence with Government Officials; and
4. LPPC Meeting Minutes.

Each of these issues is discussed further below and we are available to meet and confer with you on Thursday or Friday, February 15 or 16. We would appreciate scheduling any such meeting between 10 am and 1:30 pm.

1. DSRR Discovery Requests are Untimely

Initially, while we agree with your position that DSRR is entitled to full discovery on every "relevant" topic, it is our position that DSRR's renewed discovery is untimely. Until the Board accepts LPPC's Amended Feeder Line Application and establishes a procedural schedule, there is no pending formal proceeding that would allow DSRR to seek discovery. See 49 C.F.R. 1114.21(a)(1): "Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding."

While DSRR has relied on the Board's Decision, served November 20, 2023, it has ignored the Decision served December 11, 2023, in which Mai T. Dinh, Director, Office of Proceedings, focused on the precise language of the November 20 Decision in ordering that "LPPC's request for discovery relating to valuation may move forward under the process specified in the *November 20 Decision*."

The *December 11 Decision* also noted that the *November 20 Decision*, had directed "the parties to (i) meet and confer on the *scope of discovery necessary for LPPC to develop a sound valuation assessment* (emphasis added) and (ii) report to the administrative law judge on any remaining disputes within 30 days after the service date of a decision conditionally accepting the amended application)." DSRR thereafter chose to pursue further discovery, even though the Amended Feeder Line Application has not yet been accepted and published in the *Federal Register*, and even though no procedural schedule has been set. DSRR's decision to pursue further discovery at this time is not supported by the Board's Feeder Line regulations, the Board's regulations governing discovery, and, most importantly, with the Board's most recent decisions in this proceeding which control over any claim to the contrary with respect to the Board's regulations. In short, there is no legitimate basis for DSRR's demands that LPPC, SEAEDD and NLA take any further steps to further respond to DSRR's untimely requests.

2. Applicability of Grant Funds

In addition, we strongly object to the demands that LPPC, in Response to RFP No. 27, produce "all Documents and communications related to any and all INFRA grants (including but not limited to Exhibit A submitted by LPPC on January 4, 2023, in STB Finance Docket No. 36447, including Documents regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds or work schedules." The identical RFP was made to SEAEDD at RFP No. 9, and NLA at RFP No. 13. DSRR also requests documents and communications related to "any governmental grants" from LPPC at RFP No. 28, SEAEDD at RFP No. 10 and NLA at RFP No. 14.

LPPC, SEAEDD and NLA have consistently recognized that the foregoing RFPs are not relevant to the issue of valuation of the segment of the Lake Providence Branch line between MP 471.0 at MP 498.44, which is the only issue that is currently pending before the Board.¹ Only funds that may have

¹ We find that DSRR's focus on INFRA and other grants to be a bit confusing in that DSRR argued in its Motion to Reject Lake Providence Port Commission's Incomplete Feeder Line Application And For Action to Terminate This Proceeding, filed January 13, 2023, that the INFRA grant procedure is

been expended by DSRR's former owners and current owners would impact the current net liquidation value and the going concern value of the segment of the Lake Providence Line that LPPC is seeking to acquire between milepost 471.0 and milepost 498.44, because grant funds received by LPPC, SEAEDD, and NLA were not spent on the Providence Branch line between MP 471.0 and 498.44, but rather on lines owned by LPPC, SEAEDD, or NLA.

Production of all the information that is sought in the aforementioned RFP's would be extremely burdensome and would not likely lead to admissible evidence that would affect the outcome of this proceeding. That does not suggest in any fashion that our Clients have, in any manner, limited their individual searches for responsive information and documents that are relevant or that they have withheld responsive information or documents that are relevant. Instead, each of them has provided the names of the individuals in their respective organizations that have conducted searches of their own files, computers, and cell phones.

In short, nothing has been left in doubt that needs to be clarified. LPPC, SEAEDD and NLA all recognize that the public interest was well served by pursuing the two INFRA Grants and by continuing to seek other governmental grants that will allow them to repair the damage that was caused by DSRR's owners who allowed the track to deteriorate to the point that LPPC and SEAEDD were compelled to save rail service along the entire Lake Providence Line by acquiring the multiple segments of the Lake Providence Line that DSRR sought to abandon between 2004 and 2011. The same is true of other governmental grants that would enable shippers to make full use of rail service by providing governmental funds to assist in the construction of spur tracks and other track materials.

3. Correspondence with Government Officials

The efforts to restore the Lake Providence Line have long enjoyed bipartisan support from a host of elected officials in both Louisiana and Arkansas. However, the members of Congress and their staffs, as well as elected State officials, that have shown their support have no ability to demand that the STB reach a particular decision in this case, and have not done so, as a review of the STB's website for this proceeding demonstrates. As such, evidence of any communications with them about the history of the Lake Providence Branch Line, DSRR's failure to provide service over any part of the Lake Providence Branch Line, or the filing of LPPC's Feeder Line Applications would not affect the outcome of this proceeding, nor would any such communications be likely to lead to relevant information. Hence,

irrelevant to the feeder line standards (*id.* at p. 3 of 18) and that the grant was "irrelevant" (*id.* at p. 9 of 18).

communications, if any, with any elected officials are irrelevant and such communications are made subject to the First Amendment right to petition the government for redress of grievances.

Multiple letters have been sent to the Board by members of Congress who represent Arkansas and Louisiana urging the Board to decide expeditiously whether LPPC's Amended Feeder Line Application is complete and it is readily apparent that the Board did not kowtow to those requests. Instead, the Board issued its *November 20, 2023 Decision*, which discussed in detail the reasons why it decided to deny DSRR's petition to dismiss and imposed certain requirements on LPPC before it conditionally accepted LPPC's Amended Feeder Line Application.

As the Board has repeatedly explained, "the requirement of relevance means that the information might be liable to affect the outcome of a proceeding." *E.g., Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 3 (STB served February 27, 2012), (citing *Waterloo Ry.—Adverse Aband.—Lines of Bangor and Aroostook R.R. and Van Buren Bridge Co In Aroostook Cnty., Me*, AB 124 (Sub-No. 2), *et al.* (STB served Nov 14, 2003)). Because the acceptance of LPPC's Amended Feeder Line Application is not the equivalent of a final decision on the merits, past communications with members of Congress, unlike the past history of DSRR's failure to provide adequate rail service over a long period of time, will play no role in the final outcome.

4. LPPC Meeting Minutes

LPPC also take issue with DSRR's mistaken claims that "LPPC also refuses to produce all public notices of LPPC meetings"² and that the most recent minutes produced by LPPC are the Meeting Minutes dated February 15, 2023.³ As a review of the records of the Louisiana Division of Administration will confirm, LPPC's Meeting Minutes through November 15, 2023 are available for public inspection.⁴ The Meeting Minutes for December 2023 and January 2024, which are the most recent Meeting Minutes have not been uploaded.

² February 9, 2024 Letter from Noah P. Sullivan to Richard H. Streeter and Michael F. McBride ("Letter") at 6.

³ Letter at 5.

⁴ A copy of the most recent list of Minutes is attached hereto. *See also*, <https://wwwprd.doa.louisiana.gov/boardsAndCommissions/viewMeetingMinutes.cfm?board=116>.

Mr. Noah P. Sullivan

Page 5 of 5

February 13, 2024

In any event, and despite the above-stated objections, we are mindful of the continuing obligation to update the production of documents, or revise their substantive responses, if need be.

