

308141

RICHARD H. STREETER
ATTORNEY AT LAW
5255 Partridge Lane , N.W.
Washington, D.C. 20016
Tele: 202-363-2011 Mobile 202-210-4761
rhstreeter@gmail.com

ENTERED
Office of Proceedings
March 28, 2024
Part of
Public Record

March 28, 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”), Southeast Arkansas
Economic Development District (“SEAEDD”) and North Louisiana and Arkansas
Railroad, Inc. (“NLA”), by and through their counsel of record, hereby file their
Joint Reply to the Motions to Compel Discovery that were filed herein with the
Board on March 8, 2024, by Delta Southern Railroad, Inc. (“DSSR”). Consistent
with the Board’s decision of November 20, 2023, this Joint Reply is being
served simultaneously on the Board and ALJ McCarthy, as well as the other
“parties of record” on the Service List.

Respectfully submitted,

Richard H. Streeter

Michael F. McBride

/s/ Richard H. Streeter

/s/ Michael F. McBride

Richard H. Streeter
Law Office Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016

Michael F. McBride
Van Ness Feldman
2000 Pennsylvania Ave., N.W.
Suite 6000
Washington, D.C. 20006

Cc: Parties of Record on Service List (Including ALJ McCarthy)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36447

**LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION—
LINE OF DELTA SOUTHER RAILROAD LOCATED IN
EAST CARROLL AND MADISON PARISHES, LA.**

**Joint Reply of Lake Providence Port Commission, Southeast
Arkansas Economic Development District and North Louisiana
and Arkansas Railroad, Inc. to Delta Southern Railroad, Inc.'s
Motions to Compel Discovery**

TABLE OF CONTENTS

PAGE

Introduction.....	1
Joint Arguments of LPPC, SEAEDD and NLA in Reply to DSRR's Motions to Compel.....	2
Due to the Board's Pre-Acceptance Requirements that govern all feeder-line applications, discovery by DSRR before the Board has actually accepted a complete application is not warranted.....	6
LPPC, et al., Have Not Refused to Respond to DSRR's Discovery Requests.	9
DSRR's demands that LPPC produce all Documents and communications related to any and all INFRA grants,.....	13
including Document regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules are on their face unduly burdensome and are not relevant.....	13
DSRR's complaints regarding LPPC, et al.'s refusal to produce all communications and Documents with elected officials concerning LPPC's Feeder Line Application, DSRR's service over the Line and LPPC's ability to purchase the Line are frivolous.	15
Other Irrelevant Discovery Requests.	16

Introduction

Come now Lake Providence Port Commission (“LPPC”), Southeast Arkansas Economic Development District (“SEAEDD”), and North Louisiana and Arkansas Railroad, Inc. (“NLA”), by and through counsel, to file their joint reply to the identical arguments and claims that DSRR has asserted in its three substantially identical but separate Motions to Compel that were served on March 8, 2024.¹

Each of DSRR’s Motions raises four distinct issues. In Argument I, DSRR broadly argues that its discovery requests seek highly relevant information. *See* DSRR’s Motion served on LPPC, SEADD and NLA at p. 8.

In Argument II, DSRR argues that it is entitled to conduct discovery at this time. This argument raises two sub-arguments: A. The Surface Transportation Board’s (“STB” or “Board”) regulations grant DSRR the right to conduct discovery at this time; and B. The Board has only limited LPPC’s Conduct of Discovery, not DSRR’s. *See* DSRR Motion served on LPPC, SEAEDD and NLA at pp. 9 & 11.²

¹ DSRR’s Motion served on NLA mistakenly names LPPC rather than NLA in the Argument III. Discovery, demonstrating the fact that DSRR’s arguments are essentially identical in nearly all respects, even if presented in three separate Motions to Compel. Given the substantial identity of the issues presented by the three Motions to Compel, LPPC, SEAEDD, and NLA have opted to reply jointly to save ALJ McCarthy (or the Board if need be) from reading three separate Replies that would be substantially identical. Cross-references are provided for ease of review.

² In this respect, ALJ McCarthy’s attention is especially directed to the Emergency Motion filed herein on March 11, 2024, seeking a ruling that, under the terms of the STB’s decisions served November 20, 2023, and December 11, 2023, only LPPC may seek discovery at this time, and that discovery is limited to valuation. In other words, DSRR has it upside-down; DSRR is not entitled to

In Argument III, DSRR argues that LPPC, SEAEDD and NLA should be compelled to respond fully to the Discovery Requests. *See* DSRR’s Motion served on LPPC at p. 11, and on SEAEDD and NLA at p. 12. This argument raises three sub-arguments. As will be noted, the sequence of the three sub-arguments is mixed but claim in either A or B that the arguments involve either “discovery requests related to service by DSRR or NLA” or “discovery requests related to INFRA and other Grants.” Sub-argument C pertains to “other relevant discovery requests.”

