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VIA ELECTRONIC FILING

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

Re: Finance Docket No. 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 Southeast Arkansas Economic Development District. 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.**

**MOTION TO COMPEL DISCOVERY RESPONSES FROM THE
SOUTHEAST ARKANSAS ECONOMIC DEVELOPMENT DISTRICT**

On January 3, 2024, Delta Southern Railroad, Inc. (“DSRR”) served discovery requests upon the Southeast Arkansas Economic Development District (“SEAEDD”). SEAEDD, a noncarrier, owns a segment of the McGehee-Tallulah Railroad Corridor (of which DSRR’s Lake Providence Branch line is a part) between milepost 433.0 and milepost 454.8. SEAEDD’s segment is operated by the North Louisiana and Arkansas Railroad (“NLA”)—the would-be operator of DSRR’s Lake Providence Branch line should the Board grant the Lake Providence Port Commission’s (“LPPC”) amended feeder line application to force a sale and acquire the line. In addition, SEAEDD itself is an integral party to LPPC’s amended application as the recipient of the INFRA grant—a focal point of LPPC’s application and the topic discussed extensively in the verified statement filed in this matter by Patrecia Hargrove, SEAEDD’s Executive Director. Unfortunately, SEAEDD 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 SEAEDD to fully and completely respond to DSRR’s discovery requests, pursuant to 49 C.F.R. §§ 1114.21, *et seq.*, and 49 C.F.R. § 1117.1.

SEAEDD’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 SEAEDD 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”).

SEAEDD made itself a party to this proceeding, initiated by LPPC, by, among other things, filing a verified statement in this matter and by being an integral party to the INFRA grant LPPC includes with its Amended Application involving LPPC, NLA, and the McGehee-Tallulah Railroad Corridor. DSRR is entitled to discover relevant evidence to prepare its defense. DSRR engaged in a good-faith effort to resolve this discovery dispute with SEAEDD. But it is apparent that SEAEDD is not willing to comply with its discovery obligations. SEAEDD 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—including the segment owned by SEAEDD. Indeed, SEAEDD owns a sizeable portion of the larger McGehee-Tallulah railroad corridor, of which the Line is a part. *See* Nov. 20 Order at 2.¹

SEAEDD is especially relevant to this proceeding as a central part of the Amended Application relies on circumstances surrounding a potential public-private partnership that included SEAEDD, LPPC, DSRR, and NLA in pursuing an INFRA grant from the U.S. Department of Transportation to rehabilitate the McGehee-Tallulah railroad corridor. LPPC heavily relies on the INFRA grant in its Amended Application to allege 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. 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

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.

Ex. B. Each of the verified statements of LPPC, SEAEDD, and NLA representatives submitted with the amended application also make much of the INFRA grant—and it is the entire focus of SEAEDD’s verified statement. *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, SEAEDD, and NLA, as DSRR understands, have continued to pursue and use the INFRA grant monies ultimately awarded.

DSRR Pursues Relevant Discovery from SEAEDD

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

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

On January 3, 2024 DSRR served its Second Set of Discovery Requests on SEAEDD (the “Discovery Requests”), attached hereto as **Exhibit A**. The Discovery Requests targeted precisely these central issues in the case. For instance, DSRR 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. 9-10. DSRR also 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* RFP Nos 1-7, 11-12, Interrogatory Nos. 35-36, 41-42.

SEAEDD Refuses to Respond to the Discovery Requests

On February 6, 2024, SEAEDD served its responses to the Discovery Requests, attached hereto as **Exhibit B**. Those responses were four days late. But the extra time SEAEDD took was not to produce responsive documents. SEAEDD produced zero 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. SEAEDD also asserted, for many of the Discovery Requests, that prior discovery responses by SEAEDD 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 SEAEDD at least partially if not totally nullified.

the presumption that government entities are responsible, “although entitled to significant weight, is not conclusive”).

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

On February 12, 2024, DSRR sent to SEAEDD a detailed letter outlining the serial deficiencies in SEAEDD's responses, attached hereto as **Exhibit C**. SEAEDD sent a response on February 13, 2024 (in a joint letter from SEAEDD's counsel who also represents LPPC and NLA), attached hereto as **Exhibit D**. That letter failed to address numerous issues raised by DSRR's deficiency letter. Nonetheless, the parties conducted an approximately 1.5 hour meet-and-confer on February 16, 2024. A memorializing email of that conference is attached hereto as **Exhibit E**.

It was apparent to DSRR that SEAEDD had not conducted adequate searches for responsive documents. What SEAEDD has done is not to engage in an attorney-directed and supervised discovery process. Instead, SEAEDD relied on its own self-determination as to whether it had responsive documents. And SEAEDD could not—and still cannot—confirm that any real searches were done for electronic and hardcopy documents. For instance, SEAEDD 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, SEAEDD has played wasteful discovery games—objecting to requests and then claiming they looked and did not have anything anyway.

The paltry productions from SEAEDD lack credibility given substantial responsive information that is known to exist. For example, DSRR requested SEAEDD produce all documents and communication related to the INFRA grant or any government grants applied for involving LPPC lines currently operated by NLA or the Line. RFP Nos. 9 and 10. SEAEDD did not do so. As the lead applicant on the INFRA grant, it is inconceivable that SEAEDD has not had correspondence with the Federal Railroad Administration, the State or the other applicants regarding the terms of the grant award, receipt of money, expenditures of money, and grant compliance. In addition, minutes from LPPC's January 18, 2023 meeting discuss approval to

engage SEAEDD to pursue a RAISE grant application and another MARAD Port Infrastructure Development Program grant application. LPPC Meeting Minutes (Jan. 18, 2023) (“January Meeting”) at 1, attached as **Exhibit F**. While just one example of SEAEDD’s deficient discovery responses, it is unfortunately emblematic of SEAEDD’s responses as a whole. Moreover, SEAEDD 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.

SEAEDD also relies on other parties’ discovery responses to excuse its own discovery obligations. LPPC, NLA, and SEAEDD are all represented by the same counsel. SEAEDD’s responses make it clear it is using LPPC and NLA’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, SEAEDD has refused to provide responsive information and documents based on vague references to LPPC’s Amended Application or prior documents purportedly produced. *See* SEAEDD Resp. to RFP No. 2 (referring DSRR to LPPC’s amended application and the attached verified statement of Patrecia Hargrove, SEAEDD’s Executive Director).