Regards,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for LPPC

RHS:cn

cc: John M. Scheib, Esq. Scheib@gentrylocke.com
Michael F. McBride, Esq. mfm@vnf.com

EXHIBIT E

From: Sullivan, Noah P.
Sent: Monday, February 19, 2024 9:18 AM
To: Richard Streeter; Michael F. McBride
Cc: Scheib, John M.
Subject: Feb. 16 Meet and Confer, FD 36447

Richard and Mike,

This email memorializes our meet-and-confer on 2/16 regarding DSRR's discovery requests to LPPC, NLA, and SEAEDD. While there are points of disagreement, we remain willing to negotiate a resolution that will avoid unnecessary effort by both parties. We look forward to hearing from you after conferring with your clients regarding remedial searches for responsive documents and information.

In general, we did not discuss LPPC, NLA, and SEAEDD's position that discovery by DSRR is either limited to valuation issues or is untimely. As noted, we disagree with that and find no support for that position; however, we agreed to address specific areas where DSRR is lacking information.

Sufficiency of Search – We spent some time discussing your clients' view that they do not have a lot of responsive documents, as a general rule. We asked what was done to search for responsive documents. Richard indicated he discussed the requests with representatives from each of LPPC, NLA, and SEAEDD. We assume that was Wyly Gilfoil (LPPC), Danny Robbins (NLA), and Patrecia Hargrove (SEAEDD), but please correct if that is not accurate. Those individuals then communicated with certain others at their respective organizations to determine whether there were responsive documents. The custodians then self-reported whether they had responsive information/documents or not.

As we indicated, this is not sufficient. The process used is inherently inaccurate because it potentially relies on a client's own views and self-selection bias. Moreover, it could not be confirmed whether *any* search terms were used to find, for instance, responsive emails. We also discussed, as related to grant issues, that LPPC had not identified at least two grants that appear to be responsive to requests and that were reflected in LPPC's November 2023 minutes. Putting aside the relevance objections, this demonstrates a lack of completeness that undermines all of the responses received by DSRR to date—for LPPC, NLA, and SEAEDD.

Responsibility of Each Party – We also discussed the fact that your 2/13 response letter was unhelpful in that it attempted to bundle together responses from three separate entities, which happen to all be represented by the same counsel. We noted that each party has a separate obligation to respond to discovery requests. Reliance on the fact that another party might produce (and, of course, each party lacks knowledge as to what documents any other party may have or may be producing) a document is not grounds by the party on whom discovery was served from producing responsive material.

INFRA Grant and Other Governmental Grants for Rail Service/Infrastructure – We discussed the relevance of these requests to LPPC, NLA, and SEAEDD. Our letters set forth DSRR's legal position on why these requests are appropriate, relevant, and, frankly, necessary, including the fact that the application spends numerous pages related to grants and that SEAEDD's entire verified statement in this matter relates solely to grants. We asked whether, if LPPC felt that the grant-related issues were not relevant, whether it would withdraw the portions of its application relying on the INFRA grant as a central focus of its case. LPPC refused to do so. We also asked whether there was any narrower scope that could be agreed upon to lessen any burden in responding to the requests—which was another basis your clients objected to the requests. The response we got was no.

DSRR believes it is clear that responsive and relevant documents exist. We are proposing, as a final attempt to avoid an impasse, whether LPPC, NLA, and SEAEED would be willing to conduct a thorough search for and produce all documents and communications regarding the INFRA grant (and other governmental grants concerning rail service of infrastructure), from 2020 to present; with a further limitation that it is for communications with the FRA, or amongst LPPC, NLA, or SEAEED. In other words, we would not need the materials leading up to the INFRA grant application, but focused on more recent materials that must be less voluminous. Please let us know your clients' responses as soon as possible.

LPPC Responses

As noted above, the bulk of our discussion regarding LPPC's responses related to the grants and sufficiency of search. In particular, we discussed LPPC's response on RFP No. 29 related to communications with a list of customers, including APEX. We understand that, in light of our discussion, LPPC is going to conduct a further search for responsive documents to identify all such documents and produce them.

We also discussed LPPC's communications with elected officials (and their staff) regarding the feeder line application, DSRR, or LPPC's ability to purchase the Line. In considering your points on potential privilege issues involved, we think it prudent to understand the nature of the responsive documents—and which DSRR is entitled to understand to evaluate any privilege claim. To that end, we would ask whether any of the responsive documents (as well as for NLA and SEAEED) concern LPPC's funding requests or financing for the Line? If not, we can put the issue to rest.

We also note the other items identified in DSRR's Feb. 9 letter regarding LPPC's responses, which were not addressed in Richard's letter on 2/13. We expect to hear from LPPC promptly on what LPPC is willing to do to remedy the deficiencies identified. DSRR took care to identify with specificity the materials it sought and the issues it had with LPPC's responses, and it is entitled to a response on each point.

NLA Responses

Documents Concerning DSRR/NLA Rail Service – We also discussed documents related to the quality of rail-service provided by either DSRR or NLA. As John described, this would include, at a minimum, information and responsive documents related to any derailments, complaints about rail service by NLA (or DSRR), and any refusals to provide rail service by NLA (or DSRR). Our discussion of grants also went to NLA operated track, which is relevant to understand NLA's ability to invest in the Line should it become the operator under the lease agreement, Section 4.2.

You indicated that you were willing to go back to NLA to discuss supplementing. You could not state, though, which of the requests your offer extended to and what, specifically, you were willing to ask NLA to do. Note that our Feb. 9 letter re NLA's responses covered multiple requests (pp. 3-6), so it is important that we know which ones are on the table for discussion with NLA. Please respond by 2/21 with your response.

We also note that DSRR raised other items not discussed (p. 7) that require a response from NLA. We expect to hear from NLA promptly on what it is willing to do to remedy the deficiencies identified.

SEAEED Responses

Similar to the above w/r/t NLA, we also discussed the lack of responsiveness to requests related to service by NLA and DSRR. These were detailed in pp.5-7 of our Feb. 12 letter to SEAEED. You indicated you would consider what items you would be willing to take back to SEAEED to remedy, and we expect a response by 2/21 so we know where SEAEED stands.

We also note that DSRR raised other items not discussed (p. 7-8) that require a response from SEAEED. We expect to hear from SEAEED promptly on what it is willing to do to remedy the deficiencies identified.

To reiterate, we do not wish to have a discovery fight with LPPC, NLA, or SEAEDD, and we hope your clients will be receptive to undertaking the steps discussed. DSRR does not waive any of the deficiencies outlined in detail in its letters of Feb. 9 and 12 to LPPC, NLA, and SEAEDD. We look forward to hearing from you by 2/21 with an update on where each of your clients separately stand.

Best,
Noah



Noah Sullivan

Direct: 804.956.2069 | Cell: 804.914.2703

VIRGINIA: Richmond | Roanoke | Lynchburg | Norfolk

[web](#) | [bio](#) | [map](#)

This email may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading/forwarding to others.

EXHIBIT F

Noah, Michael and I have no objections to your email that was forwarded yesterday afternoon at 3:51 p.m. Because it is our position that DSRR's discovery at this time is untimely and contrary to the Board's recent decisions, we intend to respond to your earlier email that was forwarded yesterday morning and also request ALJ McCarthy to resolve the issue raised above. Our Response to your email that was forwarded February 19, 2024 at 9:19 a.m. is set out below.

Sufficiency of Search:

Your assumption that discussions were limited to those with Wyly Gilfoil (LPPC), Danny Robbins (NLA) and Patrecia Hargrove (SAEDD) is baseless. As explained in LPPC's response to Interrogatory 53, Wyly Gilfoil requested information from Commissioners Jerry King, Roger Clement, James Thron, IV, Mark Buntyn, Francis Lensing and Karvan Powell. Between January 26 and February 5, all seven of the Commissioners responded to Mr. Gilfoil and explicitly confirmed that they had no documents that were responsive to DSRR's requests.