Because each of DSRR’s arguments hinge on whether its latest round of discovery is timely and appropriate at this stage of the proceeding, ALJ McCarthy (and the Board if need be) are requested to resolve that initial issue. Should it be determined that DSRR is entitled to pursue discovery before the Board accepts LPPC’s Amended Feeder Line Application, ALJ McCarthy (and the Board if need be) are further asked to consider whether DSRR’s discovery requests are relevant to the subject matter involved in the unique context of a Feeder Line Proceeding and whether the challenged discovery is unduly burdensome in relation to the likely value of the information sought.

**Joint Arguments of LPPC, SEAEDD and NLA in
Reply to DSRR’s Motions to Compel**

Beginning with the second sentence of its March 8, 2024, Motion to Compel, DSRR has mischaracterized the situation in multiple respects. DSRR’s

discovery now, and the limitation on discovery is to permit LPPC to discover sufficient information and documents from DSRR to permit LPPC to present reliable expert testimony on the subject of valuation (both with respect to net liquidation value (“NLV”) and going concern value (“GCV”)).

statement that LPPC, SEAEDD and NLA (hereinafter when appropriate “LPPC, et al.”) have “failed and now refused to respond to DSRR’s discovery requests, all of which address highly relevant and central issues in this case.”³ This may have been intended only to refer to its current, Third Set of Interrogatories and Requests for Documents (“Third Set”), however, all three have responded to most of DSRR’s Interrogatories and Requests for Production of documents.

Second, DSRR’s comment that the “sole basis for refusing to conduct discovery is a strained reading of the Board’s orders as somehow limiting *DSRR’s* discovery.”⁴ is absurd. LPPC, et al. do not contend that DSRR is not entitled to take discovery at an appropriate time, as determined by the Board. Instead, as reflected in LPPC’s pending Emergency Motion for such a filing filed March 11, 2024, LPPC, et al. contend that DSRR may not take further discovery at this time. Nevertheless, as a showing of good faith, LPPC did respond to most of DSRR’s Third Set, while SEAEDD and NLA responded to DSRR’s Second Set of Discovery Requests.

Third, as a casual review of LPPC, et al.’s responses will prove; they have contested DSRR’s requests on the stated grounds that they are irrelevant to the subject matter of the Amended Feeder Line Application. In other instances, LPPC, et al., have objected on the grounds that DSRR’s requests for ***all*** communications and Documents over a period of seven (7) years are unduly burdensome in the extreme. In all instances, LPPC, et al., have relied on the

³ Motion to Compel at p. 1.

⁴ Emphasis in original.

literal wording of 49 C.F.R. § 1114.21(a)(1) and (c) to assert their rights to resist discovery.

As the Board has long recognized:

Under 49 C.F.R. § 1114.21(a)(1) and (c), discovery must be “*relevant* to the subject matter involved in a proceeding” or be “reasonably calculated to lead to the discovery” of *relevant* evidence. The requirement of relevance means that the information might be able to affect the outcome of a proceeding. Under CFR 1114.21(c), discovery also may be denied if it would be unduly burdensome in relation to the likely value of the information sought.

See, e.g., Waterloo Railway Company—Adverse Abandonment—Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine, AB-124 (Sub-No. 2), slip op. at 2 (served November 14, 2003).

Fourth, DSRR errs when it claims that “[t]he only discovery-related matters before the Board have been disputes about what limits exist on LPPC’s discovery”.⁵ DSRR’s new counsel apparently is unaware of or has forgotten the discovery disputes involving DSRR’s original discovery that ultimately caused the Board to suspend the original procedural schedule herein on March 9, 2021.

LPPC must also object to DSRR’s false and derogatory comment that LPPC, et al., are “not willing to comply with its discovery obligations”⁶ and have “played wasteful discovery games—objecting to requests and then claiming they looked and did not have anything anyway.”⁷ As the record reflects, LPPC, et al.,

⁵ *Id.* at p. 2 (emphasis in original).