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, SEAEDD must conduct its own search of its own records. Discovery obligations are specific to each party, and SEAEDD’s actions undermine the discovery process and infringe DSRR’s right to conduct relevant discovery.

SEAEDD'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 SEAEDD's responses.

It is clear that SEAEDD 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 SEAEDD, and the Board should issue an order compelling SEAEDD 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 SEAEDD.

In particular, the Discovery Requests target from SEAEDD information and documents—good, bad, or indifferent—pertaining to the INFRA grant included in the amended feeder line application, SEAEDD's role in the Amended Application, whether LPPC is financially responsible, the adequacy of rail service by NLA on lines it operates today, and what LPPC and NLA's track record is and plans are for operating 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

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

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).

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

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

SEAEDD’s main contention, at least at this time, is that the Board has limited discovery to the valuation discovery requested by LPPC.⁵ SEAEDD 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)

⁵ SEAEDD, during the meet-and-confer on February 16th, 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 SEAEDD decided to stand on its objection to the timing of DSRR’s discovery requests.

(discussing Board consideration of criteria “after a hearing on the record”). Indeed, the Board’s regulations are clear that “[a]ll discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.” 49 C.F.R. § 1114.21(b). Accordingly, there was nothing DSRR required from the Board before serving the Discovery Requests on January 3, 2024.

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

In its February 13 letter (Ex. D), SEAEDD 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).

LPPC initiated a proceeding to which SEAEDD 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.

SEAEDD 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, SEAEDD's objections lack merit, and DSRR is entitled to full discovery under the Board's regulations to prepare its defense

III. SEAEDD 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 SEAEDD.

A. 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 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 No. 9: DSRR sought documents related to the very INFRA grant attached to the amended feeder line application, and the subject of the verified statement of Patrecia Hargrove, SEAEDD's Executive Director, as well as documents related to other INFRA grants or documents

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.

regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules. In response, SEAEDD refuses to produce *any* documents related to the INFRA grant application attached to LPPC’s amended application. As shown, this is relevant information because LPPC itself made the INFRA grant the centerpiece of its application and Patrecia Hargrove’s verified statement, and the pursuit of and expenditure of public grants for purposes of improving rail infrastructure and service is *directly relevant* to LPPC’s 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.

It is not credible that the parties—including SEAEDD, LPPC, and NLA—that applied for the grant, that have had to do work to actually receive the grant funds, and that report back on the grant funds, have had no subsequent communication or documents about the grant among themselves, the State, or with the Federal Railroad Administration. Indeed, in the verified statement of Ms. Hargrove, she notes many conversations held through 2020 related to the INFRA grant, expenditure of funds, and reporting on such expenditures. Her verified statement claims that the grant award “identified the Deliverables and Approved Project Schedule, the Approved Project Budget” Am. Application Ex. I, ¶ 26. In addition, Attachment No. 7 to Ms. Hargrove’s verified statement is a letter from the Federal Railroad Administration (“FRA”) in which FRA claims that it “will reach out to you to begin developing the Statement of Work and other documents for the FRA-SEAEDD grant agreement.” But mysteriously, there have been no further emails with participants, the FRA, or anyone related to that grant since then. Again, that is simply not credible.

There is no question that the RFA No. 9 is relevant and within the scope of discovery. Thus, the Board should compel SEAEDD to answer in full and produce all responsive documents, including all communications with FRA.

RFP No. 10: DSRR sought communications related to any government grants applied for involving either (i) LPPC lines currently operated by NLA or the (ii) Line. Whether LPPC has the financial resources to receive or provide matching funds for grants is directly relevant to its financial fitness. In its Response, SEAEDD implies it is aware of responsive documents related to the INFRA grant, but then fails to produce them because it is not relevant to valuation. As argued above, this argument is improper. Moreover, responsive information is known to exist given minutes from LPPC's January 18, 2023 meeting discussing approval to engage SEAEDD to pursue a RAISE grant application and another MARAD Port Infrastructure Development Program grant application. January Meeting at 1. The Board should order SEAEDD to search for and produce all responsive documents.

Interrogatory No. 38: DSRR sought information on the identity of any SEAEDD employee who participated in discussions about any governmental grants, including INFRA grants, for expenditure on LPPC's current rail lines operated by NLA. The request inadvertently stated "operated by SEAEDD," although the meaning was arguably clear given the context and the fact that SEAEDD is not a rail carrier. SEAEDD qualifies its response by stating there are not employees that have "participated in any discussion about any government grants for expenditure on LPPC's current rail lines that are operated by SEAEDD." DSRR clarified its Interrogatory in its February 12th Letter and asked SEAEDD to revise its answer accordingly, but SEAEDD has refused to participate at the threshold. It is not credible that no SEAEDD employee participated in discussion on grants for expenditure on LPPC's current rail lines operated by NLA. Thus, the

Board should order full and complete responses to Interrogatory No. 38 as it goes directly to LPPC's and NLA's financial responsibility.

Interrogatory No. 39: DSRR sought information on the identity of each employee at SEAEDD involved in discussions regarding governmental grants for rail infrastructure or about rail service on the Line. SEAEDD provides a lengthy non-response that lists many numerous potentially responsive grants—without identifying when they were applied for or awarded—but then identifies only two employees as having had such discussions. SEAEDD did not respond to DSRR's request to clarify whether there are in fact only two employees involved in numerous grant discussions. Moreover, the list of grants indicates the existence of responsive documents to RFP No. 10. The Board should order full and complete responses to this relevant Interrogatory.

Interrogatory No. 40: DSRR sought information about the responsive grants identified in either Interrogatory Nos. 38 or 39. Despite listing a multitude of potentially responsive grants, SEAEDD's response to Interrogatory No. 40 only provided information about grant agreement for the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project. This response is clearly incomplete. The Board should order SEAEDD to provide a complete response and all documents related to all grants.

B. Discovery Requests Related to Service by DSRR or NLA

As noted above, DSRR targeted certain discovery requests to SEAEDD 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 SEAEDD to the below requests.