In addition to Danny Robbins, counsel also communicated with the following officers and employees of NLA, Tim Robbins, Michael Robbins, Noah Robbins and Missy Courtwright, regarding DSRR's latest demands for documents and requested them to advise whether they had any responsive documents. As is clearly reflected by the various emails involving APEX, Danny Robbins, Michael Robbins and Noah Robbins were involved in the process. It is

submitted that the attached copy of a chain of emails, which is in DSRR's possession, confirms their participation.

Counsel also communicated with Shane Knight, who is the Deputy Director for SEAEDD, regarding DSRR's latest demands for documents and requested him to advise whether he had any responsive documents. In addition, Counsel also discussed the DSRR's requests with Bryant Killen (LPPC). Please be advised that all of the conversations mentioned above are protected by the attorney-client communication privilege.

In further answer to the sufficiency of the search, and to clarify an issue that was raised regarding the LPPC's November 15, 2023 Meeting Minutes, please note that the EDA grant of \$380,688, for construction of a third lane from the office to Sepan, pertains to a third *truck lane* and has nothing to do with rail service.

Moreover, the LA DOTD award of \$5 million to the Rail Reconstruction Project Tallullah – Newellton is not a grant. The funds were made available through the Port Construction and Development Priority Program which was created by the Louisiana Legislature in 1989. Although mentioned in LPPC's Meeting Minutes of November 15, 2023, it has nothing to do with the feeder-line case or to any line of railroad owned by LPPC, SEAEDD, or NLA. It solely relates to the Northeast Louisiana Railroad Development District's ("NLRDD") efforts to restore the former Vidalia Branch Line of the Missouri Pacific Railroad Company that the Interstate Commerce Commission ("ICC") authorized for abandonment in 1988. Because LPPC filed the necessary application to acquire

the PPP funds on behalf of NLRDD's efforts to restore rail service between Tallulah, in Madison Parish to Newellton, which is located in northern Tensas Parish, it received the notification of the award.

To further clarify the situation, NLRDD was created in 2022 by a Concordia Parish Police Jury pursuant to the aforementioned state statute that was passed almost two (2) decades ago. NLRDD has an independent Board that is composed of nine (9) Commissioners from the four ports located in East Carroll, Madison, Tensas and Concordia parishes. Each of the four ports is represented by two Commissioners. The ninth Commissioner is chosen by the other eight Commissioners. As a result, LPPC cannot be said to control NLRDD. The same is true of the other ports.

Seven of the Commissioners that serve on the NLRDD's board are not otherwise affiliated with the four ports or any other ports. Only two (2) of the NLRDD Commissioners, Steve Weeks (Vidalia Port) and Karvan Powell (LPPC) also serve as Commissioners at ports.

NLRDD goal is "to promote and encourage development of rail service running between the parishes of East Carroll, Madison, Tensas and Concordia, to stimulate the economy among the parishes through renewed commerce and industry, and for the utilization and development of natural and human resources by providing job opportunities in and among the parishes." Moreover, because the two ports in Tensas and Concordia parishes feature deeper water than the other two, the restoration of the track will ensure that goods can be

railed instead of trucked between the four ports when the Mississippi River has a low water year that prevents the full use of barges.

Responsibility of Each Party:

As the foregoing demonstrates, LPPC, SEAEDD and NLA each responded based on the results of their own findings regarding documents and communications. The fact that they share the same legal position regarding whether DSRR is either limited to valuation issues or untimely is a different matter. As their individual responses reflect, they present a united front that the Board's decisions served November 20 and December 11, 2023, do not allow DSRR to seek discovery at this time.

INFRA Grant and Other Governmental Grants for Rail

Service/Infrastructure:

LPPC, SEAEDD and NLA adhere to the position stated on February 16, 2024. The United States Department of Transportation's ("USDOT") award of INFRA Grant in 2019 is not open to challenge. As it clearly demonstrates, the rehabilitation of the entire Lake Providence Branch Line was found to be a matter that was deemed to be of national importance. While DSRR, for its own reasons, declined to accept any portion of the INFRA funds, USDOT's decision to make the award cannot be challenged. The same is true of all other governmental grants. Furthermore, it is noted that before SEAEDD is authorized to draw down any INFRA Grant funds, the Federal Railroad Administration ("FRA") painstakingly reviews all requests for funds to ensure full compliance with the strict requirements of the Grant. The FRA, of course,

does not need DSRR's input or approval regarding any work that is done that is covered by the Grant Agreement.

LPPC's, NLA's and SEAEDD's Responses.

Because the continuing efforts to respond to DSRR's demands is diverting attention from DSRR's responses to LPPC's discovery that the Board has authorized, and because the parties strongly disagree with most of DSRR's self-serving derogatory proclamations regarding the extensive responses that have been provided, the decision has been reached to request ALJ McCarthy to resolve the basic issue as to whether DSRR is entitled at this time to any discovery.

Richard H. Streeter and Michael F. McBride

EXHIBIT G

Pollard, Kate E.

From: Richard Streeter <rhstreeter@gmail.com>
Sent: Tuesday, February 20, 2024 10:28 AM
To: 'Conner Brightwell'; Scheib, John M.; Sullivan, Noah P.; Khaira, Jasdeep S.; mfm@vnf.com
Cc: 'Thomas McCarthy'; 'Charles Tolbert'
Subject: Further response regarding discovery in STB FD 36447
Attachments: 3rd Set of ROGs and RFPs on LPPC 2024.01.03.pdf; Second Set of ROGs and RFPs on NLA 2024.01.03.pdf; Second Set of ROGs and RFPs on SEAEDD.pdf; LPPC Response to Third Set of Interrogatories and Requests for Documents.pdf; Wyly W Gilfoil Affidavit.pdf; SEAEDD Response to Second Set of Discovery.pdf; Patricia Hargrove Affidavit .pdf; NLA Reply to Second Set of Discovery from DSRR.pdf; Affidavit of Daniel B. Robbins.pdf; Letter re LPPC Discovery Responses to DSRR 3d Set.pdf; Letter re NLA Discovery Responses to DSRR 2d Set.pdf; Letter re SEAEDD Discovery Responses to DSRR 2d Set.pdf; Response to DSRR February 13 2024.pdf; LPPC Meeting Minutes.pdf; Response to Noah Sullivan's emails dated Feb 19 2024.pdf

Importance: High

Use Caution: This email originated from an external sender.

Good Morning, Mr. Brightwell

This is a further response to your email of February 13, 2024, to the parties in STB FD 36447 concerning ongoing discovery. I responded on behalf of all parties on February 15, 2024, informing you that counsel for the parties were going to have a third meet-and-confer session on Friday, February 16, 2024.

That third meet-and-confer session was devoted almost entirely to the separate discovery requests propounded by Delta Southern Railroad ("DSRR") on January 3, 2024, to Lake Providence Port Commission, North Louisiana and Arkansas Railroad ("NLA"), and Southeast Arkansas Economic Development District ("SEAEDD"). (There was also a brief discussion about the fact that DSRR's fourth electronic production of documents did occur that day.)

Notwithstanding the General Objection by LPPC, NLA, and SEAEDD to any discovery by DSRR at this time, LPPC, NLA and SEAEDD, in an attempt to avoid unnecessary disputes with DSRR, chose to respond to most of DSRR's discovery requests in good faith. However, DSRR, as reflected by its letters, dated February 9, 2024 and February 12, 2024, is not satisfied with at least some of those responses. Nor is it satisfied with my letter, dated February 13, 2024, on behalf of LPPC, NLA, and SEAEDD that further detailed various reasons that DSRR's discovery requests are objectionable.

Counsel for LPPC, NLA and SEAEDD have spent substantial time, along with the many hours their clients have spent, discussing their prior responses and DSRR's Second and Third requests for production in an attempt to determine if there is additional information and documents in the possession of LPPC, NLA, and SEAEDD that could be provided. Such communications continued following the meet-and confer session on Friday afternoon. This has allowed Counsel for LPPC, NLA, and SEAEDD to further clarify certain matters, even though it is our stated position that under the Board's orders, served November 20, 2023 and December 11, 2023, DSRR's requests are not permitted at this time. Nevertheless, it is clear from an email received early February 19, 2024, that

DSRR is not satisfied with the efforts of LPPC, NLA, and SEAEDD to respond to DSRR's current discovery requests.

