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March 14, 2024

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

Re: STB FD 36447, *Lake Providence Port Commission—Feeder Line
Application-Line of Delta Southern R.R. Located in East Carroll
And Madison Parishes, LA.*

Dear Ms. Brown:

Lake Providence Port Commission (“LPPC” or “Commission”) hereby replies to the “letter notice” filed March 12 by Delta Southern Railroad, Inc. (“DSRR”) Consistent with the Board’s decision of November 20, 2023, it is being served simultaneously on the Board and ALJ McCarthy.

LPPC strongly disagrees with the allegations set out in the letter filed by DSRR’s attorney and in the attached *Petition for Writs of QUO Warranto and Mandamus* that names Wyly Gilfoil, in his capacity as the Port Director, and the seven (7) Commissioners of the Port, as Defendants. Although DSRR’s Petition apparently was filed on March 4, 2024 in Louisiana state court, as of this date, the Petition has not yet been served on any of the named Defendants. As a result, no responses have been filed in the 6th Judicial District Court for the Parishes of East Carroll, Madison and Tensas.

As evidenced by the letter and the Petition, DSRR has focused on a single introductory sentence of the Louisiana statute that created the Lake Providence Port Commission, while ignoring the overwhelming aspects of the statute that clearly and unmistakably authorize the Commission to take the following activities.¹ In particular, LA Rev. Stat. Ann. § 1503.C explicitly provides that, in addition to regulating the “commerce, and traffic, within such port area in such a manner as may, in its judgment, be for the best interests of the state” that the Commission is authorized, among other things, to (emphasis supplied):

¹ A full copy of the Chapter 11. Lake Providence Port Commission is attached.

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.*

It should also be noted that § 1503.C further provides that “[t]he legislature may confer additional powers on the commission not inconsistent with the provisions hereof ... [and that] [t]itle to all property and improvements thereon operated by the commission shall vest in the state of Louisiana.”

In addition, § 1506 states that LPPC “may acquire by expropriation in accordance with expropriation laws of the state of Louisiana, any wharves, landings or other property necessary *for the benefit and advantage of the commerce of said commission*” (emphasis added). Given the horrendous state of the track in Madison Parish that has prevented DSRR from providing interchange traffic with North Louisiana and Arkansas Railroad (“NLA”) for several years, it is clearly beneficial and advantageous for LPPC and the “best interests of the state” for LPPC to acquire the track that is involved in LPPC’s Feeder Line Application.

The merits of the issues will be decided by the state court. Hence LPPC will leave it to the court to decide the merits. However, given the critical role that ports play in driving the economy of Louisiana, LPPC anticipates that the matter will be summarily and properly decided. Because DSRR’s new owner should have been aware of the importance that has been placed by the Louisiana legislature on the ports, as demonstrated by the Port Construction and Development Priority Program, when it acquired DSRR. In closing, LPPC requests that the Board not allow DSRR to rely on the Petition DSRR filed in Louisiana state court to delay the adjudication of LPPC’s Feeder Line Application.

Respectfully submitted,

/s/ Richard H. Streeter

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Cc: ALJ Thomas McCarthy, Connor Brightwell, Esq., Charles Tolbert, Esq.
John M. Scheib, Esq., Noah Sullivan, Esq.

CHAPTER 11. LAKE PROVIDENCE PORT COMMISSION

Sec.

- 1501. Creation of Lake Providence Port Commission.
- 1502. Officers of the commission; meetings.
- 1503. Rights and powers of the board.
- 1504. Authority for issuance of bonds; levy of taxes; election.
- 1505. Prescriptive period; sale of bonds.
- 1506. Right to expropriate.
- 1507. Advertisement; R.S. 43:111 not to apply.
- 1508. Industrial properties; authority to acquire, etc.

§ 1501. Creation of Lake Providence Port Commission

A. There is hereby created a commission to be known as the Lake Providence Port Commission, which shall be composed of seven members who shall serve without compensation and who shall be appointed as follows:

- (1) Four commissioners appointed by the governing authority of the parish of East Carroll;
- (2) Two commissioners shall be appointed by the governing authority of the town of Lake Providence;
- (3) One commissioner shall be elected by the appointed commissioners at their initial meeting.