RFP No. 1: DSRR sought 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, SEAEDD states that it has "no Documents that would reflect communications" that are responsive. However, given SEAEDD's extensive involvement in the INFRA grant and participation in the feeder line application, it seems unlikely SEAEDD would not have any responsive documents. Moreover, SEAEDD's responses as a whole indicate a failure to properly search for information and documents. SEAEDD 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. SEAEDD refused to produce *any* documents in response to these requests. Instead, SEAEDD claims because Ms. Hargrove submitted Verified Statement that purportedly "set out in detail" the responsive communications, it need not look for any or produce them. Even if Ms. Hargrove's statement did so, that would not excuse SEAEDD from searching for and producing communications that are responsive. SEAEDD likewise cannot avoid its discovery obligations by referring vaguely to LPPC's feeder line applications or to DSRR's

provision of information related to the INFRA grant applications. SEAEDD clearly has responsive documents; it must conduct a thorough search and produce them.

RFP No. 5: DSRR sought documents and communications concerning any refusal by DSRR to provide service over the Line. Here again, SEAEDD improperly relies on Ms. Hargrove's Verified Statement. This is not proper. SEAEDD must conduct a search and produce responsive documents. The Board should order SEAEDD to fully and completely respond to this highly relevant RFP.

RFP No. 6: DSRR sought documents and communications with any customers of NLA regarding service NLA has provided. SEAEDD's response was that it does not have any "customers." As explained above, 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 is willing to narrow its request to focus on the key service-quality related issues related to NLA, but the Board should order a full and complete response regardless.

RFP No. 11: DSRR sought discovery of documents involving NLA, LPPC, SEAEDD, or the Madison Parish Port Commission ("MPPC") and any of the customers identified by LPPC's amended application or prior discovery responses that concern rail service by DSRR or NLA from 2017 to present. Such materials are necessarily and indisputably relevant to the adequacy of service provided by both DSRR and NLA. The customers listed are those identified by LPPC itself in the amended application or prior discovery responses.

SEAEDD claims it has no responsive documents. However, in Patrecia Hargrove's Verified Statement in the feeder line application, she mentions her knowledge of two customers (MD Power and ATM Gloves) who located on the Line in 2022, but has no documents related to

rail service to them. She claims they located on the line because of the INFRA grant, but the presentation attached to her Verified Statement as Attachment No. 10 does not support this. SEAEDD must produce all documents that led to Ms. Hargrove's conclusion and conduct a full and complete search for all responsive documents, as this information goes directly to whether service would be better under LPPC's ownership and NLA's operation.

RFP No. 12: DSRR sought documents and communications related to NLA's rail service in SEAEDD's territory or responsibility. In response, SEAEDD disclaims having any "specific documents," yet claims knowledge of issues with NLA's service. However, SEAEDD is the owner of track on which NLA leases a rail line. *See North Louisiana & Arkansas Railroad, Inc.—Lease and Operation Exemption—Line of Southeastern Arkansas Economic Development District*, FD No. 35608 (STB served Mar. 28, 2012). A Lease was filed as an exhibit to NLA's Notice of Exemption, Filing ID No. 232032.

The contents of the Lease clearly suggest the existence of responsive documents. For example, Section 3 addresses rail service, including embargo and force majeure requirements. Section 4 sets compensation based on cars moved in rail service. Section 5 also specifies that it is SEAEDD's responsibility to rehabilitate or re-build the track to Class I condition. It further provides that if NLA has to pay any capitalized maintenance, it must notify SEAEDD. Section 6 requires NLA to maintain the track to the condition it was in on the commencement date of the lease.

Therefore, it is simply not credible that SEAEDD is not monitoring rail service, derailments, and investments by its provider, NLA, for the benefit of economic development in SEAEDD's region. SEAEDD's response demonstrates their failure to adequately search for responsive documents and produce them. The Board should order a full and complete response.

C. Other Relevant Discovery Requests

RFP No. 7: DSRR sought documents and communications concerning any study or assessment of potential traffic on the Line. SEAEDD's response is non-responsive. It does not object to the RFP, but admits that it has not searched for responsive documents since its response turns on any documents SEAEDD "may" have. Either SEAEDD has responsive documents or it does not, but it must search for them and either produce the responsive documents or state that there are none. SEAEDD contends, instead, that every responsive document and communication it "may" have are in the INFRA grant applications. However, it is highly unlikely the grant applications would include all responsive materials. Thus, the Board must order a full and complete response.

RFP No. 8: DSRR sought documents and communications regarding any verified statement signed by an employee of SEAEDD in support of LPPC's feeder line application or any filings made by LPPC in this proceeding. SEAEDD refused to produce any documents in response to this request. Instead, SEAEDD claims blanket privilege protection over all documents and communications "with any person" regarding materials in support of LPPC's feeder line application. SEAEDD's communications with its counsel may well be privileged, but documents relied upon or used are not necessarily privileged. If there are responsive documents SEAEDD is withholding (other than direct communications with counsel regarding Ms. Hargrove's Verified Statement), SEAEDD must log the documents to make a valid privilege claim. Otherwise, SEAEDD must produce the responsive documents.

RFP Nos. 13 and 14: DSRR sought discovery of minutes of SEAEDD's meetings at which the Line or LPPC's feeder application was discussed or voted upon from 2017 to the present, as well as public notice of any such meetings. SEAEDD's response only addressed the year 2020

and stated there were no minutes referencing LPPC's amended feeder line application or rail service during that year. However, the response ostensibly omits meetings between 2017 and 2020 (and beyond) and does not address whether the Line was discussed. Given the relevance of the request and the plain deficiencies in SEAEDD's response, the Board should order a complete response to RFP Nos. 13 and 14.

RFP No. 15: DSRR sought documents related to and communications with the Northeast Louisiana Railroad Development District ("NLRDD") regarding rail property owned by DSRR, including the Line. SEAEDD 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. SEAEDD indicates that it has no records related to or communications with NLRDD (at all). Given SEAEDD's failure to search for and produce responsive documents, this response cannot be accepted, and again, the Board should order that SEAEDD must conduct a thorough search for responsive documents or state that it has none.