LPPC, NLA, and SEAEDD believe the time has now come for ALJ McCarthy to decide a simple question. Is the discovery that the Board contemplated would now occur be limited to discovery propounded by LPPC to DSRR with respect to valuation? LPPC, et al. believe that the Board's decisions are clear that the only discovery now permitted is their discovery propounded to DSRR concerning valuation. As the Board explicitly clarified in its Decision served December 11, 2023, at p. 1:

The *November 20 Decision* stated that if LPPC filed and served by November 30, 2023, a certificate of service for the amended application in compliance with 49 C.F.R. § 1151.2(a) and § 1151.3(a)(16), together with the described verification and any agreement between LPPC and the proposed operator pertaining to the line, the Board expected to promptly issue a decision conditionally accepting the amended application, and discovery relating to valuation could proceed under the process described in the decision. *Nov. 20 Decision*, FD 36447, slip op. at 16 [footnote omitted].

In sum, the Board's order served December 11, 2023 (at 2, ¶ 2) was as clear as it could be. "LPPC's request for discovery relating to valuation may proceed under the process specified in the November 20 Decision."

As you noted in your email, dated February 13, 2024, the parties' Stipulation approved by the Board on January 10, 2024 is consistent with the understanding that the discovery at this time is limited to discovery propounded by LPPC relating to valuation.

ALJ McCarthy should be aware that there was extensive prior discovery in this proceeding, to which LPPC, et al., have provided extensive responses and numerous documents. They provided some additional documents on February 6, 2024, in addition to substantive responses to DSRR's discovery requests, including many that have nothing to do with valuation, but DSRR insists on more and more responses and documents, as discussed above.

For these reasons, LPPC, et al. respectfully request that ALJ McCarthy determine that only LPPC, et al. may now propound discovery from DSRR, and that the discovery be limited to valuation.

True copies of the DSRR's discovery requests dated January 3, 2024, the responses of LPPC, SEAEDD and NLA forwarded on February 6, 2024, DSRR's letters dated February 9, 2024 and February 12, 2024, counsel's reply letter dated February 13, 2024, DSRR's email dated February 19, 2024, and the response thereto of the joint response of LPPC, SEAEDD and NLA is being forwarded along with this email.

Respectively submitted, Richard H. Streeter

EXHIBIT H

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, LA

LAKE PROVIDENCE PORT COMMISSION'S RESPONSES TO
DELTA SOUTHERN RAILROAD INC.'S SECOND SET OF
INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO LAKE PROVIDENCE
PORT COMMISSION

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Lake Providence Port Commission ("LPPC"), by counsel, responds as follows to Delta Southern Railroad, Inc.'s ("DSRR") Second Set of Interrogatories and Requests for Production of Documents.¹

GENERAL OBJECTIONS

1. LPPC objects to each and every Interrogatory and Request of Production of Documents ("RFP") to the extent they seek to impose obligations on LPPC greater than or inconsistent with those imposed under 49 CFR Part 1114 Subpart B. LPPC further objects to any and all definitions and or instruction to the extent they either expand upon or conflict with 49 CFR Part 1114 Subpart B.

¹ Although DSRR has titled it Requests for Documents as its "First Request," DSRR filed its "First Set Of Requests To Produce" on February 5, 2021.

2. LPPC objects to each and every Interrogatory and RFP to the extent it seeks materials protected by the attorney-client privilege, the attorney-work product doctrine, or any other applicable privilege, protection or exception from discovery or disclosure. In the event that any such privileged, protected, or exempt information is inadvertently produced or provided, such disclosure or production is not intended as, and should not be construed as, a waiver of any applicable privilege, protection or exemption.

3. LPPC objects to each and every interrogatory and RFP to the extent it seeks information or data that is not relevant to the subject matter of this proceeding.

4. LPPC objects to each and every Interrogatory to the extent it asks for inappropriate legal conclusions, including conclusions as to the legal significance of underlying facts.

5. LPPC objects to each and every Interrogatory and RFP to the extent that it is: (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody, or control of LPPC; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding.

6. LPPC objects to each and every Interrogatory and RFP to the extent it is duplicative.

7. LPPC objects to each and every Interrogatory and RFP to the extent it requests information or material that is: (a) already in the possession of

DSRR; (b) publicly available or otherwise readily available or accessible to DSRR from other sources; or (c) as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as it would impose on DSRR. In particular, LPPC, which has previously forwarded over 90 MB of documents to DSRR's prior counsel, objects to all RFPs that seek those same documents.

8. These general objections are incorporated by reference into the following responses.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 32.

Please Identify all shippers that transport traffic over the Line.

Response: Based upon information and investigation, LPPC answers as follows: By email, dated January 19, 2023, from DSRR's counsel, addressed to LPPC's counsel, DSRR identified four (4) shippers, namely Complex Chemical Co., Inc., Terral River Services, Helena/South Delta Fertilizer and Railcar Co., that transported traffic over the Line in 2022. Because shipper information is exclusively within the personal knowledge of DSRR, LPPC has no information that would allow it to confirm or contest DSRR's information. LPPC is aware of the movement in September 2022 of one empty railcar for Railcar Co. (a/k/a Rail Vehicle Services) that involved an interchange with NLA at MP 471.25.

INTERROGATORY NO. 33.

For each shipper identified in response to Interrogatory No. 32, please state and describe in detail the basis for any contention that the shipper,

specifically, is inadequately served by DSRR, Including any denial of requested service by DSRR.

Response: See Verified Statements in LPPC Application filed November 12, 2020; Verified Statement Jerry Melton, Complex Chemical Co., Inc.; and Verified Statement of Neil Martin, Terral River Services. Because no shipper, from August 2017 until September of 2022, was able to ship over the portion of the Line located between MP 471.0 and MP 491.0, all shippers who were denied interchange service for their traffic over that 20-mile portion of the Line were, *a fortiori*, denied adequate service by DSRR. Even Railcar Co., which moved a single car over the entire Lake Providence Branch Line to the wye track at MP 491.0, had been unable to receive any rail service over the twenty (20) miles of the DSRR's Lake Providence Line between MP 471.0 and MP 491.0 between August 2017 and September 2022.

INTERROGATORY NO. 34.

Please describe in detail all actions LPPC has taken to study, measure, analyze, assess, or evaluate the adequacy of DSRR's service to shippers over the Line, Including the results of any such study, measurement, analysis, assessment, or evaluation.

Response: LPPC objects to Interrogatory 34 on the grounds that it is (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody, or control of LPPC; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought

may have in this proceeding. In further response, LPPC states that responsive information regarding the inadequacy of DSRR's service, which spans over 20+ years, is thoroughly set forth in the expanded Feeder Line Application, filed with the Board on January 4, 2023. That Application details and reflects LPPC's contemporaneous observations that have also spanned over 20+ years as well as those of shippers who have been denied direct interchange service over the full length of the Lake Providence Branch Line and those who have been compelled to utilize trucking and alternative rail routings to reach both KCS at Tallulah and UP at McGehee Arkansas that are inefficient and more expensive. In addition, evidence in the INFRA Grant Application that is included in the Feeder Line Application reflects the adverse environmental impact and additional costs that are associated with the use of trucks to provide transportation to shippers in the area due to DSRR's past and continuing failure to maintain the track between McGehee and Tallulah.

In further response, LPPC objects to Interrogatory 34 to the extent it would require LPPC to disclose the mental and legal conclusions of its counsel as such information is protected from discovery by the attorney-client privilege and attorney work product in anticipation of litigation doctrine.

