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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:

During discovery, it has come to the attention of Delta Southern Railroad, Inc. (“DSRR”) that the Lake Providence Port Commission’s (“LPPC”) authority is substantially limited by its enabling statute in Louisiana. LPPC exists as a creature of Louisiana statute, and Louisiana law expressly states that LPPC “shall exercise the powers herein conferred upon it, *within the port area, consisting of the entire parish of East Carroll* as the boundaries and limits of said parish are presently fixed by law.” La. Rev. Stat. Ann. § 34:1503(A) (emphasis added). LPPC’s jurisdiction to exercise any of its powers conferred by statute is limited geographically to East Carroll Parish.

Nevertheless, LPPC initiated this feeder line proceeding asking the Board to force DSRR to sell to LPPC and make LPPC responsible for the common carrier obligation on a rail line that is in part in Madison Parish, Louisiana. But it is unclear whether LPPC can own property, maintain and act to comply with a common carrier obligation, or enter into contracts for the lease or repair and maintenance of property in Madison Parish.

On March 4, 2024, DSRR filed the attached Petition for Writ of Quo Warranto and Mandamus (the “Petition”) in Louisiana state court to prohibit LPPC from pursuing its feeder line application and direct LPPC’s Port Director and Commissioners to withdraw the application in accordance with their clear duty to only exercise powers within East Carroll Parish. DSRR did so because this state law issue likely could not be raised and resolved by the Board in this proceeding, though it is fundamental to LPPC’s ability to maintain its Amended Application.

The Petition is to be heard on an expedited basis, and DSRR files this notice to inform the Board of this development. DSRR includes as Attachment 1 to this letter a true and correct copy of the Petition as filed in the Sixth Judicial District for the Parishes of East Carroll, Madison, and Tensas.

Sincerely,

/s/ John M. Scheib

John M. Scheib
Attorney for: Delta Southern Railroad, Inc.

cc: Judge Thomas McCarthy
Counsel of Record

**6TH JUDICIAL DISTRICT COURT FOR THE PARISHES OF EAST CARROLL,
MADISON AND TENSAS**

STATE OF LOUISIANA

CASE NO.: 24-47

DIVISION "A"

DELTA SOUTHERN RAILROAD, INC.

VERSUS

**LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN,
ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND
JAMES THOM, IV.**

FILED: March 4, 2024

[Signature]
DEPUTY CLERK

PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS

NOW INTO COURT, through undersigned counsel, comes Petitioner Delta Southern Railroad, Inc. ("DSRR"), and respectfully represents:

1.

DSRR files this petition for relief to determine one simple, purely legal question: whether the Lake Providence Port Commission ("LPPC") can exercise authority outside of the jurisdictional limits expressly set by the Louisiana Legislature when it created LPPC. The answer is that it cannot. Yet, LPPC is ignoring the limited scope of its authority and pursuing at the United States Surface Transportation Board ("STB") the right to own and operate DSRR's rail line beyond the geographical limits of LPPC's jurisdiction. DSRR files this petition for relief to prevent injustice from LPPC's continued violation of its authorizing statute, and because DSRR has no other adequate remedy at law.

PARTIES AND JURISDICTION

2.

Petitioner DSRR is a rail carrier operating in Louisiana with two branches of rail line existing both in and outside of East Carroll Parish. DSRR's Lake Providence Branch is located in East Carroll and Madison Parishes; its Sterlington Branch is located in Ouachita Parish.

3.

Defendant LPPC is a body corporate created by the Louisiana Legislature and organized under Louisiana law. La. Rev. Stat. Ann. §§ 34:1501, *et seq.*

4.

Defendant Wyly Gilfoil, named in his official capacity, is the Port Director of LPPC.

5.

Defendant Mark Buntyn, named in his official capacity, is a Commissioner of LPPC.

6.

Defendant Roger Clement, named in his official capacity, is a Commissioner of LPPC.

7.

Defendant Jerry King, named in his official capacity, is a Commissioner of LPPC.

8.

Defendant Francis Lensing, named in his official capacity, is a Commissioner of LPPC.

9.

Defendant Karvan Powell, named in his official capacity, is a Commissioner of LPPC.

10.

Defendant James Thom, IV, named in his official capacity, is a Commissioner of LPPC.

11.

Commissioners Buntyn, Clement, King, Lensing, Powell, and Thom are collectively referred to herein as the “Commissioners.”