⁶ *Id.*

⁷ *Id.* at p. 6.

have repeatedly responded to DSRR's multiple discovery requests, even at this time, with respect to the Second Set and Third Set, when they do not believe there is any obligation to respond to DSRR's latest round of discovery requests.⁸

Fifth, LPPC, et al., submit that their reading of the Board's orders as limiting *DSRR's* discovery is not strained. The Board clearly stated, in its decisions served November 20, 2023 (*November 20 Decision*) and December 11, 2023 (*December 11 Decision*), that discovery at this time may be conducted by LPPC with respect to valuation. The Board did not provide for any discovery at this time by DSRR.

LPPC, SEAEDD, and NLA have acted in good faith since February 2021 by responding to all of DSRR's Interrogatories and Requests for Production over the past few years. This has required LPPC, SEAEDD and NLA to spend hundreds of hours digging through emails and other documents that are largely or wholly irrelevant. At the same time, LPPC, et al., have watched as DSRR's owners have artfully used multiple law firms and other tactics to avoid responding to LPPC's discovery requests that are needed to assess the NLV and GCV of the segment of the Lake Providence Branch between mileposts 471 and 498.44. The lack of this information is the only thing that has prevented

⁸ On February 25, 2021, LPPC and SEAEDD served their Responses and Objections to DSRR's First Set of Interrogatories and also produced various documents. Thereafter, on March 1, 2023, LPPC served its Responses and Objections to DSRR's Second Set of Interrogatories and RFP's, dated January 30, 2023. See Exhibit H to DSRR's Motion to Compel. On February 6, 2024, LPPC served its Responses and Objections to DSRR's Third Set of Interrogatories, dated January 3, 2024.

LPPC's expert firm, L. E. Peabody & Associates, Inc., from determining the NLV and GCV of the Line that LPPC seeks to acquire and has prevented the Board from reaching a conclusion that LPPC's Amended Feeder Line Application is complete and then establishing a procedural schedule that would govern the proceedings.

Furthermore, LPPC, et al., have attempted to comply with the Board's directive to submit all "disputes concerning discovery in this proceeding that are filed after the service date" (of the Board's *November 20 Decision*), to ALJ McCarthy. As of November 20, 2023, there were no other pending discovery disputes. The current discovery disputes were provoked by DSRR's latest discovery demands that are the subject of the Motions to Compel.

Although LPPC, et al., will further respond to several of the derogatory and false claims that have been voiced in DSRR's Motion to Compel, they will note that, on February 20, 2024, consistent with the Board's directive in the *November 20 Decision*, LPPC, et al. requested ALJ McCarthy or the Board to provide clarification regarding whether DSRR can pursue discovery at this time when the Director, Office of Proceedings has not yet issued a decision that accepts LPPC's amended Feeder Line Application and adopts a procedural schedule that governs this proceeding.

Due to the Board's Pre-Acceptance Requirements that govern all feeder-line applications, discovery by DSRR before the Board has actually accepted a complete application is not warranted.

As the record reflects, DSRR's initial discovery, which was served only *after* the Board's Director, Office of Proceedings, by decision served January

15, 2021, determined that LPPC, by providing “information pertaining to the net liquidation value (NLV) of the Line” had completed its Feeder Line Application.⁹ While accepting LPPC’s Feeder Line Application, the Director cited the language in the Board’s *December 11, 2020 Decision* that “if the application is accepted, DSR would have the opportunity to provide evidence and argument to counter LPPC’s assertion that the 20-mile segment at issue has no GCV.”¹⁰

That basic premise must be applied in LPPC’s amended Feeder Line Application, which obviously now involves more than what DSRR described as a “long-out-of-service railroad line” in a pleading filed in 2021.¹¹ Until the Board *accepts* LPPC’s amended and expanded Feeder Line Application, the matter remains in “administrative limbo.” In short, because the Board has not yet determined that LPPC’s amended and expanded Feeder Line Application is complete, the Board should deny DSRR’s Motion to Compel.

The requirement that LPPC must complete the Board’s unique filing procedures for a feeder-line application to obtain a determination by the Board’s Director, Office of Proceedings, that its Amended Feeder Line Application is complete, unquestionably distinguishes feeder line application cases from other types of cases before the Board, such as formal complaint cases where the case is opened when a complaint is docketed, and the defendant is required to file an answer pursuant to the Board’s regulations which are set out at 49 C.R.R. Part

⁹ Decision served January 15, 2021, at p. 1.

¹⁰ December 11, 2020 Decision, slip op. at 5 & n. 14

¹¹ See Reply in Opposition to Motion Seeking Entry of Protective Order, filed February 26, 2021.