RFP Nos. 16-18: 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 16), DSRR's service over the Line (RFP 17), and LPPC's ability to purchase the Line (i.e. its financial condition, RFP 18). 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. 16, and based on the parties' meet-and-confer, it appears that SEAEDD 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, SEAEDD 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, SEAEDD 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 SEAEDD's burden to show that any privilege applies. That any First Amendment protection would apply to the records of a public body subject to its state's public records laws and mandatory disclosure requirements, with regard to its advocacy before other branches of government concerning public affairs, appears unlikely. SEAEDD's resistance to producing such public records in discovery only indicates to DSRR that these materials contain admissions that it is entitled to discover. Moreover, SEAEDD clearly communicated with certain elected officials regarding relevant topics; SEAEDD must conduct a thorough search for responsive documents and produce them.

Given SEAEDD'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, SEAEDD'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 SEAEDD 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
Van Ness Feldman
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Seventh Floor
Washington, DC 20007
mfm@vnf.com

/s/ Noah P. Sullivan

Noah P. Sullivan

Dated: March 8, 2024

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36447

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

**DELTA SOUTHERN RAILROAD INC.’S SECOND SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO
SOUTHEAST ARKANSAS ECONOMIC DEVELOPMENT DISTRICT**

Delta Southern Railroad Inc. (“DSRR”), through counsel, hereby serves its Second Set of Interrogatories and Requests for Production of Documents upon the Southeast Arkansas Economic Development District (“SEAEDD”), in the above-captioned matter, pursuant to 49 C.F.R §§ 1114.26 and 1114.30. SEAEDD’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” 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”, “You”, or “Your” 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 Identify each District member or employee who has communicated with LPPC, or any of its commissioners or employees, regarding LPPC's feeder line application filed at the Surface Transportation Board in FD 36447, grants for funding for rail infrastructure, or rail service over the Line.

INTERROGATORY NO. 33

Please Identify each shipper that ships or could ship on the Line; for each shipper 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 SEAEDD 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 SEAEDD 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 SEAEDD has had with each shipper identified in response to Interrogatory No. 32.

INTERROGATORY NO. 37

Please list all employees whose email and hard copy files have been searched in order to respond to these interrogatories and requests for documents.

INTERROGATORY NO. 38

Please Identify each employee of SEAEDD 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 SEAEDD.

INTERROGATORY NO. 39

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

INTERROGATORY NO. 40

For each governmental grant listed in response to Interrogatories No. 38 and 39, please list the dates on which each grant request joined by SEAEDD was signed, to which governmental entity it was submitted, and each co-signatory.

INTERROGATORY NO. 41

Please list all customers on the Line that have expressed an interest to SEAEDD 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. 42

For each customer identified in response to Interrogatory No. 41, please Identify all communications with such customer by respondents.

INTERROGATORY NO. 43

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. 44

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

INTERROGATORY NO. 45

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

REQUESTS FOR PRODUCTION OF DOCUMENTS ("RFPs")

RFP NO. 1

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

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 with any customer regarding NLA's service to that customer.

RFP NO. 7

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

RFP NO. 8

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 SEAEDD in support of LPPC's feeder line application or any filings made by LPPC in STB Finance Docket No. 36447.

RFP NO. 9

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. 10

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

RFP NO 11

Produce all Documents and communications 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. 12

Please produce all Documents and communications related to rail service by NLA or DSRR in SEAEDD's territory or responsibility.

RFP NO. 13

Please produce all minutes of SEAEDD meetings at which the Line, LPPC's feeder application, or rail service was discussed or voted upon.

RFP NO. 14

For all meetings responsive to RFP No. 14, please produce all public notices of SEAEDD meetings.

RFP NO. 15

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

RFP NO. 16

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.

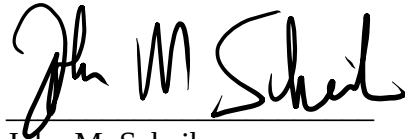
RFP NO. 17

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. 18

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". The signature is fluid and cursive, with the first name "John" and last name "Scheib" being more prominent than the middle initial "M".

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

Attorneys for:
Delta Southern Railroad Inc.

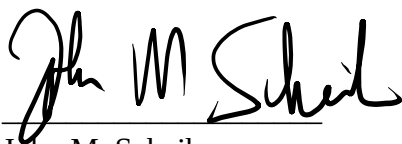
Dated: January 3, 2024

CERTIFICATE OF SERVICE

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

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

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

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

John M. Scheib

Dated: January 3, 2024

EXHIBIT B

SEAEDD Response to Second Set of Discovery Requests

Propounded by Delta Southern Railroad, Inc.

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Southeast Arkansas Economic Development District (“SEAEDD”), by counsel, responds as follows to Delta Southern Railroad, Inc.’s (“DSRR”) Documents propounded on January 3, 2024.

GENERAL OBJECTIONS

1. SEAEDD objects to each and every Interrogatory and Request of Production of Documents (“RFP”) to the extent they seek to impose obligations on SEAEDD greater than or inconsistent with those imposed under 49 CFR Part 1114 Subpart B. SEAEDD 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. SEAEDD 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, the First Amendment privilege to petition the government for redress of grievances, or any other applicable privilege, protection or exception from discovery or disclosure. In the event that any such privileged, protected, or exempt information is inadvertently produced or provided, such disclosure or production is not intended as, and should not be construed as, a waiver of any applicable privilege, protection or exemption.

3. SEAEDD objects to each and every interrogatory and RFP to the extent they seek information or data that is not relevant to the subject matter

of this proceeding and are not likely to lead to the discovery of admissible evidence.

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

5. SEAEDD 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) seeks information that is not within the possession, custody, or control of SEAEDD; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding.

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

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

8. SEAEDD 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. SEAEDD 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 herein, served November 20, 2023, at 16.

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

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 32

Please Identify each District member or employee who has communicated with LPPC, or any of its commissioners or employees, regarding LPPC’s feeder line application filed at the Surface Transportation Board in FD 36447, grants for funding for rail infrastructure, or rail service over the Line.

Response: SEAEDD 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, SEAEDD states that Patrecia Hargrove, SEAEDD’s Executive Director, and Shane Knight, SEAEDD’s Deputy Director, have communicated from time to time with Wyly Gilfoil regarding LPPC’s Feeder Line Application filed at the STB.