12.

This Court has jurisdiction to grant this Petition and issue writ of mandamus and quo warranto pursuant to La. Code Civ. P. arts. 3861, 3863, 3864, 3866, 3901 and 3902.

13.

Venue is proper in this Court pursuant to La. Rev. Stat. Ann. § 13:5104(B).

FACTS AND ALLEGATIONS

14.

Under Louisiana law, LPPC is established by and given limited authority in its enabling statutes. LPPC only has authority to exercise its powers within the boundaries of East Carroll Parish. *See* La. Rev. Stat. Ann. § 34:1503(A). (“The commission shall exercise the powers herein conferred upon it, *within the port area, consisting of the entire parish of East Carroll* as the boundaries and limits of said parish are presently fixed by law.”) (emphasis added). The Louisiana Legislature has not authorized LPPC to exercise any authority outside of the parish of East Carroll.

15.

DSRR currently owns and operates the Lake Providence Branch line which extends from milepost 471.0 at Lake Providence, Louisiana (located in East Carroll Parish), south to milepost 498.44 in Tallulah, Louisiana (located in Madison Parish) (“the Line”).

16.

LPPC is currently seeking to acquire the Line through a federally enforced sale, including the portions in Madison Parish and outside of East Carroll Parish. Specifically, LPPC has initiated a feeder line proceeding at the STB to acquire the Line. LPPC originally sought to acquire a shorter portion of the Line; however, on January 4, 2023, LPPC filed an amended feeder line application, requesting that the STB order DSRR to sell the entirety of the Line to LPPC, including the portions in Madison Parish, pursuant to the feeder line statute, 49 U.S.C. § 10907. If the STB were to issue such an order, LPPC would acquire, own, and be responsible for operations outside East Carroll Parish including obtaining a Federal common carrier obligation outside East Carroll Parish.

17.

LPPC exceeds its authority by attempting to acquire the Line through its application to the STB because the Line lies outside East Carroll. LPPC is not empowered to take, own, or operate entities or assets outside of East Carroll.

18.

Thus, LPPC’s current feeder line application is *ultra vires* and LPPC’s officers have no authority to pursue it whatsoever, under Louisiana law.

DSRR HAS NO ADEQUATE REMEDY AT LAW AND FACES IRREPARABLE HARM

19.

DSRR has no legal action otherwise available to clarify the authority of the LPPC in a way that would provide DSRR timely relief. Therefore, the prayed-for writs are the only adequate remedy available to DSRR.

20.

The STB has no authority to decide issues of state law. *See e.g., Reading, Blue Mountain & Northern Railroad Company—Petition for Declaratory Order*, FD 35956, 2016 STB LEXIS 155 at *7 (STB served June 3, 2016) (an “interpretation of state law...should be left to the state

courts”). The STB further has no mechanism whereby it can seek adjudication of state law issues that weigh on proceedings before it.

21.

DSRR faces the risk of irreparable harm, including loss of property, if the STB issues an order that would result in the LPPC acting outside the express limits of its state charter. Not only is DSRR required to expend its resources to defend against LPPC’s unauthorized actions before the STB, but DSRR also faces the risk of a decision by the STB ordering DSRR to sell its assets to LPPC, despite LPPC not being legally empowered to take, own, or operate those assets. LPPC essentially seeks to evade the state-law limitations of its charter by proceeding before a federal body that is not authorized to interpret state law. Absent this Court’s issuance of one or both of the writs sought herein, DSRR will have no recourse to prevent what Louisiana law clearly prohibits—the LPPC’s *ultra vires* exercise of its powers outside of East Carroll.

22.

It would be a profound injustice to all parties, including the constituents of LPPC, to expend further resources pursuing a cause that is *ultra vires*.

COUNT I – PETITION FOR WRIT OF QUO WARRANTO

23.

The allegations contained in the foregoing paragraphs are incorporated herein by reference.

24.

Quo warranto is a writ “directing a corporation...to show by what authority it exercises certain powers. Its purpose is to prevent usurpation of office or of powers.” La. Code Civ. P. art. 3901.

25.

A body corporate acting outside the scope of its authority necessitates the issuance of a writ of quo warranto prohibiting the action. *See* La. Code Civ. P. art. 3902 (“When the court finds that a corporation or limited liability company is exceeding its powers, the judgment **shall** prohibit it from doing so.”) (emphasis added).