1111. In those instances, where there is no requirement that the Board preliminarily “accept” the complaint, the Board’s regulations do not prevent parties from starting discovery before a procedural schedule is issued. *See, e.g., Navajo Transitional Energy Company, LLC v. BNSF Railway Company*, NOR 42179, slip op. at 4 (STB served August 7, 2023) (“*Navajo*”). As the Board further recognized in *Navajo*, “[u]nder the circumstances, which include BNSF’s awareness of the competing procedural schedules and its emphasis of the need for sufficient time for discovery in its motion ..., the Director did not make a clear error in judgment or issue a manifestly unjust order in assuming that BNSF would initiate discovery without waiting for a Board order regarding the procedural schedule.”

That procedure is unlike the unique situation in all feeder line cases where the Board must engage in a preliminary review of a feeder line application before providing for further proceedings that are governed by a procedural schedule. As their previous responses to discovery show, LPPC, et al., have consistently attempted to respond to DSRR’s discovery demands after the original Application was accepted. In fact, LPPC, et al., have also made a full effort to respond to DSRR’s latest round of discovery requests, even though they believed, and continue to believe, based on the clear language in the Board’s *November 20, 2023 Decision* that states that “[w]ithin 30 days after the service date of a decision conditionally accepting the amended application, the parties shall (i) meet and confer on the scope of discovery necessary for LPPC to develop a sound valuation assessment and (ii) report to the administrative law judge on any

remaining discovery disputes,” that only LPPC can undertake discovery at this time (and that discovery is limited to valuation).

LPPC, et al., Have Not Refused to Respond to DSRR’s Discovery Requests.

As an honest assessment of LPPC, et al.’s Responses to DSRR’s Second Set and Third Set will show, they have unquestionably and repeatedly responded to DSRR’s discovery requests. As DSRR’s various objections demonstrate, DSRR’s complaints are focused on the manner in which LPPC, et al., replied and on the fact that LPPC, et al., have not spent the past several years solely focused on DSRR or recording every random comment that remotely mentioned DSRR or Patriot Rail, but rather have also focused on their own daily activities and businesses.

At page 4, DSRR complains that LPPC, et al.’s responses to DSRR’s Third Set “were four days late.” Putting aside the fact that LPPC had no obligation at all to respond to those Requests, that complaint reveals the trivial nature of many of DSRR’s complaints, which include multiple derogatory remarks such as the comment at p. 5 that LPPC provided “half-baked answers.”¹² LPPC, et al., must leave it to the ALJ to decipher what is meant by “half-baked,” if ALJ McCarthy deems it necessary to do so.

Furthermore, DSRR claims that “[i]t was apparent to DSRR that [LPPC, et al.] had not conducted adequate searches for responsive documents,” and that “what [LPPC, et al.] has done is not to engage in an attorney-directed and

¹² Motion to Compel at p. 5.

supervised discovery process”¹³ are baseless. LPPC’s counsel was involved and supervised (albeit from a distance) LPPC’s studied efforts to look for relevant documents. Although DSRR portrays their efforts as “paltry,”¹⁴ LPPC, et al., cannot be faulted because they have no relevant documents beyond those previously produced. Contrary to DSRR’s position, LPPC, et al., have wasted countless hours conducting multiple thorough searches for additional relevant documents beyond those already produced by them or by other parties of record who produced documents such as emails on which more than one party was involved.

A prime example is DSRR’s arguments at pp. 11-12 that LPPC did not provide “documents and communications between LPPC and each of the customers identified in its application or discovery responses concerning rail service by DSRR or NLA, from 2017 to present.” This is backed up by DSRR’s comment that “the customers listed are those identified by LPPC itself.”

LPPC did not identify these shippers or potential shippers. By way of background, DSRR RFP No. 29 addressed to LPPC, DSRR RFP No. 11 addressed to SEAEDD and DSRR RFP No. 15 addressed to NLA consist of a list of 23 shippers that was compiled by NLA and is based largely on efforts undertaken in 2015-2016 by Daniel B. Robbins, the President of NLA, and Craig Huff, who was DSRR’s General Manager at the time at the request of J.

¹³ *Id.*

¹⁴ Motion to Compel at p. 6.

D. Ventrcek, who was one of the principals of Continental Rail, LLC, which was formed in 2015 for the purpose of managing and operating DSRR.

What DSRR fails to mention is that LPPC, in its Response to DSRR RFP No. 29, explained that, with the exception of APEX, which is located within the Lake Providence Port facilities and is the only active rail shipper in the Port at this time, has not had commercial dealings with those other shippers.

