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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 North Louisiana and Arkansas Railroad. 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 NORTH LOUISIANA AND ARKANSAS RAILROAD**

On January 3, 2024, Delta Southern Railroad, Inc. (“DSRR”) served discovery requests upon the North Louisiana and Arkansas Railroad (“NLA”), the chosen, exclusive operator of the Lake Providence Port Commission’s (“LPPC”) current rail lines and would-be operator of DSRR’s Lake Providence Branch line should the Board grant LPPC’s amended application. NLA 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 NLA 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.

NLA’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 NLA 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").

NLA made itself a party to this proceeding, initiated by LPPC, by, among other things, filing a verified statement in this matter and by being a party to an agreement with LPPC (and submitted to the STTB) to operate the line in the event the STB grants LPPC's Amended Application thereby imposing a common carrier obligation on LPPC. DSRR is entitled to discover relevant evidence to prepare its defense. DSRR engaged in a good-faith effort to resolve this discovery dispute with NLA. But it is apparent that NLA is not willing to comply with its discovery obligations. NLA 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"). As LPPC is not a rail carrier but would

assume a common carrier obligation in the event the STB granted its Amended Application, it entered into an agreement with 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 LPPC’s acquisition of the Line—and operation of it by NLA—will benefit the public interest, that DSRR inadequately serves current or potential shippers, and that it has refused to invest adequately in maintaining the Line. In addition, a central part of the amended application relies on circumstances surrounding a potential public-private partnership that included NLA, LPPC, DSRR, 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.

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.

DSRR Pursues Relevant Discovery from NLA

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 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 Second Set of Discovery Requests on NLA (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 regarding the quality of NLA's services, DSRR's service over the Line, and requests by customers for service that were allegedly not provided by DSRR. See ROGs 32-37, 42-43, RFPs 1-5, 7-9, 12,

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 Cnty., 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").

and 15-18. DSRR also sought information and documents regarding the INFRA grant, as well as other governmental grants for rail service or infrastructure involving the LPPC lines currently operated by NLA or the Line. See RFP Nos. 13-14.

NLA Refuses to Respond to the Discovery Requests

On February 6, 2024, NLA served its responses to the Discovery Requests, attached hereto as **Exhibit B**. Those responses were four days late. But the extra time NLA took was not to produce responsive documents. NLA produced only eighteen pages of responsive documents to these most recent Discovery Requests, raised frivolous objections, provided almost no substantive information, and evidenced a lack of diligence and completeness in searching for responsive documents or information. NLA also asserted, for many of the Discovery Requests, that prior discovery responses by NLA 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 NLA at least partially if not totally nullified.

On February 9, 2024, DSRR sent to NLA a detailed letter outlining the serial deficiencies in NLA's responses, attached hereto as **Exhibit C**. NLA sent a response on February 13, 2024 (in a joint letter from NLA's counsel who also represents LPPC 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**.

³ Of note, NLA has not Bates stamped any documents produced, which makes it difficult to have useful discussions about particular documents. NLA should reproduce the limited number of documents produced to date with proper Bates labeling so they can be identified.

It was apparent to DSRR that NLA had not conducted adequate searches for responsive documents. What NLA has done is not to engage in an attorney-directed and supervised discovery process. Instead, NLA relied on its own self-determination as to whether it had responsive documents. And NLA could not—and still cannot—confirm that any real searches were done for electronic and hardcopy documents. For instance, NLA could not state what, if any, search terms were used to find responsive documents (particularly emails or other electronic communications). Based on this inadequate “confirm you have nothing” approach, NLA has played wasteful discovery games—objecting to requests and then claiming they looked and did not have anything anyway.

The paltry productions from NLA lack credibility given substantial responsive information that is known to exist. For example, DSRR requested NLA produce all documents related to any derailment on line owned by LPPC and operated by NLA. RFP No. 12. NLA’s sole response was that DSRR already possessed documents related to derailments during the summer of 2023. Resp. to RFP No. 12. DSRR’s RFP not limited to 2023. And DSRR is aware of other derailments in January 2024, which was personally witnessed by DSRR’s counsel. NLA has clearly failed to produce all responsive materials to his request. While just one example of NLA’s deficient discovery responses, it is unfortunately emblematic of NLA’s responses as a whole. Moreover, NLA 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.

NLA also relies on other parties’ discovery responses to excuse its own discovery obligations. LPPC, NLA, and SEAEDD are all represented by the same counsel. NLA’s responses make it clear it is using LPPC 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. Likewise, NLA has refused to provide responsive information and documents based on vague references to LPPC's Amended Application or prior documents purportedly produced. *See* NLA Resp. to ROG 32 (referring DSRR to LPPC's amended application and "NLA's Supplementary Response to Interrogatories No. 1 through 6, dated June 15, 2021").

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 party may have or produce the same document. Consequently, NLA must conduct its own search of its own records. Discovery obligations are specific to each party, and NLA's actions undermine the discovery process and infringe DSRR's right to conduct relevant discovery.

NLA's unwillingness to engage in meaningful, relevant discovery is evidenced 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 NLA's responses.

It is clear that NLA 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 NLA, and the Board should issue an order compelling NLA 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, in which case LPPC will comply with its common carrier obligation by having NLA—one of DSRR’s competitors—operate the Line. The Line is a going concern, which generates most of the revenue for DSRR.⁴ As described above, Congress established the feeder line remedy that LPPC seeks with very specific criteria that the Board must 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 to NLA.

In particular, the Discovery Requests target from NLA 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 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 and NLA’s financial management of rail infrastructure and related government grants certainly is relevant to whether LPPC is financially responsible and whether NLA will be a better rail operator than DSRR. 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).

⁴ DSRR has another, shorter branch—the Sterlington Branch—in Monroe, Louisiana.

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

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

NLA's main contention, at least at this time, is that the Board has limited discovery to the valuation discovery requested by LPPC.⁵ NLA has offered various explanations for this position, but all of them lack merit.

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

⁵ NLA, 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 NLA decided to stand on its objection to the timing of DSRR's discovery requests—a position waived given previous responses in this proceeding.