INTERROGATORY NO. 33

Please Identify each shipper that ships or could ship on the Line; for each shipper 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: SEAEDD states that while it is aware of various problems involving the need to rehabilitate the entire Lake Providence Branch Line, which includes the segment owned by DSRR, in order to ensure adequate freight rail service for all shippers who would ship over that Line, SEAEDD does not have specific information that would enable it to respond and describe in detail the basis for any contention that any shipper is inadequately served by DSRR.

INTERROGATORY NO. 34

Please describe in detail all actions SEAEDD 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: SEAEDD 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, SEAEDD responds that it worked closely with the Lake Providence Port Commission ("LPPC"), the Madison Parish Port Commission ("MPPC"), North Louisiana & Arkansas Railroad ("NLA") and DSRR for several years to prepare

multiple INFRA Grant Applications to obtain funding from the U.S. Department of Transportation to address the dilapidated condition of the entire Lake Providence Branch Line between McGehee, Arkansas and Tallulah, Louisiana. This necessarily required SEAEDD to assess DSRR's professed lack of financial resources to provide adequate freight service over its segment of the Lake Providence Branch Line.

INTERROGATORY NO. 35

Please Identify all shippers with which SEAEDD 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: SEAEDD 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, SEAEDD responds that it is not a rail carrier and that communications with shippers concerning the above-described topics would be addressed to NLA, which operates rail service over the track that SEAEDD acquired in order to save it from abandonment after DSRR's owners allowed the track to deteriorate to the point that rail operations could not be safely performed.

INTERROGATORY NO. 36

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

Response: SEAEDD 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, SEAEDD responds that no meetings have been held with any shippers regarding the Feeder Line Application filed by LPPC and matters related thereto.

INTERROGATORY NO. 37

Please list all employees whose email and hard copy files have been searched in order to respond to these interrogatories and requests for documents.

Response: SEAEDD 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, Patrecia Hargrove and Shane Knight have reviewed their emails and hard copy files to respond to these interrogatories and requests for documents.

INTERROGATORY NO. 38

Please Identify each employee of SEAEDD 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 SEAEDD.

Response: SEAEDD objects to this Interrogatory on the grounds that grant funds for expenditure on LPPC's current lines are not relevant to the issue of valuation of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, SEAEDD states that no

employee of SEAEDD participated in any discussions about any government grants for expenditure on LPPC's current rail lines that are operated by SEAEDD. Although SEAEDD acquired a segment of the Lake Providence Branch Line between MP 433.0 at Lake Village, Arkansas, and MP 454.8 at the Louisiana/Arkansas Border outside of the STB's OFA procedures after this segment was abandoned by DSRR, SEAEDD does not operate over *any* line of railroad.

INTERROGATORY NO. 39

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

Response: SEAEDD objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, SEAEDD responds that SEAEDD was established in 1967 by the local governments in Southeast Arkansas in response to their common interests and concerns and the need for a joint approach to resolve area-wide problems. SEAEDD is a non-profit, local unit of government organization that renders technical, economic development, and planning assistance for the ten-county region it serves in Southeast Arkansas. The region includes Chicot and Desha Counties through which NLA operates. Grants have been received from the following governmental agencies: EDA - US Department of

Commerce/Economic Development Administration; DRA - Delta Regional Authority; DRA/RCAP - Delta Regional Authority Rural Community Advancement Program; CDBG-ED - Arkansas Economic Development Commission Community Development Block Grant Economic Development funding (these funds are through the State from US Department of Housing and Urban Development); AEDC - Arkansas Economic Development Commission; FEMA/ADEM - Federal Emergency Management Administration/Arkansas Department of Emergency Management; CDBG/GA - Community Development Block Grant/General Assistance funding through the Arkansas Economic Development Commission; CDBG/GAIP - Community Development Block Grant/General Assistance Innovative Project funding through the Arkansas Economic Development Commission; CDBG/RS - Community Development Block Grant/ Rural Services funding through the Arkansas Economic Development Commission; CDBG/ANRC - Community Development Block Grant/Arkansas Natural Resources Commission; CDBG/D - Community Development Block Grant Disaster funding; CDBG/GIF - Community Development Block Grant General Improvement Funds; CDBG/COVID - Community Development Block Grant COVID funding; Parks - Arkansas Outdoor Recreation Grant Program. In further response, Patrecia Hargrove and Shane Knight have participated in some of those conversations involving grants for rail infrastructure or rail service on the Lake Providence Branch. With the exception of the DOT INFRA Grant Applications, which DSRR initiated at a meeting held in its headquarters in Tallulah on September 26, 2016, and

thereafter actively participated throughout the grant process, the foregoing grants have not involved the segment of the Lake Providence Branch Line that is now owned by DSRR.

INTERROGATORY NO. 40

For each governmental grant listed in response to Interrogatories No. 38 and 39, please list the dates on which each grant request joined by SEAEDD was signed, to which governmental entity it was submitted, and each co-signatory.

Response: SEAEDD 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. SEAEDD further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome in that it seeks information related to grants that are not relevant to this proceeding. Notwithstanding the foregoing, SEAEDD states that Patrecia Hargrave signed the Grant Agreement for the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project on January 15, 2021, in her capacity as the Authorized Representative of the SEAEDD, which is the Grantee.

INTERROGATORY NO. 41

Please list all customers on the Line that have expressed an interest to SEAEDD 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: SEAEDD responds that it is not a rail carrier and, therefore, it has no rail customers that would have expressed an interest in routing traffic over the Line.

INTERROGATORY NO. 42

For each customer identified in response to Interrogatory No. 41, please Identify all communications with such customer by respondents.

Response: See Response to Interrogatory No. 41.

INTERROGATORY NO. 43

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: SEAEDD 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, the undersigned has no knowledge that any documents have been destroyed or purged that are responsive to any of DSRR's Interrogatories or RFPs.

INTERROGATORY NO. 44

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

Response: SEAEDD 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, SEAEDD does not backup emails or electronic documents.

INTERROGATORY NO. 45

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

Response: SEAEDD 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, Patrecia Hargrove, Shane Knight and Amber Thrower, Hargrove's Executive Assistant reviewed records in response to DSRR's discovery requests.