Furthermore, DSRR does not mention that LPPC stated that it “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” and that “LPPC 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.”

While DSRR insists that “it is not credible [that] LPPC has *no* documents or communications related to service by DSRR or NLA to the present, particularly given the fact NLA operates the portion of rail line owned by LPPC currently.”¹⁵ The fact of the matter is that complaints regarding NLA’s service would have been directed to NLA while complaints regarding DSRR’s service would have been directed to DSRR. It is highly unlikely – and indeed, illogical -- that they would have been sent to LPPC, which is not a carrier and was not a party to the transaction that resulted in a complaint.

In its Motion to Compel addressed to SEAEDD, DSRR mentions Patrecia Hargroves’ comments in her Verified Statement regarding what DSRR claims to be two “customers” who located on the Line in 2022. DSRR then chastises Ms.

¹⁵ Motion to Compel at p. 12.

Hargrove for having “no documents related to rail service to them.”¹⁶ DSRR’s attack fails to comprehend that the two shippers, after announcing their plans to build new facilities that will be served by NLA in the future, have not yet opened their facilities and, as a result, have not yet started shipping by rail.

Furthermore, there were no rail movements whatsoever between milepost 454.8 at the Arkansas-Louisiana state line and milepost 463.0 near Shelburn, LA, after December 2010, following DSRR’s consummation of the abandonment of that 8.2-mile segment. It was only in 2016 that the Line between points in Arkansas and the Lake Providence Port was briefly reopened. During the first part of 2017, the Line was temporarily closed to allow the State of Louisiana to finish a flood mitigation project. However, in August of 2017, DSRR announced that interchange traffic was closed due to track conditions between milepost 471.0 and 491.0. Since then, only the specialized Schnable car has traversed that segment of the Lake Providence Branch Line.

The sole exception is the fairly recent incident that involved LPPC in its capacity as APEX’s landlord inside of the Lake Providence Port. Despite the fact that DSRR already has all of the email documents in its possession and despite the fact that Jerry Coleman, who is Regional Operations Manager Louisiana and North West Railroad/Delta Southern Railroad, was a participant in the meeting with APEX, DSRR is demanding that LPPC produce the identical email chain that has already been produced by NLA. Although DSRR insists that it is improper for LPPC to rely on documents that LPPC and its counsel knows have

¹⁶ Motion to Compel addressed to SEAEDD at p. 17.

been submitted, there is no reason that LPPC must produce duplicate copies of documents produced to DSRR by other parties of record. Such reliance does not in any fashion indicate that LPPC has not conducted an independent, thorough search to respond to an identical discovery demand.

DSRR's demands that LPPC produce all Documents and communications related to any and all INFRA grants, including Document regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules are on their face unduly burdensome and are not relevant.

The production of all Documents and communications relating to the decision of the U.S. Department of Transportation ("USDOT") to grant funds to be used to restore the Lake Providence Branch Line would involve the production of thousands of pages of documents which would not affect the outcome of this proceeding in any respect. Moreover, to retrieve all Documents and communications would be unduly burdensome to put it mildly.

DSRR's suggestion that "LPPC may file another amended application and withdraw all reference to the INFRA grant if it should like to stand on an objection that the grant information is not relevant" is patently absurd.¹⁷ The grant, which involves a determination of the USDOT that the rehabilitation of the Line is in the national interest, speaks for itself. The fact that DSRR voluntarily declined to use grant funds to restore the crucial 20-mile segment also speaks for itself and demonstrates that DSRR and its absentee owners had and have no intent to restore that segment of track so that interchange operations may resume. As the record also demonstrates, the absentee owners

¹⁷ Motion to Compel at p. 13.

were focused on the easy money that could be earned by storing railcars on the unrestored main line instead of providing rail service that would be beneficial to the public interest.

The Application also demonstrates the environmental benefits that will be realized by moving truck traffic to rail. The movement of freight to rail will also benefit the State of Louisiana by helping to preserve the highway that parallels the line between Tallulah, LA and McGehee, AR.

Without question, the INFRA Grant is relevant because it shows this matter is consistent with the public interest. The same is not true of communications and studies and other documents that caused USDOT to award the Grant. In addition, it should be noted that the Federal Rail Administration is carefully monitoring the ongoing efforts to rehabilitate the Line and the dispersal of funds. Such expenditures are consistent with the terms of the Grant and will proceed in any event and are not open to challenge by DSRR or its owners in this proceeding or elsewhere.