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), NLA 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, NLA's own conduct confirms that it hardly believes its own now-adopted contention, and the Board specifically ordered NLA to comply with discovery before LPPC filed its amended application. *See 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 3-4 (STB served June 1, 2021). Indeed, in protesting initial discovery requests in 2021 (which objections the Board overruled), NLA criticized DSRR for *not serving discovery* until *after* the procedural schedule had been entered. *See* Mot. Seeking Entry of Protective Order Requested by NLA at 20, FD 36447 (Feb. 18, 2021) ("In seeking expedited consideration, it is duly noted that DSR waited nearly three full months after LPPC's Feeder Application was filed and nearly two full months after the Board found that the Application was substantially complete and conditionally accepted the Application to serve its Interrogatories."). NLA cannot now reverse course and claim that DSRR is serving its discovery too early. The bottom line is that LPPC initiated a proceeding to which NLA is a party, 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.

NLA 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, NLA’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 NLA.

A. Discovery Requests Related to Service by NLA or DSRR

As noted above, DSRR targeted certain discovery requests to NLA focused on the adequacy of rail service by both DSRR and NLA. The public convenience and necessity test requires LPPC to prove that DSRR 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. DSRR’s Discovery Requests specifically target these issues, and the Board should order full and complete responses from NLA to the below requests.

RFP No. 1: DSRR sought discovery of documents and communications with shippers regarding LPPC’s feeder line application, DSRR, DSRR’s service over the Line, or the shipper/customers’ rail transport needs. Such materials are necessarily and indisputably relevant and go to the very reasons for which LPPC claims this proceeding is necessary. In response, NLA claims it already produced responsive materials to DSRR (without identifying any particular

documents or communications). NLA stated it would produce relevant documents generated after June 23, 2021, but the fourteen pages of documents produced in response are clearly incomplete. NLA must conduct a thorough search for responsive documents and produce them.

RFP Nos. 2 and 4: DSRR sought communications with LPPC regarding the feeder line application, DSRR, operations over the Line, NLA’s potential operation of the Line, or the Line itself. Again, these materials are necessarily relevant as they involve the parties to this proceeding as well as the proceeding itself. NLA refused to produce *any* documents in response to these requests and gave no indication whether it withheld responsive documents on the basis of privilege (which would require a privilege log). NLA further responded it provided the operating lease through LPPC’s application. However, it is not credible—if LPPC and NLA have given any consideration to the matter at all, as they claim they have—that no other responsive documents exist related to discussions about NLA operating the Line, NLA’s plan to serve customers, and NLA’s plan to serve customers better than DSRR. NLA must perform a thorough search and produce all responsive documents.

RFP No. 8: DSRR sought documents and communications discussing or related to interchange with DSRR—which is undoubtedly relevant. In its response, NLA erroneously conflates prior discovery responses as sufficiently covering this request, specifically a previous interrogatory asking NLA to identify “all agreements, understandings, or customs” for interchange between NLA and DSRR. That is not coterminous with RFP No. 8 asking for “all Documents and communications discussing or related to interchange with DSRR.” NLA’s response also confusingly claims that, in 2021, it searched for and produced responsive documents to requests that were not served on NLA until January 3, 2024 (regarding communications with shippers regarding LPPC’s feeder line application, DSRR’s service, DSRR, and the shipper’s rail

transportation needs). Finally, DSRR is aware of outreach to NLA by DSRR and its new owner, Patriot Rail, multiple times in the last year about which nothing has been produced by NLA. Again, NLA clearly has not done a thorough search for responsive records, and it must do so.

RFP No. 9: DSRR sought documents and communications with any customers of NLA regarding the rail service NLA provided. NLA flatly refuses to respond to RFP No. 9 despite the fact that this material is absolutely central to the issues in the case regarding whether having NLA provide service on the Line would improve railroad transportation for shippers who transport traffic over the Line compared to the service that DSRR provides. DSRR expressed to NLA and reiterates here that it is willing to narrow its request to focus on the key service-quality related issues related to NLA. However, NLA instead chose to halt all discovery. NLA cannot credibly produce nothing in response to this RFP and the Board should order a full and complete response.

RFP No. 12: DSRR sought documents concerning any derailment on the line owned by LPPC and operated by NLA. This is plainly relevant as it speaks directly to whether service would be better under its ownership and NLA's operation. 49 U.S.C. § 10907(c)(1)(E). NLA offers no objection, but claims that DSRR already has all the documents related to NLA's apparently multiple derailments that occurred in summer of 2023. That is improper. NLA must search for and produce responsive documents. Moreover, the scope of the request is not narrowed to the multiple derailments of 2023, so the response is necessarily incomplete. For example, DSRR is aware of derailments that occurred as recently as the last week of January 2024. DSRR is also aware that NLA hires outside help to address derailments. The lack of documents related to known events calls into question whether any search has occurred as to events both known and unknown. Finally, it is not credible that the only responsive documents or communications that exist are ones that

DSRR was a participant in. The Board should order NLA to fully and completely respond to this highly relevant RFP.

RFP No. 15: DSRR sought discovery of documents involving NLA, LPPC, SEAEDD, or the Madison Parish Port Commission (“MPPC”) and any of the customers identified in LPPC’s amended application that concerns rail service by DSRR or NLA from 2017 to present. Such materials are necessarily and indisputably relevant to the adequacy of service provided by each of DSRR and NLA. The customers listed are those identified by LPPC itself in the amended application or prior discovery responses.

Despite the clear relevance of RFP No. 15, NLA 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. NLA must produce those and all requested documents, whether or not it surmises that DSRR may be aware of them or not. LPPC must provide complete discovery responses to DSRR’s indisputably relevant request, and the Board should order a full and complete response.

RFP No. 16: DSRR sought documents and communications regarding NLA’s or LPPC’s investments, lack of investments, or inability to invest in the segment of the Lake Providence branch line that LPPC owns and NLA operates today. This information is directly relevant because the Board must 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). In addition, it goes to the required finding that the “sale of the line will

be likely to result in improved railroad transportation for shippers who transport traffic over such line.” 49 U.S.C. § 10907(c)(1)(E).

NLA offered no valid objection, and its response is not credible and non-responsive. Rather than searching for responsive documents, NLA claims that it is not “privy to LPPC’s investment in the segments of the lines that it owns and that NLA operates,” and that it is furthermore “not aware that LPPC lacks the ability to invest further in those identical line segments.” It is not credible that the operator of rail line owned by LPPC has no information regarding LPPC’s investments in upgrading or maintaining those line segments or of NLA’s own investments. It further is of no moment whether NLA is aware of any lack of ability to invest or not—NLA must search for responsive documents and produce them. NLA must also confirm that it has made no investments itself.