B. The commissioner initially elected by the appointed commissioners and one of the four commissioners initially appointed by the governing authority of the parish of East Carroll, and one of the two commissioners initially appointed by the governing authority of the town of Lake Providence, shall be appointed for a term of two years. One of the four commissioners initially appointed by the governing authority of the parish of East Carroll, and one of the two commissioners initially appointed by the governing authority of the town of Lake Providence shall serve for four years; and the remaining commissioners shall be appointed for a term of six years. Thereafter, the successors to each of such commissioners shall be appointed for terms of six years.

C. Any vacancy on the commission for any reason shall be filled in the same manner as the original appointments and for the unexpired term of office. Each commissioner shall be a citizen of the United States, and a qualified voter and a taxpayer of the State of Louisiana.

Added by Acts 1958, No. 450, § 1. Amended by Acts 1966, No. 446, § 1.

History and Source of Law

The 1966 amendment rewrote par. (3) of subsec. A, which prior thereto read: "One commissioner shall be appointed directly by the governor of the state of Louisiana"; and inserted "appointed by the governor" in the first sentence of subsec. B.

Section 4 of Acts 1966, No. 446, provided as follows:

"R.S. 38:1401 [34:1401], 38:1501 [34:1501], 38:1801 [34:1801] and 38:1851 [34:1851] as amended in this Act shall take effect and become operative if, as and when the proposed revision of Sections 31, 33, 34 and 35

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of Article VI of the [1921] Constitution of Louisiana, incorporated into [Senate] Bill No. [129] [Act No. 543] introduced at this session of the legislature, is finally adopted at the general election in November, 1966."

The constitutional amendment was adopted at the November 8, 1966 general election.

Acts 1975, No. 68, § 1, which repealed Louisiana Constitution of 1921, Art. 6, § 33, relating to the Lake Providence Port Commission, provided in part that the repeal

should not affect the provisions of R.S. 34:1501 to 34:1507.

Title of Act:

An Act to amend Title 34 of the Louisiana Revised Statutes of 1950 to add thereto a new Chapter to be designated as Chapter 11, to contain R.S. 34:1501 through 34:1507, creating and providing for a new executive department to be known as the Lake Providence Port Commission and defining its powers and duties. Acts 1958, No. 450.

Library References

Navigable Waters ~~¶~~14(2).

C.J.S. Navigable Waters § 17.

§ 1502. Officers of the commission; meetings

The commission shall elect from among its own members a president, a vice president, a secretary and a treasurer, whose respective duties shall be prescribed by the commission. At the option of the commission, the office of the secretary and treasurer may be held by one person. The commission shall meet in regular session, once each month, and shall also meet in special session at the call of the president of the commission, or on the written request of three members of the commission. A majority of the commission shall constitute a quorum, and all actions or resolutions of the commission must be approved by the affirmative vote of not less than a majority of all members of the commission. The commission shall prescribe rules governing its meetings and shall fix a place at which the meetings shall be held.

Added by Acts 1958, No. 450, § 1.

Library References

Navigable Waters ~~¶~~14(2).

C.J.S. Navigable Waters § 17.

§ 1503. Rights and powers of the board

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.

B. The commission may authorize a reasonable travel allowance for its members in the performance of their official duties, and it may employ such officers, or agents, and employees, as it may find necessary in the performance of its duties, and may prescribe their duties, powers and compensation of such officers, agents, and employees. The commission may, upon such terms as it may agree upon, contract for legal, financial, engineering and other professional services necessary or expedient in the conduct of its affairs, and may upon terms and conditions mutually agreeable, utilize the services of the other executive departments of the state.

C. The commission shall regulate the commerce, and traffic, within such port area in such a manner as may, in its judgment, be for the best

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interests of the state. It shall have charge of and administer public wharves, docks, sheds and landings, and shall have authority to construct or acquire and equip wharves and landings, and other structures useful for the commerce of the port area, and provide mechanical facilities therefor; to erect sheds or other structures on said wharves and landings; to maintain proper depths of water at all such wharves and landings; to provide light, water, police protection and other services for its facilities as it may deem advisable; to construct or acquire, maintain and operate basins, locks, canals, warehouses and elevators; to charge for the use of all facilities administered by it, and for all services rendered by it, such fees, rates, tariffs, or other charges as it may establish; to establish harbor lines within the port area by agreement with the corps of engineers; and 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. The legislature may confer additional powers upon the commission not inconsistent with the provisions hereof; provided, however, that it shall not impair any contracts lawfully entered into by the commission. Title to all property and improvements thereon operated by the commission shall vest in the state of Louisiana.