26.

Pursuant to La. Rev. Stat. Ann. § 34:1503(A), LPPC’s authority is explicitly limited to the boundaries of East Carroll Parish:

The commission shall exercise the powers herein conferred upon it, **within the port area, consisting of the entire parish of East Carroll** as the boundaries and limits of said parish are presently fixed by law. (emphasis added)

27.

The rail line that LPPC seeks to take, own, and operate through the case pending at the STB is in both East Carroll Parish and Madison Parish.

28.

LPPC is unable to show any authority by which it may take rail property outside the boundaries of East Carroll Parish. In the STB proceeding, DSRR asked LPPC directly by what authority it is allowed to act outside of East Carroll Parish. LPPC stated in response:

Notwithstanding the foregoing, Louisiana Revised Statutes 34:1503 authorizes LPPC to “construct, own, operate and maintain terminal rail facilities and other common carrier rail facilities for the purpose of rendering rail transportation to and from the facilities to be erected, owned and operated by the commission in both intrastate and interstate commerce.”

LPPC’s response ignores the clear introductory and limiting language of the very statute it cites which expressly declares that LPPC may only exercise these powers *within East Carroll*. La. Rev. Stat. Ann. § 34:1503(A). LPPC’s failure to show cause for overstepping the bounds of its clearly limited statutory authority and attempting to seize territory, and own and operate it, outside of East Carroll warrants the issuance of this extraordinary writ.

29.

LPPC’s actions exceed the limits of its authority and, if it were successful, would result in LPPC owning and having a federal common carrier obligation outside the boundaries of its authority—in clear violation of La. Rev. Stat. Ann. § 34:1503(A).

30.

Pursuant to La. Code Civ. P. art. 3901, LPPC must show cause that it has authority to pursue its amended feeder line application.

31.

As LPPC cannot show cause, pursuant to La. Code Civ. P. Art. 3902, the Court must prohibit LPPC’s *ultra vires* actions and order LPPC to discontinue pursuit of its feeder line application before the STB, for lack of authority.

COUNT II – PETITION FOR WRIT OF MANDAMUS

32.

The allegations contained in the foregoing paragraphs are incorporated herein by reference.

33.

“A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law.” La. Code Civ. P. art. 3863.

34.

“Mandamus will issue only when there is a clear and specific right to be enforced or a duty which ought to be performed.” La. Code Civ. P. art. 3863 Official Revision Comment (b).

35.

“A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice.” La. Code Civ. P. art. 3862.

36.

“Upon the filing of a petition for a writ of mandamus, the court shall order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary.” La. Code Civ. Proc. art. 3865.

37.

A ministerial duty is a “simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.” *Hoag v. State*, 889 So. 2d 1019 (La. 2004).

38.

Even if the act involves discretion, a writ of mandamus is proper if whether or not to do the act *itself* is not discretionary. *See Bussie v. Long*, 257 La. 624, 630 (1971) (“The Commission has no discretion as to whether or not the act will be performed”).

39.

Furthermore, “it is well settled in this state as well as in other jurisdictions that the writ may also be employed to reach and correct an arbitrary or capricious abuse of discretion by public boards or officials.” *State ex re. Torrance v. Shreveport*, 231 La. 840, 846 (1957).

40.

As shown, LPPC has a clear duty to limit any exercise of authority to matters arising within East Carroll Parish. This is a non-discretionary limitation on LPPC's authority, imposing a non-discretionary duty on the officers that run LPPC to never act beyond the parish boundaries. La. Rev. Stat. Ann. § 34:1503(A).

41.

The question of whether or not to exercise or attempt to exercise its authority *outside* of East Carroll Parish is non-discretionary. Indeed, LPPC, nor Respondent Gilfoil, nor the Commissioners has any discretion to exercise statutory authority outside of the boundaries of East Carroll Parish.

42.

LPPC and its Commissioners violate a simple, definite duty to only exercise powers in East Carroll Parish by attempting to acquire rail property outside of East Carroll Parish through their STB application.

43.

There being no discretion to have filed the amended feeder line application, there is no discretion in whether to maintain the action. Therefore, each of Respondents Gilfoil and the Commissioners is duty-bound to withdraw the unlawful and *ultra vires* application. The Court should compel the performance of the Commissioners' non-discretionary duty to withdraw their STB application. *See Fire Prot. Dist. Six v. City of Baton Rouge Dep't of Public Works*, 868 So. 2d 770, 772-73 (2003) (stating a writ of mandamus is allowed to "correct an...abuse of discretion by public boards or officials" and "violation of a specific...rule or regulation that prohibits such action can constitute an abuse of discretion.").