Interrogatory No. 32: DSRR sought information on the identity of shippers who have sought or have transported traffic over the Line and which, if any, have sought or shipped in joint movement involving both NLA and DSRR. NLA refuses to provide a straight-forward answer to this plainly relevant request. NLA instead says that, after June 15, 2021, there was no shipper other than Rail Vehicle Services, and, for the period between 2017 and June 15, 2021, NLA refers DSRR to LPPC’s amended application and its June 15, 2021 discovery responses. Of course, those prior responses related to the original application and a different “Line.” In addition, none of those responses answered Interrogatory No. 32. Instead, they are a rough assemblage of portions of email messages that force DSRR to guess as to any context. The Board should order NLA to respond in a straight forward fashion to this request, which lays the foundation for other requests for information.

Interrogatory No. 35: DSRR sought identification of shippers with whom NLA communicated regarding the feeder line case, DSRR, DSRR's service over the Line, or the shipper's rail transport needs, and description of those communications. NLA's answer is largely non-responsive. NLA provides *no* answer on these relevant topics, and either disclaims any "reason" for communications to exist or again refers to prior productions that are deficient and incomplete, as noted above. If there are no such shippers, NLA can say so. But it has no basis not to investigate and respond completely. Thus, the Board should order a full and complete investigation and response to this item as well.

Interrogatory No. 42: DSRR sought straight-forward information about the customers on the Line that have "expressed an interest to NLA" in routing traffic over the Line. NLA refuses to respond, suggesting only that DSRR knows the answer because it lists customers in RFP No. 15. NLA makes no attempt to provide any verified answer to the actual question, which it must do and has no basis not to.

Interrogatory No. 43: Relatedly, DSRR sought the identification of communications with the customers identified in Interrogatory No. 42. NLA refuses to identify any communications, blankly stating the request is overly broad and unduly burdensome while at the same time claiming NLA has already produced such communications to DSRR (but without identifying any particular communications). DSRR has expressed willingness to narrow the scope of the RFP to focus the issues, but NLA has refused at the threshold.

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.⁶ 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 U.S.C. § 10907(c)(1)(E). LPPC's—with NLA—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.

RFP Nos. 13 and 14: In these RFPs, DSRR sought documents and communications regarding the INFRA grant and any other governmental grants sought for LPPC's lines operated by NLA or the Line. As shown above, such information is highly relevant to 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 NLA, LPPC, SEAEDD, and others. Either way, information about the grant is relevant to the issues raised in LPPC's amended application.

⁶ LPPC may file another amended application and withdraw all references to the INFRA grant if SEAEDD would like to stand on an objection that the grant information is not relevant.

NLA tries to claim such information is not relevant and it is not aware of any government grants involving LPPC lines currently operated by NLA or the Line. It is inconceivable that the parties that applied for the grant, including NLA, have had no subsequent communication about the grant. There is no question that the requests are relevant and within the scope of discovery, and the Board should order NLA to answer these requests in full.

C. Other Relevant Discovery Requests

RFP No. 17: 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, NLA 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 related to its attempt to acquire track from DSRR, at a minimum, is relevant to the subject matter of this case, including valuation of the Line.

NLA indicates that it has no records of communications with NLRDD. However, NLA must confirm that after conducting an adequate search, and it also must search for and produce any documents related to NLRDD regarding any rail property owned by DSRR—not just communications directly with NLRDD.

RFP No. 18: DSRR sought documents and communications regarding the cost for infrastructure, rehabilitation, or other capital expenditures on the Line, related entirely to any plans LPPC/NLA would have to purportedly improve service over the Line. NLA’s response is non-responsive, stating “because NLA lacks information regarding the potential costs for the infrastructure or rehabilitation or other capital expenditures, it has no documents or communications with respect thereto.” The Board should require NLA to conduct a full and

complete search for responsive documents, and, if there are none, to affirmatively relate that information to DSRR.

RFP Nos. 19-21: 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 19), DSRR's service over the Line (RFP 20), and LPPC's ability to purchase the Line (i.e. its financial condition, RFP 21). 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. 19, and based on the parties' meet-and-confer, it appears that NLA 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, NLA 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, NLA 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 NLA's burden to show that any privilege applies. NLA's resistance to producing such public records in discovery only indicates to DSRR that these materials contain admissions that it is entitled to discover.

Given NLA's improper objections and that the substance of the communications are directly relevant to the case (the feeder line application itself, DSRR's service over the Line, and LPPC's ability to purchase the Line), the Board should order full and complete responses to these RFPs.

CONCLUSION

In sum, NLA's discovery responses to DSRR's Second 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 (with NLA as a beneficiary) 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
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Washington, DC 20016
rhstreeter@gmail.com

Mr. Michael F. McBride
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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 SECOND SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO
NORTH LOUISIANA & ARKANSAS RAILROAD**

Delta Southern Railroad Inc. (“DSRR”), through counsel, hereby serves its Second Set of Interrogatories and Requests for Production of Documents upon the North Louisiana & Arkansas Railroad (“NLA”) in the above-captioned matter, pursuant to 49 C.F.R §§ 1114.26 and 1114.30. NLA’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” 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”, “You”, or “Your” 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. 32

Please list all shippers that have sought or have transported traffic over the Line, and Identify which of those shippers have sought or shipped in joint line movement involving both NLA and DSRR.

INTERROGATORY NO. 33

For each shipper listed 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.

INTERROGATORY NO. 34

Please describe in detail all actions NLA 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.

INTERROGATORY NO. 35

Please Identify all shippers with which NLA 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.

INTERROGATORY NO. 36

Please provide the dates, locations, and Identify the attendees for all meetings NLA has had with each shipper identified in response to Interrogatory No. 32.

INTERROGATORY NO. 37

Please list all shippers who have moved freight over LPPC lines operated by NLA.

INTERROGATORY NO. 38

Please list all employees whose email and hard copy files have been searched in order to respond to DSRR's discovery requests.

INTERROGATORY NO. 39

Please Identify each employee of NLA who has participated in discussions about any governmental grants, including but not limited to INFRA grants, for expenditure on LPPC's current rail lines that are operated by NLA.

INTERROGATORY NO. 40

Please Identify each employee of NLA who has participated in discussions about an any governmental grants, including but not limited to INFRA grants, for rail infrastructure or rail service on the Line.