D. The commission may charge a reasonable fee to each vessel arriving in the port area in ballast or carrying cargo of any kind. It may also charge for each copy of any certificate issued by it, or by any of its officers or employees for inspecting hatches, surveying cargo, or making other surveys or inspections of vessels in the port area, but shall furnish, without charge, to the master of each such vessel, one copy of all surveys upon his vessel or cargo.

E. The commission shall have authority to make and enter into contracts, leases, and other agreements with railroads, trucking companies, barge lines, and with any and all companies interested in the transportation, storage and shipping of goods and other products, whether by rail, truck line, barge line, ocean going vessels, or otherwise for the use of facilities administered by the commission or any part or portion thereof for a period of time not exceeding forty years. No exclusive franchise, however, shall be granted to any carrier.

Added by Acts 1958, No. 450, § 1.

Library References

Municipal Corporations §719(2).	C.J.S. Municipal Corporations § 1813.
Navigable Waters §14(2, 4).	C.J.S. Navigable Waters §§ 12, 17.
Wharves §12, 16.	C.J.S. Wharves §§ 7, 12.

Notes of Decisions**1. In general**

Constitutional and legislative acts creating port commission did not confer upon commission right to prohibit reasonable use of property owned by others adjacent to the banks of navigable waters in parish. Lake

Providence Port Commission v. Bunge Corp., App.1966, 193 So.2d 363, writ denied 250 La. 269, 195 So.2d 147.

Rural riparian owner could not be prohibited from placing improvements on its prop-

erty between levee and navigable river so obstruct or prevent the public use of the long as the structures did not seriously navigable stream or its banks. Id.

§ 1504. Authority for issuance of bonds; levy of taxes; election

A. The commission shall have authority, when authorized so to do by a vote of a majority in number and amount of the property of taxpayers of the port area qualified to vote at an election for the purpose and in accordance with law, to levy annually on all property situated within the port area, subject to taxation, and ad valorem tax not to exceed seven and one-half mills on the dollar. The commission may, upon its own initiative, call a special election and submit to the qualified taxpaying voters of the port area the question of authorizing the levy of such a tax. The commission shall call such a special election when requested so to do by petition in writing signed by one-fourth of the property taxpayers in number eligible to vote at such election. These special taxes shall be levied, assessed and collected on the property within the port area under the same methods, terms and conditions and at the same time as state and parish taxes are levied, assessed and collected; these taxes shall be secured by the same liens upon the property subject to taxation within the port area as taxes for state and parish purposes; and the property subject to any taxes within said port area shall be sold for failure to pay the same in the manner as property is sold for delinquent state, parish and other taxes under the laws of the state.

B. The provisions of the constitution and all laws regulating the collection of taxes, the creating of tax liens and mortgages, tax penalties and tax sales also shall apply to the collection of all taxes authorized by this Section. The sheriff and ex-officio tax collector for the parish of East Carroll shall make a monthly settlement with the treasurer of the commission and receive from him a receipt for the amount of the taxes paid over in the same manner as tax collectors are required to settle with the auditor of the state. The tax collector shall receive from the treasurer the same quietus for a full settlement of taxes due and exigible in any given year and account for the delinquents or deductions in the same manner as though accounting to the auditor of the state for state taxes. The sheriff and ex-officio tax collector shall retain from all taxes collected by him for the port area the same commission allowed thereon to him by law on special taxes and shall deposit the amount thereof with the parish treasurer to the credit of the sheriff's salary fund. Upon the failure of the tax collector to comply with the provisions of this Section, the commission shall proceed against him and the sureties on his official bond for the collection of whatever money may be owing to the commission for such special taxes.

C. The commission, with the approval of the State Bond Commission, is authorized to incur debts for its lawful purposes, and to issue in its name, negotiable bonds or notes therefor, and to pledge for the payment of the principal and interest of such negotiable bonds or notes the revenues derived from the operation of properties and facilities maintained and operated by it, or received by the commission from any taxes authorized under this Section or from other sources; provided, however, that the amount of such bonds or notes outstanding at any one time shall

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not exceed fifteen million dollars. Such bonds, when authorized to be issued, shall constitute, first, a general obligation of the commission, and secondly, the full faith and credit of the parish of East Carroll and the state of Louisiana shall be and are hereby pledged. In addition to the pledge of revenues to secure said bonds and notes, the commission may further secure their payment by conventional mortgage upon any or all of the properties constructed or acquired, or to be constructed and acquired by it. The commission is further authorized to receive, by gift, grant, donation or otherwise, any sum of money, aid or assistance from the United States, the state of Louisiana, or any political subdivision thereof, and unless otherwise provided by the terms of such gift, grant or donation, in its discretion, to pledge all or any part of such monies for the further securing of the payment of the principal and interest of its bonds or notes.