Without waiving any of the above-stated objections, LPPC states that Wyly Gilfoil has engaged in conversations with shippers for over 20+ years regarding the lack of adequate rail service over the entire Lake Providence Branch Line between McGehee, Arkansas and Tallulah, Louisiana caused by DSRR's failure to properly maintain its track, and that he has no notes or other

means of establishing the dates of all such conversations or the subject matter discussed.

INTERROGATORY NO. 35.

Please Identify all shippers with which LPPC has communicated concerning either (i) LPPC's feeder line application, (ii) DSRR, (iii) DSRR's service over the Line, or (iv) the shipper's rail transport needs. Describe in detail and Identify the communications with each shipper identified.

Response: LPPC objects to Interrogatory 35 on the grounds that it is overly broad and unduly burdensome and beyond the scope of permissible discovery. Indeed, it is incapable of being answered with any precision. Without waiving the foregoing objectives, LPPC answers that it is in the business of assisting shippers and promoting the movement of their freight, whether by rail, barge, or truck on a non-discriminatory basis. As a result, for the past 20+ years, LPPC has been in constant contact with shippers that are looking to move their products to and from the Lake Providence Port.

Based on information that is part of the record that was developed in 2015-2016 by NLA in conjunction with DSRR's former General Manager, LPPC is aware that there are several shippers, in addition to those that have been named in response to Interrogatory 33, who are not physically located on the Line, that have previously forwarded shipments over the Line and have stated their intent and willingness to move their freight over the Line in the future. However, they were denied transportation due to DSRR's policy that caused its employees to focus on storage revenues instead of developing interchange

freight transportation service with shippers that were identified by Craig Huff and Daniel Robbins. Such shippers that have been identified in LPPC's Application include Stepan Company, Clearwater Paper Corp., Livingston Pecan and Metal, Epstein Gin & Transloading Company; Hollybrook Gin & Warehouse, Riceland Foods, Sullivan Log Yard, Anderson Trade Group, Hensley Farms (f/k/a Big River Grain), Rail Vehicle Services, Helena Chemical, Nutrien (f/k/a CPS); Terral River Services, MD Power, Simplot (f/k/a Lake Village Seed), Gavilon (f/k/a CHS); APEX, Scott Petroleum, Complex Chemical, Bayou Bioenergy, LLC and John Deere.

Documents that confirm the intent of many of the foregoing shippers have been previously provided to DSRR and its attorneys in response to DSRR's First Set of Interrogatories and First Set of Requests to Produce. LPPC incorporates its prior responses to this interrogatory by reference thereto. By way of further response, LPPC states that DSRR, after evaluating the extensive documents that were provided, advised the Board that it deemed discovery concluded. Those documents have been available for review by DSRR's counsels since June 2021 and would be burdensome for LPPC to produce duplicative or cumulative information when DSRR's attorneys have already received and reviewed them.

INTERROGATORY NO. 36.

Please provide the dates, locations, and Identify the attendees for all meetings LPPC has had with each shipper on the Line.

Response: LPPC objects to Interrogatory 36 on the grounds that it is vague, overly broad and unduly burdensome. LPPC has no records that would allow it to provide the requested information regarding “all” meetings LPPC has had with each shipper. LPPC is aware of the movement in September 2022 of one empty railcar for Railcar Co. (a/k/a Rail Vehicle Services) that involved an interchange with NLA at MP 471.25.

INTERROGATORY NO. 37.

Please describe in detail the process LPPC used to reach any agreement with NLA to operate the Line should LPPC succeed in acquiring the Line through this proceeding.

Response: LPPC objects to Interrogatory 37 on the grounds that the “process” it used to reach any agreement with NLA is not relevant to the subject matter of this proceeding. Without waiving its objection, LPPC states that because NLA has served as the operator of the Lake Providence Branch Line from MP 408.9 to MP 471.0 since 2011, there was no need to engage in any extended discussion regarding how NLA would conduct operations over the approximate 29 miles of track that is involved in this proceeding.

INTERROGATORY NO. 38.

Please describe in detail how LPPC plans to finance its acquisition of the Line and to fund expenses for operating the Line. Include in your response details regarding any grant, gift.

Response: LPPC objects to Interrogatory 38 on the grounds that it would require LPPC, in the absence of the Board’s determination of the constitutional

minimum value, to speculate regarding the potential details of any financing that may or may not be required. Without waiving its objection, LPPC states that it will not participate in expenses to operate the Line.

INTERROGATORY NO. 39.

Please identify each person paying for any costs, including experts and counsel, associated with LPPC's feeder line application.

Response: Lake Providence Port Commission.

INTERROGATORY NO. 40.

Please Identify and describe all sources of revenue for LPPC.

Response: Ad Valorem Tax, State Revenue Sharing, Leases, Interest, Grants, Sale of Fixed Assets.

INTERROGATORY NO. 41.

Please state LPPC's net revenue for each of the years 2017, 2018, 2019, 2020, 2021, and 2022.

Response: LPPC objects to Interrogatory 41 on the grounds that it requests information or material that is publicly available or otherwise readily available or accessible to DSRR from other sources; or is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as it would impose on DSRR. Without waiving its objections, LPPC states that LPPC's annual Audit Reports for this information are available for public review on the Louisiana Legislative Auditor's website at <https://lla.la.gov>.

INTERROGATORY NO. 42.

Please state LPPC's current cash on hand and the sources of the cash on hand.

Response: LPPC objects to Interrogatory 42 on the grounds that LPPC's current cash on hand and the sources of that cash are not relevant to this proceeding.

INTERROGATORY NO. 43.

Please describe in detail any instance in which LPPC has defaulted on, been rejected for, or negotiated any workout or deferral for any loan, bond, or other financial instrument, from the year 2000 to present.

Response: No instance of any such occurrence is known to have happened.

INTERROGATORY NO. 44.

Please state whether LPPC has been rated by any bond or credit-rating agency and, if so, what LPPC's current bond or credit rating is.

Response: Unknown.

INTERROGATORY NO. 45.

Please state the amount of funds provided by any governmental entity, including the State of Louisiana, to LPPC in cash from 2017 to present.

Response: LPPC objects to Interrogatory 45 on the grounds that it requests information or material that is publicly available or is otherwise readily available or accessible to DSRR from other sources; or is as accessible or available to DSRR as it is to LPPC and producing responsive information

would impose substantially the same or greater burden on LPPC as it would impose on DSRR. Without waiving its objections, LPPC states all such data is set out in the Audit Reports referenced in response to Interrogatory 41.

INTERROGATORY NO. 46.

Please state and describe all facts supporting any contention that the sale of the Line will not have a significant adverse financial effect on DSRR, including how the loss of profits will not have a significantly adverse financial effect on DSRR.

Response: LPPC objects to Interrogatory 46 on the grounds that it assumes that DSRR's freight operations over its entire line have been profitable. DSRR has been trying to sell this line since, at least, August 2019 as indicated in the DOT Grant Agreement. This question was addressed in the Feeder Line Application, dated January 4, 2023, in Section M. When DSRR provides the financial data requested in LPPC's First Discovery Requests, dated January 4, 2023, LPPC may have the data necessary to quantify the financial benefit to DSRR of not having to maintain and operate this line. As of this date, DSRR has refused to respond to LPPC's First Discovery Requests, thereby preventing LPPC to state and describe all facts supporting its contention that the sale of the Line will not have a significantly adverse financial effect on DSRR.

INTERROGATORY NO. 47.

Please state and describe all facts supporting any contention that the sale of the Line will not have any adverse effect on the overall operational performance of DSRR.