INTERROGATORY NO. 41

For each governmental grant listed in response to Interrogatories Nos. 39 and 40, please list the dates on which each grant request joined by NLA was signed, to which governmental entity it was submitted, and each co-signatory.

INTERROGATORY NO. 42

Please list all customers on the Line that have expressed an interest to NLA in routing traffic over the Line, and for each such 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.

INTERROGATORY NO. 43

For each customer identified in response to Interrogatory No. 42, please Identify all communications with such customer by respondents.

INTERROGATORY NO. 44

Please identify the dates on which any Documents that may be responsive to any of these Interrogatories or RFPs were destroyed, deleted, or purged and the name of the person who destroyed, deleted, or purged such materials.

INTERROGATORY NO. 45

Please describe where, how often, and the name of the system or software used to backup work emails and other electronic documents at NLA.

INTERROGATORY NO. 46

Please list each member or employee whose records were searched to respond to LPPC's discovery requests and the date on which the records were searched.

INTERROGATORY NO. 47

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

REQUESTS FOR PRODUCTION OF DOCUMENTS ("RFPs")**RFP NO. 1**

Please produce all communications and Documents 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.

RFP NO. 2

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

RFP NO. 3

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

RFP NO. 4

Please produce all Documents and communications with or concerning LPPC and the Line.

RFP NO. 5

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

RFP NO. 6

Please produce all Documents and communications concerning NLA's estimates, forecasts, and budgets for operating the Line.

RFP NO. 7

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.

RFP NO. 8

Please produce all Documents and communications discussing or related to interchange with DSRR.

RFP NO. 9

Please produce all Documents and communications with any customer regarding NLA's service to that customer.

RFP NO. 10

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

RFP NO. 11

Please produce all Documents and communications with any person regarding submission of, contents of, supporting material for, or attachments to any verified statement signed by any employee of NLA in support of LPPC's feeder line application or any filings made by LPPC in STB Finance Docket No. 36447.

RFP NO. 12

Please produce all Documents related to any derailment on the line owned by LPPC and operated by NLA.

RFP NO. 13

Please produce all Documents 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. 14

Please produce all Documents 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. 15

Produce all Documents involving LPPC, NLA, SNEAEDD, or MPPC and any of the following rail customers or potential rail customers that discuss or relate to rail service provided by either DSR 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. 16

Please produce all Documents and communications concerning NLA's or LPPC's investment, lack of investment, or inability to invest in the line segments currently owned by LPPC and operated by NLA.

RFP NO. 17

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. 18

Please produce all Documents and communications that include estimates of the cost for any infrastructure or rehabilitation or other capital expenditures on the Line.

RFP NO. 19

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.

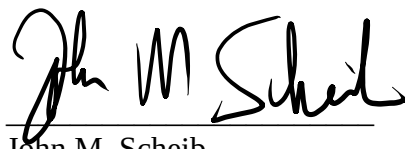
RFP NO. 20

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. 21

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
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Attorneys for:
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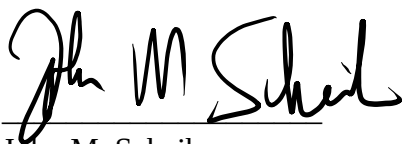
Dated: January 3, 2024

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
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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", written over a horizontal line.

John M. Scheib

Dated: January 3, 2024

EXHIBIT B

North Louisiana & Arkansas Railroad's Responses to

Second Set of Discovery Requests

Propounded by Delta Southern Railroad

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, North Louisiana & Arkansas Railroad ("NLA"), by counsel, responds as follows to Delta Southern Railroad, Inc.'s ("DSRR") Second Set of Interrogatories and Requests for Production of Documents propounded on January 3, 2024.

GENERAL OBJECTIONS

NLA'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, NLA will also state specific objections. NLA's objections shall not waive, limit, or prejudice any objections it may later assert.

1. NLA objects to each and every Interrogatory and Request of Production of Documents ("RFP") to the extent they seek to impose obligations on NLA greater than or inconsistent with those imposed under 49 CFR Part 1114 Subpart B. NLA 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. NLA objects to each and every Interrogatory and RFP to the extent they seek materials protected by the attorney-client privilege, the attorney-work product doctrine, or any other applicable privilege, protection or exception from discovery or disclosure, including the privilege under the First Amendment to petition the Government for redress of grievances. 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. NLA objects to each and every interrogatory and RFP to the extent they seek information or data that are not relevant to the subject matter of this proceeding and are not likely to lead to the discovery of admissible evidence.

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

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

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

7. NLA 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 NLA and producing responsive information would impose substantially the same or greater burden on NLA as it would impose on DSRR.

8. NLA 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. NLA 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. 32: Please list all shippers that have sought or have transported traffic over the Line and identify which of those shippers have sought or shipped in joint movement involving both NLA and DSRR.

Response: NLA is not privy to *all* shippers that have sought or transported traffic over the segment of the Line between MP 471.0 and 498.44 (which for clarity is defined as “the Line”) between

January 1, 2017 and the present. With the exception of the Schnable Car that was transported for Rail Vehicle Services and moved in interchange service, no other shipper has requested rail service from NLA to transport traffic in interchange service with DSRR over the Line between MP 471.0 and 498.44 between June 15, 2021, and the present. Furthermore, DSRR's request for information between January 1, 2017, and June 15, 2021, is redundant and unnecessary. The Amended Application reflects the names of shippers that previously sought to have traffic transported in interchange service over the Lake Providence Line between McGehee, AR and Tallulah, LA. *See also* NLA's Supplementary Response to Interrogatories No. 1 through 6, dated June 15, 2021, and documents that were attached thereto and filed under seal.

INTERROGATORY NO. 33: For each shipper listed 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: As reflected in the Expanded Feeder Line Application filed by the Lake Providence Port Commission ("LPPC")

on January 4, 2023, because of DSRR's past failure to maintain the track, shippers that might wish to tender traffic that would be interchanged with NLA have not been able to do so for several years.

INTERROGATORY NO. 34: Please describe in detail all actions NLA 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: NLA responds that it has not undertaken any formal steps to study, measure, analyze, assess, or evaluate the adequacy of DSRR's service to shippers over the Line. NLA further responds that all Documents and communications that NLA may possess concerning any study, report, analysis, assessment, or evaluation of potential traffic on the Line may be found in the INFRA Grant Applications to which DSRR was a party. NLA is aware from its own efforts to restore the tracks that it owns, along with LPPC and the Southeast Arkansas Economic Development District ("SEAEDD"), that DSRR failed to adequately maintain the track. Based on NLA's efforts to provide service to APEX in the summer of

2023, and inspections of the track between mileposts 471.0 and 472.25, NLA is aware that DSRR failed to rehabilitate this track to FRA Class 1 status. The inspection reports have previously been provided to DSRR and its counsel.