REQUESTS FOR PRODUCTION OF DOCUMENTS ("RFPs")

RFP NO. 1

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

Response: SEAEDD has no Documents that would reflect communications with any shipper concerning the items set forth in (i) through (iv).

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: SEAEDD objects to RFP No. 2 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. SEAEDD further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Moreover, it is redundant and unnecessary because communications with LPPC and DSRR regarding LPPC's Feeder Line Applications and DSRR's refusals to rehabilitate the crucial 20-mile segment of the Lake Providence Branch Line are set out in detail in the Verified Statements of Patrecia Hargrove. SEAEDD has had no conversations with LPPC concerning NLA's potential operations over the Line, which, to clarify SEAEDD's responses, would cover NLA's future operations between milepost 471.0 and 498.44.

RFP NO. 3

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

Response: SEAEDD objects to RFP No. 3 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, no formal agreements exist between SEAEDD and LPPC related to LPPC's Feeder Line Application other than the Consortium Agreement that was previously provided to DSRR.

RFP NO. 4

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

Response: SEAEDD objects to RFP No. 4 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, assuming that DSRR is seeking documents and communications with LPPC concerning the Line, meaning the track between Mileposts 471.0 and 498.44, SEAEDD objects to RFP No. 4 on the grounds that it seeks duplicative information that is set forth in detail in LPPC's Feeder Line Applications and that was provided by DSRR in the course of supplying information that was utilized in the INFRA Grant Applications to convince the U.S. Department of Transportation to award the INFRA Grant. SEAEDD further objects on the grounds that RFP No. 4 is overly broad and unduly burdensome and is not proportional to the needs of the case

RFP NO. 5

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

Response: SEAEDD objects to RFP No. 5 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, SEAEDD states that communications concerning DSRR's refusal to provide service over

the Line are discussed in the Verified Statements of Patrecia Hargrove that have been filed in LPPC's Feeder Line Applications.

RFP NO. 6

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

Response: SEAEDD has no customers that have communicated to it about NLA's service.

RFP NO. 7

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

Response: All Documents and communications that SEAEDD 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.

RFP NO. 8

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 SEAEDD in support of LPPC's feeder line application or any filings made by LPPC in STB Finance Docket No. 36447.

Response: Patricia Hargrove is the only person who submitted a verified statement in support of LPPC's Feeder Line Application in STB Finance Docket No. 36447 on behalf of SEAEDD. All communications regarding submission of,

contents of, supporting material for, or attachments to any verified statement signed by Ms. Hargrove were with counsel and are subject to the attorney-client privilege and attorney work-product doctrine. Because all supporting material contained in Ms. Hargrove's verified statement has been attributed to the source thereof, this RFP is redundant and unnecessary.

RFP NO. 9

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: SEAEDD objects to RFP No. 9 on the grounds that the request for such communications and Documents is not relevant to the issue of valuation of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, SEAEDD objects to RFP No. 9 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. SEAEDD 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 U.S. Department of Transportation, is not relevant to this proceeding and would not likely lead to the production of admissible evidence.

RFP NO. 10

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

Response: SEAEDD objects to RFP No. 10 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, SEAEDD further states that it is not aware of any government grants other than the INFRA Grant that have been applied for since January 1, 2017 that involve the LPPC lines currently operated by NLA or the Line.

RFP NO. 11

Produce all Documents and communications 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: SEAEDD objects to RFP No. 11 on the grounds that the request for such communications and Documents is not relevant to the issue of valuation of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, SEAEDD has had no communications with any of the foregoing entities that relate to rail service provided by either DSRR or NLA from 2017 to the present date. In addition, SEAEDD does not have any documents from any of the foregoing entities that relate to rail service provided by either DSRR or NLA from 2017 to the present date.

RFP NO. 12

Please produce all Documents and communications related to rail service by NLA or DSRR in SEAEDD's territory or responsibility.

Response: SEAEDD objects to RFP No. 12 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, SEAEDD states that DSRR has provided no rail service whatsoever in SEAEDD's territory or responsibility since 2004. SEAEDD further responds that, although it has no specific documents, it is aware that NLA has restored rail service to all shippers that are located in SEAEDD's territory and that were left without any rail service following DSRR's abandonment of all of its lines in Arkansas after allowing the track to deteriorate.

RFP NO. 13

Please produce all minutes of SEAEDD meetings at which the Line, LPPC's feeder application, or rail service was discussed or voted upon.

Response: SEAEDD 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. SEAEDD further responds, based on a review of all Board meeting minutes since 2020, that there are no minutes that reference a discussion or a Board vote on LPPC's Expanded Feeder Line Application or rail service.

RFP NO. 14

For all meetings responsive to RFP No. 14, please produce all public notices of SEAEDD meetings.

Response: There have been no public notices of SEAEDD meetings that mentioned LPPC's Feeder Line Application.

RFP NO. 15

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

Response: SEAEDD objects to RFP No. 15 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, SEAEDD has no Documents related to or communications with Northeast Louisiana Railroad Development District.

RFP NO. 16

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

RFP NO. 17

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: SEAEDD 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, SEAEDD further states that it has had no communications with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning DSRR's service over the Line.

RFP NO. 18

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: SEAEDD objects to RFP No. 18 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, SEAEDD further states that it has had no communications with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or Governor of Louisiana concerning LPPC's ability to purchase the Line.

EXHIBIT C



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February 12, 2024

VIA ELECTRONIC MAIL

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

Dear Counsel for SEAEDD:

This letter identifies serial deficiencies in the responses provided by your client the Southeast Arkansas Economic Development District ("SEAEDD"), 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 SEAEDD 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, SEAEDD 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 SEAEDD

DSRR Is Not Limited to Valuation Discovery

First, SEAEDD 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 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 SEAEDD must withdraw it. SEAEDD 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 SEAEDD has combined objections with some semblance of an answer or response. *See e.g.*, SEAEDD ROG No. 40 Response (objecting in whole on relevance and scope, but then providing partial answer). This leaves DSRR uncertain as to whether SEAEDD is completely responding to the request, providing a partial response (and for which part), otherwise limiting its response, or standing on an objection.