Response: DSRR has been trying to sell this line since, at least, August 2019 as indicated in the DOT Grant Agreement. This question was addressed in the Feeder Line Application, dated January 4, 2023, in Section N. When DSRR provides the financial and operating data requested in LPPC's First Discovery Requests, dated January 4, 2023, LPPC may have the data necessary to quantify the benefit to DSRR of not having to maintain and operate this line. As of this date, DSRR has refused to respond to LPPC's First Discovery Requests, thereby preventing LPPC to state and describe all facts supporting its contention that the sale of the Line will not have any adverse effect on the overall operational performance of DSRR.

INTERROGATORY NO. 48.

Please state and describe all facts supporting any contention that sale of the Line will likely result in improved railroad transportation for shippers who transport traffic over the Line.

Response: The 20-mile segment of the Line between MP 471.0 and MP 491.0 will be fully restored so as to provide all potential shippers with the ability and option to use single-line rail service over the entire rail corridor between McGehee, Arkansas and Tallulah, Louisiana that is less expensive than the longer, inefficient and more expensive alternative that involves

multiple Class I carriers and multiple Class III carriers. The sale of the Line will facilitate the receipt of rates and ease the administrative burdens associated with having to obtain multiple rates from two short line railroads and multiple Class I rail carriers. Furthermore, single line service will facilitate the tracking of railcars, which problems have been identified in the confidential information that was previously provided to DSRR's attorneys in June 2021. The sale will also clear the track of several hundred railcars that have been stored on DSRR's mainline track between MP 471.0 and MP 491.0 for approximately 12 years that has hindered efficient interchange operations between DSRR, who has been designated by KCS as its agent for interchange with LPPC since 2016. Such information was previously provided to DSRR's attorneys even though such information was known to former DSRR employees.

INTERROGATORY NO. 49.

Please state whether LPPC have (sic) unrestricted funds on hand to purchase the Line from DSRR.

Response: LPPC has sufficient funds on hand and available in grants to purchase the Line depending on the constitutional minimum value that the Board establishes pursuant to the provisions of 49 U.S.C. § 10907(b)(2).

INTERROGATORY NO. 50.

Please state all limits or restrictions on the use of funds raised from each issuance of debt in 2020, 2021, and 2022.

Response: In response to Interrogatory 50, LPPC states that it was not the recipient of any funds raised from the issuance of debt in 2020 or 2022. On

February 25, 2021, LPPC was authorized to incur debt to repair, rehabilitate and extend its rail lines by issuing bonds.

INTERROGATORY NO. 51.

Please list all customers on the Line that have expressed an interest in routing traffic over the Line, and for each customer, identify its name, location, commodities it handles, any information on its rail shipping history (including commodities shipped, origin or destination for rail shipments, and date or year of shipment) and the date of any such expressions of interest.

Response: Asked and answered. The information sought herein is repetitive of the information that was provided in response to DSRR's First set of Interrogatories 1 through 6. Furthermore, it involves highly confidential information that is subject to 49 U.S.C. § 10904 and that is already known to DSRR, which has provided rail service to all of the customers who are physically located on the Line. In addition, DSRR has been served with the verified statements of three (3) of the known customers that are physically located on its Line, namely Complex Chemical, Terrel River Services and Hollybrook Warehouse, Inc., that have expressed an interest in once again routing their traffic over the Line to reach UP directly.

INTERROGATORY NO. 52.

For each customer identified in response to Interrogatory No. 51, please identify all communications with such customer by respondents.

Response: LPPC objects to Interrogatory 52 to the extent that it seeks materials protected by the attorney-client privilege, the attorney-work product

doctrine in anticipation of litigation, and other applicable privileges, protections and exceptions from discovery or disclosure. Without waiving these objections, LPPC states that consistent with the Board's decision, dated August 23, 2022, On October 13, 2022, LPPC forwarded an email to various customers and former customers to advise them that the Board had authorized LPPC to file an expanded feeder line application. A survey was attached to that email that sought information as to whether the recipient of the survey has a current or future need for rail service over the entire Line. The surveys were returned to L. E. Peabody & Associates, Inc.

Thereafter, counsel for LPPC reached out via telephone to shippers that had indicated an interest in using rail service to ascertain whether they would be interested in filing a verified statement in support of LPPC's expanded Feeder Line Application. True copies of the shippers' Verified Statements were duly filed as Exhibits to LPPC's expanded Feeder Line Application on January 4, 2023, and speak for themselves.

REQUESTS FOR PRODUCTION OF DOCUMENTS ("RFPs")

RFP NO. 1

Please produce all communications with shippers concerning either (i) LPPC's feeder line application, (ii) DSRR's service over the Line, (iii) DSRR, or (iv) the shipper's rail transport needs.

Response: For all the above-stated reasons set forth in the responses to Interrogatories Nos. 34 and 35, the request for production of *all communications* concerning either (i) LPPC's feeder line application, (ii) DSRR's

service over the Line, (iii) DSRR, or (iv) the shipper's rail transport needs is overly broad and unduly burdensome as it seeks voluminous information that spans over 20+ years that is not relevant to this proceeding, as well as extensive communications with shippers that were made during the preparation of the two (2) INFRA applications that were filed in 2017 and 2019 that were intended to provide revenues for DSRR to use to rehabilitate its rail infrastructure and upgrade its bridges that DSRR estimated would cost \$12,448,000. Without waiving the foregoing, copies of the L. E. Peabody survey were forwarded to rail shippers. *See Attachment to RFP 22.*

RFP NO. 2

Please produce all studies, evaluations, analyses, assessments, or measurements of the adequacy of service by DSRR to shippers over the Line.

Response: LPPC objects to RFP 2 on the grounds that it is (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody, or control of LPPC; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding. LPPC further objects to RFP 2 on the grounds that it seeks information that is in DSRR's possession along with all communications that were previously provided in response to DSRR's First Set of Interrogatories and First Set of Requests to Produce. Without waiving the foregoing objection, the information that is sought in RFP 2 is set out in detail

in LPPC's expanded Feeder Line Application filed January 4, 2023, and would be burdensome to reproduce a second time in response to RFP 2.

RFP NO. 3

Please produce all communications with NLA concerning (i) LPPC's feeder line application, (ii) DSRR, (iii) operations over the Line, or (iii) NLA's potential operation of the Line.

Response: LPPC objects to this request on the grounds that it is (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the scope of LPPC's Feeder Line Application; and (e) would impose an undue burden that outweighs any relevance of probative value that the information sought may have in this proceeding. In further response, LPPC states that routine day-to-day communications regarding operations over the entire Lake Providence Branch Line and business development efforts have been ongoing since 2011. Such conversations continued through the INFRA Grant processes and during the ongoing rehabilitation of the tracks between MP 408.9 and MP 471.0. Because such communications were not recorded, they are incapable of being produced. Ascertaining and providing *all* communications, including all emails that span 12 years, would subject LPPC to a burden that is not proportional to the needs of the case.

RFP NO. 4

Please produce all agreements with NLA related to LPPC's feeder line application.

Response: A copy of the Lease Agreement, dated December 20, 2020, between LPPC and NLA was entered as part of the Public Record in this proceeding on December 28, 2020. Following the Board's approval of LPPC's expanded Feeder Line Application, it will be amended to reflect the Board's approval.

RFP NO. 5

Please produce all communications with or concerning NLA and the Line.

Response: LPPC objects to this request on the grounds that it is (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the scope of LPPC's Feeder Line Application; and (e) would impose an undue burden that outweighs any relevance of probative value that the information sought may have in this proceeding. LPPC further objects to RFP 5 to the extent it seeks materials protected by the attorney-client privilege, the attorney-work product doctrine, or any other applicable privilege, protection or exception from discovery or disclosure. Without waiving the foregoing objections, LPPC states that routine day-to-day communications regarding operations over the entire Lake Providence Branch Line and business development efforts have been ongoing since 2011. Such conversations continued through the INFRA Grant processes and during the ongoing rehabilitation of the tracks between MP 408.9 and MP 471.0. Because such communications were not recorded, they are incapable of being produced. Ascertaining and providing *all* other

communications, including all emails that span 12 years, would subject LPPC to a burden that is not proportional to the needs of the case.