INTERROGATORY NO. 35: Please Identify all shippers with which NLA 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: NLA 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, NLA responds that because LPPC's initial Feeder Line Application, which involved only the 20 miles between mileposts 471.0 and 491.0, was filed on November 12, 2020, there would have been no reason to discuss the Feeder Line Application until LPPC made the decision to file at some point in September of 2020. Nor was there any reason to discuss DSRR's operations between mileposts 491.0 and 498.44.

The renewed request for discussions with shippers prior to August 2020 regarding service over the 20-mile segment is redundant and unnecessary. Such discussions have been fully disclosed to DSRR's attorneys. See Response to Interrogatory No. 32.

INTERROGATORY NO. 36: Please provide the dates, locations, and Identify the attendees for all meetings NLA has had with each shipper identified in response to Interrogatory No. 32.

Response: NLA 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, NLA responds that with the exception of a zoom meeting that was held with APEX, on July 21, 2023, NLA has not had personal or zoom meetings with any other shippers that have involved DSRR or its service. The attendees of that meeting were Noah B. Robbins and Michael Robbins, NLA; Wyly Gilfoil, LPPC; Nicholas Mazzi, James Patterson, and Jonathan Lewandowski, APEX. It is believed that Jerry Coleman, Patriot Rail LLC's Regional Operations Manager, who was involved in the matter, also participated in the Zoom Meeting.

INTERROGATORY NO. 37: Please list all shippers who have moved freight over LPPC lines operated by NLA.

NLA responds that since January 1, 2017, the only shippers for whom NLA has moved freight over LPPC's Lines are APEX and Rail Vehicle Services, which involved the movement of a Schnabel car. As previously disclosed, on August 24, 2017, DSRR declined to accept cars destined to Complex Chemical that NLA had placed in interchange because DSRR had closed the interchange based upon track issues on the DSRR side.

INTERROGATORY NO. 38: Please list all employees whose email and hard copy files have been searched in order to respond to DSRR's second set of discovery requests.

Response: Daniel B. Robbins, Timothy K. Robbins, Michael Robbins, Noah Robbins and Missy Courtwright.

INTERROGATORY NO. 39: Please Identify each employee of NLA who has participated in discussions about any governmental grants, including but not limited to INFRA grants, for expenditure on LPPC's current rail lines that are operated by NLA.

Response: NLA 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, NLA responds that Daniel B. Robbins and Timothy K. Robbins were the only employees of NLA who participated in such discussions.

INTERROGATORY NO. 40: Please Identify each employee of NLA who has participated in discussions about an (sic) any governmental grants, including but not limited to INFRA grants, for rail infrastructure or rail service on the Line.

Response: NLA 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, NLA responds that no NLA employee has participated in any discussions about rail infrastructure or rail service on the Line in any grant other than the FY 17-18 INFRA Application filed by SEAEDD on November 2, 2017, and the FY 19-20 INFRA Application filed by SEAEDD on March 2, 2019.

INTERROGATORY NO. 41: For each governmental grant listed in response to Interrogatories Nos. 39 and 40, please list the dates on

which each grant request joined by NLA was signed, to which governmental entity it was submitted, and each co-signatory.

Response: NLA 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, NLA responds that the INFRA Grant Applications, which were filed with the United States Department of Transportation, were signed by Patrecia Hargrove, the Executive Director of SEAEDD. They were not signed by an NLA employee.

INTERROGATORY NO. 42: Please list all customers on the Line that have expressed an interest to NLA in routing traffic over the Line, and for each such 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: NLA objects to this Interrogatory because it is redundant as the names of customers that have expressed an interest in routing traffic over the Line have previously been

provided to DSRR and its attorneys. In fact, such shippers are named in RFP No. 15 and in LPPC's expanded Feeder Line Application.

INTERROGATORY NO. 43: For each customer identified in response to Interrogatory No. 42, please Identify all communications with such customer by respondents.

Response: NLA objects to this Interrogatory because it is redundant as well as overly broad and unduly burdensome. As stated in the foregoing response, the communications that are sought herein were previously provided to DSRR's counsel.

INTERROGATORY NO. 44: Please identify the dates on which any Documents that may be responsive to any of these Interrogatories or RFPs were destroyed, deleted, or purged and the name of the person who destroyed, deleted, or purged such materials.

Response: NLA 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, NLA responds that following an investigation involving all NLA employees with access

to such Documents, no Documents that may be responsive to these Interrogatories have been destroyed, deleted, or purged.

INTERROGATORY NO. 45: Please describe where, how often, and the name of the system or software used to backup work emails and other electronic documents at NLA.

Response: NLA 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, NLA responds that it does not have any systems or software used to backup work emails and other electronic documents at NLA.

INTERROGATORY NO. 46: Please list each member or employee whose records were searched to respond to LPPC's discovery requests and the date on which the records were searched.

Response: NLA 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, NLA responds that between January 6, 2024 through January 26, 2024, records were searched by Daniel B. Robbins, Tim Robbins, Michael Robbins,

Noah Robbins and Missy Courtwright to respond to DSRR's Second Set of Interrogatories and Requests for Production of Documents.

INTERROGATORY NO. 47: Please state what You estimate the costs of operating the Line will be on an annual basis.

Response: NLA responds that because NLA lacks current reliable data regarding the condition of the track between mileposts 472.25 and 498.44, and has not yet finalized an operating plan, NLA is unable to estimate the future costs of operating the Line with any precision.

REQUESTS FOR PRODUCTION OF DOCUMENTS ("RFPs")

RFP NO. 1

Please produce all communications and Documents 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: NLA objects to RFP No. 1 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. NLA

further objects on the grounds that the request is redundant of DSRR's "Request to Produce," served February 5, 2021, that requested the production of "all Documents identified or otherwise referenced in response to the First Set of Interrogatories." DSRR's Interrogatories Nos. 1 – 6, and No. 9, involved the very materials that are now sought in RFP No. 1. After a thorough search of past communications and documents concerning communications with shippers regarding: (i) LPPC's pending feeder line application, (ii) DSRR's service or lack thereof over the Line, (iii) DSRR and (iv) the shipper's rail transportation needs over the Line, NLA states that copies of prior communications and documents pertaining to DSRR's First Set of RFPs were served on June 23, 2021, on Thomas J. Healey, who was DSRR's second counsel of record. Given the production of such records on June 23, 2021, the renewed demand for production of records that covered the period prior to June 23, 2021, is redundant and unnecessary because they have been available for review for two and a half years. NLA will, consistent with its General Objection No. 9, produce relevant documents

that were generated after June 23, 2021, and that were located during the current search of its records.