SEAEDD 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, SEAEDD either limited its search for responsive information and documents or withheld responsive information or documents on the basis of those objections.

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

¹ DSRR also notes that SEAEDD’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.”).

February 12, 2024

Page 3

We will address deficiencies in the responses from LPPC and North Louisiana & Arkansas Railroad (“NLA”) in separate correspondence, but it appears clear that LPPC, SEAEDD, and NLA—each represented by Mr. Streeter—are using each other’s responses to excuse their own non-performance of reasonable searches for responsive information and records. Indeed, in an email from Mr. Streeter on 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, SEAEDD has refused to provide responsive information and documents based on vague references to LPPC’s Amended Application or prior documents purportedly produced. *See* SEAEDD Response to RFP No. 2 (referring DSRR to LPPC’s amended application and Ms. Hargrove’s verified statement). It is unclear whether SEAEDD is withholding information on the improper assumption that another party subject to discovery has responsive documents.

That is improper—particularly insofar as SEAEDD 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 SEAEDD’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 SEAEDD.

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

RFP No. 9 —SEAEDD, whose primary relevance in LPPC’s amended application is as it relates to an INFRA grant that LPPC attached to its amended application, refuses to produce *any* documents related to that INFRA grant application. That is an unsupportable position, and SEAEDD must produce responsive documents. 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). The pursuit of and expenditure of public grants for purposes of improving rail infrastructure and service is directly relevant to LPPC’s suitability to acquire and operate the Line.

It is inconceivable that the parties that applied for the grant, have had to do work to actually receive the grant funds, and report back on the grant funds, have had no subsequent

communication or documents about the grant. Indeed, in the verified statement of Patrecia Hargrove, she notes many conversations held through 2020 related to the INFRA grant, expenditure of funds, reporting on such expenditures, etc. Her verified statement ¶ 26 claims that the grant award “identified the Deliverables and Approved Project Schedule, the Approved Project Budget” Attachment No. 7 to her verified statement is a letter form FRA in which FRA claims that it “will reach out to you to begin developing the Statement of Work and other documents for the FRA-SEAEDD grant agreement.” But mysteriously, there have been no further emails with participants, the FRA, or anyone related to that grant since then. That is simply not credible. There is no question that the requests are relevant and within the scope of discovery, must be answered in full, and all responsive documents, including all communications with FRA, must be produced. Or, SEAEDD must state that there are no communications with FRA.

RFP No. 10—similarly, this RFP seeks communications related to any government grants applied for involving either (i) LPPC lines currently operated by NLA or the (ii) Line. SEAEDD states that it is aware of at least responsive documents related to the INFRA grant, but fails to produce them. SEAEDD must search for and produce responsive documents. It plainly has not done so for either RFP No. 9 or 10, and it must do so.

Interrogatory No. 38—SEAEDD’s response is unclear as to whether any of its employees participated in discussions regarding the INFRA grants or expenditures related to LPPC’s current rail lines. The request inadvertently states “LPPC’s current rail lines that are operated by SEAEDD,” which we believe should have said “by NLA.” Further, SEAEDD qualifies its answer by stating there are not employees that have “participated in any discussion about any government grants for expenditure on LPPC’s current rail lines that are operated by SEAEDD.” Please confirm whether the answer would be the same (which we suspect it would not be), if clarified to mean LPPC’s current rail lines “operated by NLA.” It would be a waste of time to re-serve a revised request, so we expect SEAEDD to answer the ROG as clarified here.

Interrogatory No. 39—this request seeks the *identity* of each employee at SEAEDD involved in discussions regarding governmental grants for rail infrastructure or about rail service on the Line. SEAEDD provides a lengthy non-response that lists numerous potentially responsive grants—unclear whether they are from 2017 to present—but then identifies only two employees as having had such discussions. Please verify that SEAEDD has provided a complete response to the request, and that the two listed employees are the complete answer. Please confirm that there are no documents related to these grants as requested in RFP No. 10 and ROG No. 40.

Interrogatory No. 40—seeks information about the responsive grants identified in either the ROG 38 or 39 response. SEAEDD provides only information about grant agreement for the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project. That is incomplete, and SEAEDD must provide a complete response and all documents related to all grants.

SEAEDD 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 LPPC/NLA's rail services, DSRR's service over the Line, and regarding requests by customers for service that were allegedly not provided by DSRR. *See* ROGs 35-36, 41-42, RFPs 1-7, 11-12. In general, SEAEDD has refused to provide responsive information and documents, relying on, variously, LPPC's amended application and prior discovery responses by LPPC or NLA. 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 DSRR. Thus, this discovery is at the very heart of the matter, and SEAEDD must provide complete discovery responses. We address specific responses below.

Interrogatory No. 35—SEAEDD's answer is largely non-responsive. The interrogatory seeks identification of shippers with whom SEAEDD 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. SEAEDD provides no answer on these relevant topics, but disclaims being a rail carrier. That is not responsive. If SEAEDD has no responsive shippers to identify, having investigated the information requested, then it must simply so state.

Interrogatory No. 41—this interrogatory seeks straight-forward information about the customers on the Line that have "expressed an interest to SEAEDD" in routing traffic over the Line. SEAEDD refuses to respond, because it is not a "rail carrier." That is non-responsive. SEAEDD makes no attempt to provide any verified answer to the actual question, which it must do and has no basis not to—obviously rail customers refer to customers for rail services. If SEAEDD has responsive information, whether it is itself a rail carrier or not, it must provide it. Indeed, such disclaiming of knowledge related to the topic is in tension with the lengthy and detailed Verified Statement submitted by Ms. Patricia Hargrove, which promotes LPPC and NLA for having "recently attracted major new shippers, MD Power and ATM Gloves" to the region. Hargrove VS ¶ 29.

Interrogatory No. 42—similarly, SEAEDD refuses to identify communications with the customers identified in ROG 41, incorporating the same non-responsive response. SEAEDD must search for responsive communications and identify them if they exist.

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 over the Line, or the shipper/customers’ rail transport needs. SEAEDD’s response states that it has “no Documents that would reflect communications” that are responsive. Given its prior responses that indicate it has not searched for responsive information on such documents, please confirm that SEAEDD has conducted an actual search for responsive documents.