RFP NO. 6

Please produce all Documents or communications concerning any refusal by DSRR to provide service over the Line.

Response: LPPC objects to RFP 6 to the extent that to the extent it seeks materials protected by the attorney-client privilege, the attorney-work product doctrine, or any other applicable privilege, protection or exception from discovery or disclosure. Without waiving the foregoing objections, LPPC states that the Feeder Line Applications reflect and contain various documents and communications of which LPPC is currently aware regarding DSRR's refusals to provide service.

RFP NO. 7

Please produce all Documents or communications concerning the financial effect on DSRR of a sale of the Line.

Response: LPPC objects to this request on the grounds that it is (a) overly broad; (b) the term "financial effect" is vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the scope of LPPC's Feeder Line Application; and (e) would impose an undue burden that outweighs any relevance of probative value the information sought may have in this proceeding. In further response, LPPC states that as a non-affiliate of DSRR and acting only as the potential

purchaser of the Line, LPPC is not in a position to assess the internal financial impact on DSRR of the sale of the line and therefore has no applicable documents or communications.

RFP NO. 8

Please produce all Documents or communications concerning the movement in 2022 of a Schnabel car over the Line or for interchange from NLA to DSRR.

Response: LPPC objects to RFP 8 to the extent that to the extent it seeks materials protected by the attorney-client privilege, the attorney-work product doctrine, or any other applicable privilege, protection or exception from discovery or disclosure. Without waiving the foregoing objections, LPPC states that in Docket No. 36642, LPPC filed its Reply and Request to Postpone Effective Date of the Notice of Exemption and Other Relief, (a copy of which was previously served on DSRR's counsel), in which it mentioned the movement of the oversized Schnabel car.

A copy of an email chain, dated September 6, 2022, is attached which mentions a Schnabel car and includes a copy of that car that is hitched to a NLA locomotive.

The Schnabel car is mentioned four (4) times in LPPC's Feeder Line Application, filed on January 4, 2023.

RFP NO. 9

Please produce LPPC's income statements, profit or loss statements, and/or statements of revenue and expenses by category for 2017 to present.

Response: LPPC objects to RFP 9 on the grounds that the documents being sought are not relevant to this proceeding. Consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objection, LPPC states that the information sought is publicly available to DSRR at the website of the Louisiana Legislative Auditor. Moreover, the information is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR.

RFP NO. 10

Please produce LPPC's annual reports from 2017 to present.

Response: LPPC objects to this RFP on the grounds that the documents being sought are not relevant to this proceeding. Consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objection, LPPC states that the information sought is publicly available to DSRR at the website of the Louisiana Legislative Auditor. Moreover, the information is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR.

RFP NO. 11

Please produce LPPC's annual budgets from 2017 to present.

Response: LPPC objects to this RFP on the grounds that LPPC's past annual budgets are not relevant to this proceeding. LPPC further objects to this RFP on the grounds that consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objection, LPPC states that the information sought is publicly available to DSRR at the website of the Louisiana Division of Administration. Moreover, it is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR.

RFP NO. 12

Please produce LPPC's consolidated statements of financial position or balance sheets for 2017 to present.

Response: LPPC objects to RFP 12 on the grounds that the documents being sought are not relevant to this proceeding. Consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objections, LPPC states that the information sought is publicly available to DSRR at the website of Louisiana Legislative Auditor. That information is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR.

RFP NO. 13

Please produce all reports, studies, analyses, assessments, or evaluations of LPPC's financial condition, Including any audits.

Response: LPPC objects to RFP 13 on the grounds that the documents being sought are not relevant to this proceeding. Consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objections, LPPC states that the information sought is publicly available to it at the website of the Louisiana Legislative Auditor. That information is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR.

RFP NO. 14

Please produce all Documents or communications concerning LPPC's requests for funding from the State of Louisiana, for the period 2017 to present.

Response: LPPC objects to RFP 14 on the grounds that the documents being sought are not relevant to this proceeding. Consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objections, a copy of LPPC's "Application To The Louisiana Port Construction And Development Priority Program 2018-20019," dated November 30, 2017, is produced herewith.

RFP NO. 15

Please produce minutes of the LPPC, Including any committee, subcommittee, working group, or similar sub-group of the LPPC, concerning either (i) LPPC's feeder line application, (ii) LPPC's agreement with NLA to operate the Line, (iii) LPPC's financial condition, or (iv) DSRR's operation of the line.

Response: The LPPC has no subcommittees, working groups or similar sub-groups. In further answer to RFP 15, LPPC objects to RFP 15 on the grounds that consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. The information sought is publicly available to DSRR at the website of the Louisiana Division of Administration. Moreover, it is accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR. LPPC specifically objects to this RFP because LPPC's minutes are not relevant to this proceeding.

RFP NO. 16

Please produce Documents sufficient to show LPPC's current cash reserves, fund balances, bonds and other liabilities.

Response: LPPC objects to RFP on the grounds that it seeks information or data that is not relevant to the subject matter of this proceeding. Without waiving its objection, LPPC notes that consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that

LPPC, as a governmental entity, is presumed to be a financially responsible entity. Because the information sought is publicly available at the website of the Louisiana Legislative Auditor, it is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR. LPPC specifically objects to this RFP for the reason that the documents being sought are not relevant to this proceeding.

RFP NO. 17

Please produce all reports, studies, analyses, assessments, or evaluations of LPPC's financial or operational ability to either (i) acquire the Line or (ii) fund operations over the Line.

Response: The Surface Transportation Board, consistent with its policy and precedents, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. LPPC further states that until relevant and accurate information is provided to LPPC from DSRR, consistent with the Board's order that did not allow LPPC to obtain such information until it filed its extended Feeder Line Application, LPPC cannot assess or evaluate the funds that will be required to acquire the Line. As previously stated, LPPC will not fund operations over the Line.

RFP NO. 18

Please produce all Documentations or communications reflecting or describing any estimate of appraisal of the economic value of the Line generated in the ordinary course of business.

Response: LPPC objects to this request on the grounds that it is (a) overly broad; (b) the term “economic value” is vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the scope of LPPC’s Feeder Line Application; and (e) would impose an undue burden that outweighs any relevance of probative value the information sought may have in this proceeding. In further response, LPPC states that the economic value of the line based upon the constitutional minimum value of the Line was included in the expanded Feeder Line Application filed with the STB on January 4, 2023.

RFP NO. 19

Please produce all communications concerning LPPC’s financial or operational ability to either (i) acquire the Line or (ii) fund operations over the Line.

Response: LPPC objects to this request on the grounds that any communications regarding LPPC’s ability to financially acquire the Line and operate the Line based on its submission of the Feeder Line Application are subject to attorney client privilege.

RFP NO. 20

Please produce all reports concerning LPPC’s bond rating or credit worthiness.

Response: LPPC has no such documents.

RFP NO. 21

Please produce all Documents concerning or discussing how LPPC will fund any infrastructure investments in the Line, Including when and how that funding will be available.

Response: If necessary, LPPC will seek to acquire funds from the Louisiana Port Construction and Development Priority Program, utilize INFRA funds granted by the US Department (“USDOT”), USDOT’s Rebuilding American Infrastructure with Sustainability and Equity Program (“RAISE”), the Maritime Administration’s Port Infrastructure Development Program (“PIDP”), the US Department of Agriculture, the Delta Regional Authority (“DRA”), LA Department of Economic Development, and the US Department of Commerce’s Economic Development Administration. Until relevant financial information is obtained from DSRR that will enable LPPC to determine the constitutional minimum value of the Line for the Board’s consideration and approval, it is premature to consider which of or how many of the above-listed sources of funds would be approached or when such funding will be available.