RFP NO. 2

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

Response: With respect to communications and documents with LPPC concerning LPPC's feeder line application, NLA objects to RFP No. 2 on the grounds that it seeks information that is protected by the attorney-client privilege and the attorney-work product doctrine. In further response, NLA did not consult with LPPC regarding the contents of its Verified Statement that was filed in support of LPPC's Feeder Line Application. Moreover, NLA developed its supporting statements based on its communications with shippers who had sought information regarding interchange movements between NLA and DSRR but were denied interchange service due to DSRR management's unwillingness and inability to reopen interchange in 2017. NLA relied on information received from DSRR's former

employees regarding restrictions placed on their ability to accept new interchange business and the required need to focus on storage of rail cars. Because such communications and documents were disclosed and produced in June 2021 in response to DSRR's First Set of Requests to Produce, served February 5, 2021, RFP No. 2 is redundant and unnecessary. NLA further states that the Second Amended Lease, which speaks to NLA's potential operation of the segment of the Lake Providence Branch that is the subject of this proceeding, was filed with the Board and served on DSRR on November 30, 2023. The only other communication between NLA and LPPC involved the need for Wyly Gilfoil to provide mailing addresses for shippers located in Louisiana that were served by DSRR.

RFP NO. 3

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

Response: NLA's Second Amended Lease Agreement By and Between LPPC and NLA was filed with the Board on November 30, 2023, and served on DSRR's attorneys.

RFP NO. 4

Please produce all Documents and communications with or concerning LPPC and the Line.

Response: *See Response to RFP No. 2.*

RFP NO. 5

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

Response: NLA objects to RFP No. 5 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, NLA further responds as follows:

See Response to RFP No. 1. NLA has no Documents or communications post-June 26, 2021 that concern subsequent refusals to provide service over the Line.

RFP NO. 6

Please produce all Documents and communications concerning NLA's estimates, forecasts, and budgets for operating the Line.

Response: NLA responds that it has no documents concerning estimates, forecasts or budgets for operating the Line.

RFP NO. 7

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: NLA objects to RFP No. 7 on the grounds that the request for all 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, NLA will provide all information in its possession related to the movement of the Schnabel car in interchange service with DSRR.

RFP NO. 8

Please produce all Documents and communications discussing or related to interchange with DSRR.

Response: NLA objects to RFP No. 8 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. NLA further objects on the grounds that the request is redundant of DSRR's "Request to Produce" that requested the production of "all Documents identified or otherwise referenced in response to the First Set of Interrogatories." As herein relevant, Interrogatory No. 7 involved the matters that are now sought in RFP No. 8. After a thorough search of its past communications and documents concerning communications with shippers regarding: (i) LPPC's pending feeder line application, (ii) DSRR's service or lack thereof over the Line, (iii) DSRR and (iv) the shipper's rail transportation needs over the Line, all such past communications and documents were served on June 23, 2021, on Thomas J. Healey, who was DSRR's second counsel of record. Given the production of all such records on June 23, 2021, the renewed demand for production of records that covered the period prior to June 23, 2021 is redundant and unnecessary. Moreover, production of *all* communications, which would include calls made in the ordinary course of business is unduly burdensome, if not impossible. NLA further states that because

there have been no interchange movements since 2017, with one exception, there has been nothing to discuss.

RFP NO. 9

Please produce all Documents and communications with any customer regarding NLA's service to that customer.

Response: NLA objects to RFP No. 9 on the grounds that it is overly broad and unduly burdensome as it requests *all communications* between NLA and its customers regarding NLA's service that have no bearing or relationship on the five issues set forth in 49 U.S.C. § 10907(c)(1) that the Board must consider in determining whether DSRR has failed to provide adequate service to shippers who transport traffic over the Line. NLA further objects on the grounds that communications with its customers regarding matters that are irrelevant to this proceeding are not likely to lead to admissible evidence in this proceeding.

RFP NO. 10

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

Response: NLA states that it has no Document or communication concerning any study, report, analysis, assessment, or evaluation of potential traffic on the Line other than information provided by DSRR while preparing the INFRA Grant Applications. See Response to Interrogatory No. 34.

RFP NO. 11

Please produce all Documents and communications with any person regarding submission of, contents of, supporting material for, or attachments to any verified statement signed by any employee of NLA in support of LPPC's feeder line application or any filings made by LPPC in STB Finance Docket No. 36447.

Response: NLA objects to RFP No. 11 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, NLA further states that such communications involve privileged communications with counsel and that the request is vague and ambiguous.

RFP NO. 12

Please produce all Documents related to any derailment on the line owned by LPPC and operated by NLA.

Response: NLA states that such documents that relate to the derailments that occurred in the summer of 2023 are already in DSRR's possession.

RFP NO. 13

Please produce all Documents 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: NLA objects to RFP No. 13 on the grounds that 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; or (b) the use of such funds to fulfill the objectives of the grant. NLA further states that 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, MPPC, SEAEDD, and DSRR to the United States Department of Transportation, is not relevant to this proceeding and would not likely lead to admissible evidence, and is irrelevant to this proceeding.

RFP NO. 14

Please produce all Documents 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: NLA objects to RFP No. 14 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, NLA 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. 15

Produce all Documents involving LPPC, NLA, SEAEDD, or MPPC and any of the following rail customers or potential rail customers that discuss or relate to rail service provided by either DSR 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: NLA objects to RFP No. 15 on the grounds that this request imposes an undue burden on NLA, that is not proportional to the needs of the case and not likely to lead to admissible

evidence. NLA also objects to this RFP because it seeks duplicative information that has been previously provided to DSRR in response to its initial request for production of documents and in LPPC's expanded Feeder Line Application filed January 4, 2023.

RFP NO. 16

Please produce all Documents and communications concerning NLA's or LPPC's investment, lack of investment, or inability to invest in the line segments currently owned by LPPC and operated by NLA.