Added by Acts 1958, No. 450, § 1. Amended by Acts 1960, No. 295, § 1; Acts 1976, No. 325, § 1.

History and Source of Law

The 1960 amendment designated subsecs. A, B, and C as such, and in subsec. A increased the mill rate from two and one-half mills on the dollar to seven and one-half mills on the dollar.

The 1976 amendment, in subsec. C, substituted reference to the State Bond Commission for reference to the Board of Liquidation of the State Debt.

Cross References

Bond, debt and tax elections, see R.S. 18:1281 et seq.

Library References

Municipal Corporations §911.

Navigable Waters §14(2, 4).

C.J.S. Municipal Corporations §§ 1907, 1908.

C.J.S. Navigable Waters §§ 12, 17.

§ 1505. Prescriptive period; sale of bonds

For a period of sixty days from the date of the adoption of any resolution of the commission authorizing the issuance of its bonds or notes, any person interested may test the legality of such resolution and the validity of such bonds or notes issued or proposed to be issued thereunder, after which time no one shall have any cause of action to contest the regularity, formality, or legality of said resolution or to draw in question the legality of said bonds or notes or the debts represented thereby for any cause whatever, and it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of said sixty days.

Any bonds issued in accordance with the provisions hereof shall be sold to the highest bidder, at a public sale, for not less than par and accrued interest, after advertisement, once a week for not less than thirty days, by the commission in a newspaper of general circulation published in Lake Providence, Louisiana, Chicago, Illinois, New York, New York, and such other places as the commission shall determine, reserving to the commission the right to reject any and all bids, and the

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right to re-advertise for new bids. If, after advertisement as hereinabove provided, no bids are received, or if such bids as are received are considered in the discretion of the commission to be unsatisfactory, then and in that event, the commission may publicly negotiate for the sale of such bonds.

Added by Acts 1958, No. 450, § 1.

Library References

Municipal Corporations $\Leftrightarrow$ 921(1), 955(1 $\frac{1}{4}$). C.J.S. Navigable Waters § 17.
Navigable Waters $\Leftrightarrow$ 14(2).
C.J.S. Municipal Corporations §§ 1930 to 1933, 1973.

§ 1506. Right to expropriate

The Lake Providence Port Commission may acquire by expropriation in accordance with expropriation laws of the state of Louisiana, any wharves, landings or any other property necessary for the benefit and advantage of the commerce of the said commission.

Added by Acts 1958, No. 450, § 1.

Cross References

Expropriation by port commissions, see R.S. 19:141 et seq.

Library References

Eminent Domain $\Leftrightarrow$ 25. C.J.S. Eminent Domain § 51.
Navigable Waters $\Leftrightarrow$ 14(2). C.J.S. Navigable Waters § 17.

§ 1507. Advertisement; R.S. 43:111 not to apply

The prohibition, contained in R.S. 43:111, against advertising in any newspaper, book, pamphlet or periodical, shall not apply to the Lake Providence Port Commission in carrying out its functions and duties under the constitution and laws of this state.

Added by Acts 1958, No. 450, § 1.

Library References

Navigable Waters $\Leftrightarrow$ 14(2, 4).
C.J.S. Navigable Waters §§ 12, 17.

§ 1508. Industrial properties; authority to acquire, etc.

In order to encourage the location of or addition to industrial enterprises therein and the economic development of its port area, the Lake Providence Port Commission, created and operating in accordance with the provisions of Article VI, Section 33 of the Constitution of the State of Louisiana, may acquire, purchase, construct or improve industrial plant buildings and necessary property, equipment and appurtenances therefor, as a lawful purpose for which its bonds may be issued in the manner and within the limitations provided by said constitutional provision. Such industrial properties are hereby determined to be structures useful

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for the commerce of the port area as contemplated by said constitutional provision and not inconsistent with the provisions thereof.

Added by Acts 1973, No. 105, § 1.

History and Source of Law

Title of Act:

An Act to authorize the Lake Providence Port Commission to acquire, purchase, construct or improve industrial plant buildings

and necessary property, equipment and appurtenances therefor as a lawful purpose for which its bonds may be authorized. Acts 1973, No. 105.

Library References

Navigable Waters ~~§~~14(2).

C.J.S. Navigable Waters § 17.