44.

In conclusion, LPPC has no authority to acquire rail lines outside East Carroll Parish and thus has no discretion to file—or continue to pursue—its application to the STB to acquire the Line. The Commissioners must withdraw LPPC's application and DSRR respectfully asks the Court to enter a writ directing them to do so.

WHEREFORE, your Petitioner herein, DSRR, prays:

- a. That this Court issue a writ of quo warranto prohibiting LPPC's *ultra vires* actions in pursuing its amended application at the STB or to show cause to the contrary;

- b. That this Court issue a writ of mandamus to Port Director Wyly Gilfoil and LPPC Commissioners Mark Buntyn, Roger Clement, Jerry King, Francis Lensing, Karvan Powell, and James Thom, IV, directing them to withdraw the application in accordance with their clear duty to only exercise powers within East Carroll Parish;
- c. For such additional relief as is proper.

Respectfully submitted,



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Attorneys for Delta Southern Railroad, Inc.
and-

**6TH JUDICIAL DISTRICT COURT FOR THE PARISHES OF EAST CARROLL,
MADISON AND TENSAS**

STATE OF LOUISIANA

CASE NO.: _____

DIVISION “ _____ ”

DELTA SOUTHERN RAILROAD, INC.

VERSUS

**LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN,
ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND
JAMES THOM, IV.**

FILED: _____

DEPUTY CLERK

RULE TO SHOW CAUSE

Considering the foregoing Petition for Writ of Quo Warranto and Writ of Mandamus of plaintiff, Delta Southern Railroad, Inc.;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Lake Providence Port Commission, Wyly Gilfoil, Mark Buntyn, Roger Clement, Jerry King, Francis Lensing, Karvan Powell, and James Thom, IV show cause on the _____ day of _____, 2024, at _____ o'clock _____.m. why Plaintiff Delta Southern Railroad, Inc.'s, Petition for Writs of Quo Warranto and Mandamus should not be granted.

Lake Providence, Louisiana this _____ day of _____, 2024.

JUDGE

PLEASE SERVE:

Lake Providence Port Commission
Through its agent, Port Director, Wyly Gilfoil
409 Port Road
Lake Providence, LA 71254-9801

Wyly Gilfoil
409 Port Road
Lake Providence, LA 71254-9801

Mark Buntyn
409 Port Road
Lake Providence, LA 71254-9801

Roger Clement
409 Port Road
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Jerry King
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Karvan Powell
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James Thom, IV
409 Port Road
Lake Providence, LA 71254-9801

6TH JUDICIAL DISTRICT COURT FOR THE PARISHES OF EAST CARROLL,
MADISON AND TENSAS

STATE OF LOUISIANA

CASE NO.: _____

DIVISION “ _____ ”

DELTA SOUTHERN RAILROAD, INC.

VERSUS

LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN,
ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND
JAMES THOM, IV.

FILED: _____

DEPUTY CLERK

ORDER

Considering the foregoing Petition for Writ of Quo Warranto.

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Delta Southern Railroad, Inc.’s, Petition for Writ of Quo Warranto be granted in the above-entitled matter and that the writ shall issue directing that the Lake Providence Port Commission cease its *ultra vires* actions and discontinue pursuit of its feeder line application before the Surface Transportation Board.

This ____ day of _____, 2024.

JUDGE

6TH JUDICIAL DISTRICT COURT FOR THE PARISHES OF EAST CARROLL,
MADISON AND TENSAS

STATE OF LOUISIANA

CASE NO.: _____

DIVISION “ _____ ”

DELTA SOUTHERN RAILROAD, INC.

VERSUS

LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN,
ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND
JAMES THOM, IV.

FILED: _____

DEPUTY CLERK

ORDER

Considering the foregoing Writ of Mandamus,

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff’s Delta Southern Railroad, Inc., Writ of Mandamus be granted in the above-entitled matter and that the writ shall issue directing that the Director and Commissioners of the Lake Providence Port Commission dismiss LPPC’s feeder line application before the Surface Transportation Board.

This ____ day of _____, 2024.

JUDGE