Response: NLA objects to RFP No. 16 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, NLA further states that it is not privy to LPPC's investment in the segments of the lines that it owns and that NLA operates. Furthermore, NLA is not aware that LPPC lacks the ability to invest further in those identical line segments.

RFP NO. 17

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: NLA objects to RFP No. 17 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, NLA further states that it has no documents or records of any communications with the Northeast Louisiana Rail Development District, which is not a party to this proceeding.

RFP NO. 18

Please produce all Documents and communications that include estimates of the cost for any infrastructure or rehabilitation or other capital expenditures on the Line.

Response: Because NLA lacks information regarding the potential costs for the infrastructure or rehabilitation or other

capital expenditures, it has no documents or communications with respect thereto.

RFP NO. 19

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: NLA objects to RFP No. 19 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, NLA 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, production of such communications would not likely lead to the production of admissible evidence and would not affect the outcome of this proceeding. Moreover, 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 Board to take any result on the merits. Instead, Congressional communications have been limited to repeated requests that the Board establish a new procedural schedule consistent with the National Rail Transportation Policy that requires the Board "to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part." 49 U.S.C.A § 10101(15).

RFP NO. 20

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: NLA objects to RFP No. 20 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. Furthermore, production of such communications would not likely lead to the production of admissible evidence and would not affect the outcome of this proceeding. Notwithstanding the foregoing, NLA relies on its Response to RFP No. 19.

RFP NO. 21

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: NLA objects to RFP No. 20 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. Furthermore, production of such communications would not likely lead to the production of admissible evidence and would not affect the outcome of this proceeding. Notwithstanding the foregoing, NLA relies on its Response to RFP 19.

EXHIBIT C



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

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

Dear Counsel for NLA:

This letter identifies serial deficiencies in the responses provided by your client the North Louisiana and Arkansas Railroad ("NLA"), 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 NLA 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, NLA 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 NLA

DSRR Is Not Limited to Valuation Discovery

First, NLA 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 the Lake Providence Port Commission's ("LPPC") 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

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discovery. The STB found that LPPC 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 NLA must withdraw it. NLA 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 NLA has combined objections with some semblance of an answer or response. *See e.g.*, NLA RFP No. 1 Response (Listing objections on relevance and burden, but stating it will produce “relevant documents” generated after a prior production by NLA, “consistent with its General Objection No. 9” related to valuation discovery). This leaves *DSRR* uncertain as to whether NLA is completely responding to the request, providing a partial response (and for which part), otherwise limiting its response, or standing on an objection.

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

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

We will address deficiencies in the responses from LPPC 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

¹ *DSRR* also notes that NLA’s counsel did not sign the responses, nor attest specifically to the objections stated. This is itself a deficiency that renders the objections invalid. *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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searches for responsive information and records. Indeed, in an email from Mr. Streeter on 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. Likewise, NLA has refused to provide responsive information and documents based on vague references to LPPC's Amended Application or prior documents purportedly produced. See NLA Response to ROG 32 (referring DSRR to LPPC's amended application and "NLA's Supplementary Response to Interrogatories No. 1 through 6, dated June 15, 2021"). 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 NLA is not itself conducting its own search of its own records, but relying on others to produce any responsive documents or information 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 NLA'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 NLA.

NLA Must Produce Documents and Communications Related to Rail Service by DSRR and by NLA

DSRR served a number of discovery requests that targeted documents and information regarding the quality of NLA's services, DSRR's service over the Line, and regarding requests by customers for service that were allegedly not provided by DSRR. See ROGs 32-37, 42-43, RFPs 1-5, 7-9, 12, and 15-18. In general, NLA has refused to provide responsive information and documents, relying on, variously, LPPC's amended application and prior discovery responses. As noted above, that is improper and inherently incomplete.

In this case, LPPC is seeking to acquire from DSRR the remainder of the Lake Providence Branch line. In deciding whether to grant LPPC's amended 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). NLA is the chosen, exclusive operator of LPPC's current rail lines, and would be the operator should LPPC prevail in its amended application.

Accordingly, nothing could be more central to this case than the adequacy of service by DSRR and the adequacy of service by NLA—the entity LPPC proposes to take over operations by

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DSRR. Thus, this discovery is at the very heart of the matter, and NLA must provide complete discovery responses.

In addition, NLA's reliance on documents produced in response to Interrogatory Nos. 1-6 to respond to many of these requests, is non-responsive. Those interrogatories sought information about customers, but do not cover the subject matter here—rail service by either NLA or DSRR. Thus, they cannot possibly be an adequate response to these new and different requests. We address specific responses below.

Interrogatory No. 32—NLA refuses to provide in straight-forward fashion the identity of shippers who have sought or have transported traffic over the Line and which, if any, have sought or shipped in joint movement involving both NLA and DSRR. NLA instead says that, after June 15, 2021, there was no one other than Rail Vehicle Services, and, for the period between 2017 and June 15, 2021, NLA refers DSRR to LPPC's amended application and its June 15, 2021 discovery responses. Of course, those prior responses related to the original application and a different "Line." In addition, none of those responses answered precisely the question posed by ROG 32—they are, frankly, a rough and sloppy assemblage of portions of email messages that force DSRR to guess as to any context. NLA can and should simply respond in a straight forward fashion to this request, which is also the foundation for subsequent requests for information.

Interrogatory No. 35—NLA's answer is largely non-responsive. The interrogatory seeks identification of shippers with whom NLA communicated regarding the feeder line case, DSRR, DSRR's service over the Line, or the shipper's rail transport needs, and description of those communications. NLA provides no answer on these relevant topics, but either disclaims any "reason" for communications to exist or again refers to prior productions that are deficient and incomplete, as noted above. If there are no such shippers, NLA can say so. But it has no basis not to investigate and respond completely.

Interrogatory No. 42—this interrogatory seeks straight-forward information about the customers on the Line that have "expressed an interest to NLA" in routing traffic over the Line. NLA refuses to respond, suggesting only that DSRR knows the answer because it lists customers in RFP No. 15. NLA makes no attempt to provide any verified answer to the actual question, which it must do and has no basis not to.

Interrogatory No. 43—similarly, NLA refuses to identify communications with the customers identified in ROG 42. NLA blankly states that it is overly broad and unduly burdensome while at the same time claiming NLA has already produced such communications to DSRR, but does not identify any particular communications. NLA should, at a minimum, direct DSRR to responsive communications it has produced.