RFP NO. 22

Please produce all Documents or communications concerning any study, report, analysis, or evaluation of potential traffic on the Line.

Response: LPPC objects to this request on the grounds that it is (a) overly broad; (b) the term “potential traffic” is vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the scope of LPPC’s Feeder Line Application; and

(e) would impose an undue burden that outweighs any relevance of probative value the information sought may have in this proceeding. In further response, LPPC states that responsive documents for shippers that currently move traffic on the rail line can be found in Exhibit No. 4 to the January 3, 2023 Verified Statement of Thomas D. Crowley and Christena Nielsen included in LPPC's January 4, 2023 expanded Feeder Line Application. Other potential shippers and their responses to LPPC's inquiry can be found in the attached survey responses.

RFP NO. 23

Please produce all communications with any person regarding submission of any verified statement in support of LPPC's feeder line application.

Response: LPPC objects to RFP 23 on the grounds that it seeks materials protected by the attorney-client privilege, the attorney-work product doctrine in anticipation of litigation, and any other applicable privilege, protection or exception from discovery or disclosure.

RFP NO. 24

Please produce all Documents shared with any person regarding any verified statement in support of LPPC's feeder line application. Please identify in your response the person with whom any particular responsive Documents was shared.

Response: LPPC objects to RFP 24 on the grounds that it seeks materials protected by the attorney-client privilege, the attorney-work product doctrine in

anticipation of litigation, and any other applicable privilege, protection or exception from discovery or disclosure. LPPC further objects to RFP on the grounds that it is vague and ambiguous.

RFP NO. 25

To the extent not produced by DSRR, please produce all Documents LPPC obtains through discovery in this proceeding.

Response: LPPC has not received any document through discovery in this proceeding.

RFP NO. 26

Please produce all documents related to each debt issuance in 2020, 2021, and 2022, including authorization to issue and restrictions on use.

Response: LPPC objects to RFP 26 on the grounds that the documents being sought are not relevant to this proceeding. Consistent with Board policy and precedents, the Board, by its decision, dated 12/11/2020, has stated that LPPC, as a governmental entity, is presumed to be a financially responsible entity. Without waiving its objection, LPPC states that the information sought is publicly available to DSRR at the website of the Louisiana Legislative Auditor. Moreover, the information is as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as that on DSRR.

EXHIBIT I

REGULAR MEETING OF THE LAKE PROVIDENCE PORT COMMISSION
HELD ON NOVEMBER 15, 2023

The Lake Providence Port Commission met in regular session on Wednesday, 15 November 2023 at 8:00 a.m. in the Port Commission office at the Lake Providence Port.

Officers Jim Thom, President, Jerry King, Vice President and Francis Lensing, Secretary-Treasurer were present. Commissioners Mark Buntyn and Roger Clement were present. Commissioner Karvan Powell was absent. Wyly Gilfoil, executive director, and Bryant Killen, deputy director, were also present.

The minutes from the meeting held 18 October 2023, were accepted on a motion by Mr. Buntyn and second by Mr. King.

The financial reports for the period ending October 2023 were approved on a motion by Mr. King and seconded by Mr. Buntyn.

The bills for November 2023 were approved as presented on a motion by Mr. Lensing and seconded by Mr. Clement.

Mr. Gilfoil presented project reports on construction in progress and in design. HDR and Buehrt Horn submitted an INFRA application for Railroad Rehabilitation on 1 Mar 2019. US DOT awarded 10.5 million in Federal appropriations 20 July 2019. HDR was selected as the engineering firm for the INFRA project. The Arkansas portion of the Rail, segments A & B, are complete. Categorical Exclusion for the Louisiana sections has been completed. We have submitted Final Design to FRA and LA DOTD for their approval. A Feeder Line Application was filed with the Surface Transportation Board on 10 Nov 2020 to acquire the 20 miles of track from MP 471 to MP 491. STB directed the parties to mediation which was unsuccessful. A second feeder line application was filed with the STB in January 2023 seeking to acquire the entire line from LPPC down to the KCS in Tallulah. The STB has not set a schedule for hearing the matter. We received an EDA grant of \$ 380,688 for construction of a third lane from the office to Stepan. LA DOTD awarded 5 million to the Rail Reconstruction Project Tallulah – Newellton The Commission approved the project report on a motion by Mr. King and seconded by Mr. Lensing.

The Commission adjourned at 9:21 a.m. on a motion by Mr. Lensing and seconded by Mr. Clement.

James A. Thom, IV
President

Attest:

Francis X. Lensing
Secretary

EXHIBIT J

REGULAR MEETING OF THE LAKE PROVIDENCE PORT COMMISSION
HELD ON JANUARY 18, 2023

The Lake Providence Port Commission met in regular session on Wednesday, 18 January 2023 at 8:00 a.m. in the Port Commission office at the Lake Providence Port.

Officers Jerry King, Vice President, and Francis Lensing, Secretary-Treasurer were present. Jim Thom, President was absent. Commissioner Mark Buntyn, Karvan Powell, & Roger Clement was present. Bryant Killen, deputy director, was also present.

The minutes from the meeting held in December 2022 were accepted on a motion by Mr. Clement and second by Mr. Powell.

On a motion by Mr. Powell and second by Mr. Buntyn, the Commission approved the financial reports for the period ending December 2022.

The bills for December 2022 were approved as presented on a motion by Mr. Lensing and seconded by Mr. Clement.

Mr. Killen presented project reports on construction in progress and in design. DOTD sent a Notice of Award with Funding 22 Jun 2022 in the amount of \$ \$2,021,386 for the Port Construction & Development Priority Program (PCDPP) application for the Multimodal Freight Corridor Improvements bringing the total amount to \$11,484,000 (the full state share). HDR and Burchart Horn submitted an INFRA application for Railroad Rehabilitation 1 Mar 2019. US DOT awarded 10.5 million in Federal appropriations 20 July 2019. HDR was selected as the engineering firm for the INFRA project. Bids for the Arkansas portion of the railroad rehabilitation were opened 29 July with Queen City Railroad Construction having the lowest bid at \$6,270,029.00. A Preconstruction Meeting was held 26 August in Lake Village where the contracts were signed. As a result of the bid going over the estimated cost by \$1,223,286, a portion of funding in Segment D was moved to cover those higher costs. The EDA grant application to account for the funding moved from Section D and other rail work to be done due to the original reduction in the INFRA grant was denied. We submitted a PIDP application 16 May which we were unsuccessful with, but have an exit interview scheduled to learn how to strengthen the application going forward. The Rail Line is now open between McGehee and Lake Providence. A Feeder Line Application was filed with the Surface Transportation Board 10 Nov 2020 to acquire the 20 miles of track from MP 471 to MP 491. STB directed the parties to mediation which was unsuccessful. A Declaration of Emergency was passed on a motion by Mr. Lensing and a second by Mr. Powell regarding the dock repair. The Commission approved the project report on a motion by Mr. Powell and seconded by Mr. Buntyn.

In other business, Mr. Killen presented updates on the electrical substation as well as the continued DSR Rail Issue. The Commission passed a resolution to engage SEAEDD to submit a RAISE grant application on a motion by Mr. Lensing and second by Mr. Clement. A separate resolution was passed to engage SEAEDD to submit a MARAD Port Infrastructure Development Program (PIDP) grant application with a motion by Mr. Powell and a second by Mr. Buntyn. Other Business was approved with a motion by Mr. Lensing and a second by Mr. Buntyn.

The Commission adjourned at 8:55 a.m. on a motion by Mr. Lensing and seconded by Mr. Clement.

James A. Thom, IV
President

Attest:

Francis X. Lensing
Secretary