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. SEAEDD refuses to produce *any* documents and raises frivolous objections. SEAEDD first claims that because Ms. Hargrove submitted a Verified Statement that purportedly “set out in detail” the responsive communications, it need not look for any or produce them. Even if Ms. Hargrove’s VS did so, that would not excuse SEAEDD from searching for and producing communications that are responsive. SEAEDD likewise cannot avoid its discovery obligations by referring vaguely to LPPC’s feeder line applications or to DSRR’s provision of information related to the INFRA grant applications. SEAEDD clearly has responsive documents; it must conduct a thorough search and produce them.

RFP Nos. 5—these RFPs seek documents and communications concerning any refusal by DSRR to provide service over the Line. SEAEDD again improperly relies on Ms. Hargrove’s VS. It cannot do so and must conduct a search and produce responsive documents.

RFP No. 6—SEAEDD dodges this RFP seeking documents and communications with any customer regarding NLA’s rail service to that customer. That SEAEDD does not itself have “customers” is non-responsive. This RFP is seeking responsive documents with customers of NLA—SEAEDD must search for and produce responsive documents.

RFP No. 11—this RFP, similar to RFP No. 1, 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. SEAEDD claims it has no responsive documents. In Patrecia Hargrove’s verified statement she mentions her knowledge of two customers who located in 2022, but has no documents related to rail service to them. She claims that they located on the line because of the grant, but the presentation attached to her verified statement says no such thing. Please produce all document that lead her to this conclusion, including any notes. Given SEAEDD’s refusal to engage in other similar requests, SEAEDD must confirm that it has actually searched for responsive documents.

RFP No. 12—this RFP seeks documents and communications related to NLA’s rail service in SEAEDD’s territory or responsibility. SEAEDD disclaims having any “specific documents,” yet claims knowledge of issues with DSRR’s service. SEAEDD however, is the owner of track on which NLA leases a rail line. *See* STB FD 35608. The lease attached to FD 35608 includes Section 3 that address rail service, including embargo and force majeure requirements, and

Section 4, which sets compensation based on cars moved in rail service. Section 5 also specifies that it is SEAEDD's responsibility to rehabilitate or re-build the track to Class I condition. It further provides that if NLA has to pay any capitalized maintenance it must notify SEAEDD. Section 6 requires NLA to maintain the track to the condition it was in on the commencement date of the lease. It is not credible that SEAEDD is not monitoring rail service, derailments, and investments by its provider, NLA, for the benefit of economic development in SEAEDD's region. This self-serving response is contradictory and only highlights that SEAEDD is not adequately searching for responsive documents and producing them.

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 "privity 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.

Other Discovery Requests Require Further Responses

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

RFP No. 7—this RFP seeks producing of documents and communications concerning any study or assessment of potential traffic on the Line. SEAEDD's response is non-responsive. It does not object to the RFP, but admits that it has not searched for responsive documents since its response turns on any documents SEAEDD "may" have. Either SEAEDD has responsive documents or it does not, but it must search for them and either produce the responsive documents or state that there are none. SEAEDD contends, instead, that all the responsive documents and communications it may have are I the INFRA grant applications. That is nonsense, as those applications surely did not include all such materials.

RFP No. 8—SEAEDD claims blanket privilege protection over all documents and communications "with any person" regarding materials in support of LPPC's feeder line application. SEAEDD's communications with its counsel may well be privileged, but documents relied upon or used are not necessarily privileged. If there are responsive documents SEAEDD is withholding (other than direct communications with counsel regarding Ms. Hargrove's verified statement), SEAEDD must log the documents to make a valid privilege claim. Otherwise, SEAEDD must produce the responsive documents.

February 12, 2024

Page 8

RFP No. 13—SEAEDD’s response to the request to produce meeting minutes at which the Line, LPPC’s feeder line application, or rail service were discussed or voted upon. SEAEDD improperly limits its response to meeting minutes since 2020. Our requests sought material from 2017 to present. The response also omits whether the Line was discussed, or LPPC’s initial feeder line application. SEAEDD must complete respond to the RFP.

RFP No. 14—similarly, if there are responsive meeting minutes to RFP No. 13, SEAEDD must produce any responsive public notices.

RFP No. 15—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. SEAEDD 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. SEAEDD indicates that it has no records related to or communications with NLRDD (at all). Given SEAEDD’s clear failure to search for and produce responsive documents across the board, this response is not credible, and SEAEDD must conduct a thorough search for responsive documents.

RFP Nos. 16-18—these RFPs 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. SEAEDD’s communications regarding these topics are necessarily and facially relevant to this case, and SEAEDD’s convoluted objections are invalid. SEAEDD further cites no reason these documents may be withheld on any legal basis. SEAEDD clearly communicated with certain elected officials regarding relevant topics; SEAEDD must conduct a thorough search for responsive documents and produce them.

* * *

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

Sincerely,

GENTRY LOCKE

/s/ Noah P. Sullivan

Noah P. Sullivan

February 12, 2024
Page 9

cc: John M. Scheib
Jasdeep S. Khaira

EXHIBIT D

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

February 13, 2024

VIA ELECTRONIC MAIL NSullivan@gentrylocke.com

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

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

Dear Mr. Sullivan:

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

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

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

1. DSRR Discovery Requests are Untimely

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

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

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

2. Applicability of Grant Funds

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

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

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

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

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

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

3. Correspondence with Government Officials

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

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

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

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

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

4. LPPC Meeting Minutes

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

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

³ Letter at 5.

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

Mr. Noah P. Sullivan

Page 5 of 5

February 13, 2024

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

Regards,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for LPPC

RHS:cn

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

EXHIBIT E

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

Richard and Mike,

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

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

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

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

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

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

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

LPPC Responses

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

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

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

NLA Responses

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

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

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

SEAEED Responses

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

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

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

Best,
Noah



Noah Sullivan

Direct: 804.956.2069 | Cell: 804.914.2703

VIRGINIA: Richmond | Roanoke | Lynchburg | Norfolk

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

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EXHIBIT F

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

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

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

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

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

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

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

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

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

James A. Thom, IV
President

Attest:

Francis X. Lensing
Secretary