RFP No. 1—similar to the above-described interrogatories, this RFP sought documents and communications with shippers regarding LPPC's feeder line application, DSRR, DSRR's service

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over the Line, or the shipper/customers' rail transport needs. NLA again ducks a response and relies on prior productions that do not meet the call of the request in scope. NLA must conduct a thorough search for responsive documents and produce them.

DSRR also notes that it is clear that even the purported recent search for documents is clearly incomplete.

RFP No. 2 and 4—these RFPs seek communications with LPPC regarding the feeder line application, DSRR, operations over the Line, NLA's potential operation of the Line, or the Line. NLA refuses to produce *any* documents and raises frivolous objections and unsupported privilege claims. If NLA is withholding responsive documents on the basis of privilege, it must produce a privilege log that identifies the particular document with sufficient information (to/from/date/subject matter) and the particular privilege claimed. NLA's further response is non-responsive. That NLA has provided the operating lease through LPPC's application is neither here nor there. It is not credible that no other responsive documents exist related to discussions about NLA operating the Line, and NLA must perform a thorough search and produce responsive documents.

RFP No. 8—this RFP seeks documents and communications discussing or related to interchange with DSRR—which is undoubtedly relevant. Again, NLA erroneously conflates its prior discovery responses as sufficiently covering this request, relying on its response to ROG 7. But ROG 7 asked NLA to identify "all agreements, understandings, or customs" for interchange between NLA and DSRR. That is decidedly not coterminous with RFP No. 8. NLA's response also confusingly claims that, in 2021, it searched for and produced responsive documents to requests that were not served on NLA until January 3, 2024 (regarding communications with shippers regarding LPPC's feeder line application, DSRR's service, DSRR, and the shipper's rail transportation needs"). We are aware of outreach to NLA by Patriot Rail multiple times in the last year about which nothing has been produced by NLA. NLA clearly has not done a thorough search for responsive records, and it must do so.

RFP No. 9—NLA flatly refuses to respond to this RFP seeking documents and communications with any customer regarding NLA's rail service to that customer. This material is absolutely central to the issues in the case, as explained above. To the extent NLA's objection is to scope/burden, we can discuss narrowing to focus on the key service-quality related issues related to NLA. But NLA cannot credibly produce *nothing* in response to this RFP.

RFP No. 12—NLA also sidesteps this request for documents concerning any derailment on the line owned by LPPC and operated by NLA. It's plainly relevant, and NLA offers no objection. But it claims that DSRR already has all the documents related to NLA's apparently multiple derailments that occurred in summer of 2023. That is improper. NLA must search for and produce responsive documents, which it plainly has not done or is trying to avoid doing. The scope of the request is no narrowed to the multiple derailments of 2023, so the response is necessarily incomplete. For example, we are aware of derailments incurred by NLA as

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recently as the last week of January. We also are aware that NLA hires outside help to address derailments. The lack of documents related to events we know about call into question whether any search has occurred as to those events and ones we do not yet know about. Moreover, it is not credible that the *only* responsive documents or communications that exist are ones that DSRR was a participant in. NLA must fully and completely respond to this RFP.

RFP No. 15—this RFP, similar to RFP No. 9, seeks highly relevant information regarding communications with customers identified by LPPC as receiving inadequate service from DSRR, related to rail service by NLA or DSRR. DSRR is specifically aware of communications involving serious service complaints by APEX regarding NLA’s service. NLA must produce those records, whether or not it surmises that DSRR may be aware of them or not. Again, DSRR is willing to discuss a narrower scope of the RFP to focus the issues, but NLA has an obligation to search for and produce responsive documents.

RFP No. 16—this RFP seeks documents and communications regarding NLA’s or LPPC’s investments, lack of investments, or inability to invest in the segment of the Lake Providence branch line that LPPC owns and NLA operates. NLA’s objection is frivolous, and its response is not credible and non-responsive. Rather than searching for responsive documents, NLA claims that it is not “privy to LPPC’s investment in the segments of the lines that it owns and that NLA operates,” and that it is furthermore “not aware that LPPC lacks the ability to invest further in those identical line segments.” It is not credible that the operator of rail line owned by LPPC has no information regarding LPPC’s investments in upgrading or maintaining those line segments. It further is of no moment whether NLA is aware of any lack of ability to invest or not—NLA must search for responsive documents and produce them. NLA must also confirm that it has made no investments itself.

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

RFP No. 13 and 14—seek documents and communications regarding the INFRA grant and any other governmental grants sought for LPPC’s lines operated by NLA or the Line. This information is highly relevant to the case because LPPC itself made it the centerpiece 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—with NLA—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.

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NLA must search for and produce responsive documents. It plainly has not done so for either RFP, and it must do so.

Other Discovery Requests Require Further Responses

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

RFP No. 17—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. NLA 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 related to its attempt to acquire track from DSRR, at a minimum, is relevant to the subject matter of this case, including valuation of the Line. NLA indicates that it has no records of communications with NLRDD. NLA must confirm that after conducting an adequate search, and it also must search for and produce any documents related to NLRDD regarding any rail property owned by DSRR—not just communications directly with NLRDD.

RFP No. 18—this seeks documents and communications regarding the cost for infrastructure or rehabilitate or other capital expenditures on the Line, related entirely to any plans LPPC/NLA would have to purportedly improve service over the Line. NLA's response is non-responsive. If NLA has no responsive documents, it should state so.

RFP Nos. 19-21—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. NLA's communications regarding these topics are necessarily and facially relevant to this case, and NLA's convoluted objections are invalid. NLA further cites no reason these documents may be withheld on any legal basis. NLA clearly communicated with certain elected officials regarding relevant topics; NLA must conduct a thorough search for responsive documents and produce them.

* * *

NLA's discovery responses to DSRR's Second 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 (with NLA as a beneficiary) to wield the STB's authority to seize DSRR's assets. NLA must immediately remedy its responses. Please let me know when you are available to meet and confer no later than February 16.

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Sincerely,

GENTRY LOCKE

/s/ Noah P. Sullivan

Noah P. Sullivan

cc: John M. Scheib
Jasdeep S. Khaira

EXHIBIT D

RICHARD H. STREETER
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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://www.prd.doa.louisiana.gov/boardsAndCommissions/viewMeetingMinutes.cfm?board=116>.

Mr. Noah P. Sullivan

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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

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