In the final analysis, what is the relevance of information regarding past grant denials? Simply put, there is none.

DSRR also claims that “LPPC still will not produce” the Lake Providence Port Commission’s Meeting Minutes.¹⁸ That claim is false. LPPC provided all of its Meeting Minutes to DSRR by providing a link to their location online. Moreover, because the Meeting Minutes are publicly available online, there is nothing to prevent DSRR from acquiring copies thereof from the website of the

¹⁸ *Id.* at p. 13.

Louisiana Division of Administration without hectoring LPPC to do what DSRR is equally capable of doing. This sort of demand epitomizes the harassment with which DSRR is engaged.

In response to DSRR's complaint that the "website appears to be out of date and insufficient,"¹⁹ it must be noted that Wyly Gilfoil, Executive Director of LPPC, does not have a secretary to whom he can assign the task of preparing the Meeting Minutes and is frequently delayed from doing so by the press of his other duties as the Port Director.

Furthermore, because these are public records that are maintained as a matter of law by the Louisiana Division of Administration, they are readily available for public inspection. LPPC is not hiding behind another agencies' website. The same cannot be said of DSRR's owners who are hiding behind the STB's confidentiality determination to prevent LPPC from viewing the unredacted Stock Purchase Agreement By And Among West Branch Intermediate Holdings, LLC, Delta Southern Railroad, Inc. and Patriot Rail Company LLC. As the Public Version reflects, over 90 percent of the Stock Purchase Agreement has been redacted.²⁰

DSRR's complaints regarding LPPC, et al.'s refusal to produce all communications and Documents with elected officials concerning LPPC's Feeder Line Application, DSRR's service over the Line and LPPC's ability to purchase the Line are frivolous.

¹⁹ *Id.* at p. 16.

²⁰ See F.D. 36642, *Patriot Rail, et al., -- Control Exemption – Delta Southern Railroad, Inc.*, Verified Notice of Exemption, Exhibit E Stock Purchase Agreement (Redacted) filed September 23, 2022.

LPPC, et al. respectfully submit that non-public communications with elected officials are not relevant and are not able to affect the outcome of this proceeding. It is the Board, not members of Congress or members of the Louisiana Legislature, that will decide the outcome of this proceeding. Although the INFRA Grant demonstrates that all levels of government in the States of Louisiana and Arkansas recognize the economic importance of the rehabilitation of the Lake Providence Branch, and that members of the U.S. Senate and the House of Representatives have urged the Board to reach a decision herein, such efforts by correspondence with the Board, which are a matter of public record in this proceeding, have not sought to pressure the Board to reach a particular decision, but, as is apparent on the face of the letters, only to establish a new and timely procedural schedule that will cause the process of considering LPPC's amended application to resume and to govern this proceeding.

Other Irrelevant Discovery Requests.

DSRR's requests for documents related to and communications with the Northeast Louisiana Railroad Development District ("NLRDD") do not involve the Line of railroad that is involved in this proceeding. The NLRDD was formed by a Concordia Parish Police Jury ordinance in May of 2022. Its goal is to promote and encourage the development of rail service running between the Parishes of East Carroll, Madison, Tensas and Concordia, in order to stimulate the economy among the Parishes through renewed commerce and industry,

and for the utilization and development of natural and human resources by providing job opportunities in and among the Parishes.

As part of its mandate, NLRDD intends to acquire the real property that the Missouri Pacific Railroad Company (“MoPac”) sold to Delta Southern Railroad Company in 1989, following MoPac’s abandonment of the Vidalia Branch Line in 1988. The Vidalia Branch Line extended between milepost 498.44 at Tallulah, LA and milepost 651.6 at Vidalia, LA. The abandonment was approved by the Interstate Commerce Commission (“ICC”) and an appropriate certificate was served August 25, 1988, permitting abandonment of that portion of MoPac’s Branch Line. See ICC Decision served September 30, 1988, in Docket No. AB-3 Sub. No. 72, *Missouri Pacific Railroad Company – Abandonment -- In Desha and Chicot Counties, AR, and East Carroll, Madison, Tensas and Concordia Parishes, LA*. MoPac did consummate the abandonment. See letter herein from DSRR to the Board, dated September 2, 2022, at p. 2 n. 2, referring to the line beyond milepost 498.44 as “non-regulated track.”

The abandonment of the Vidalia Branch Line terminated the ICC’s jurisdiction and removed it from the national rail transportation system. See, *Hayfield N.R.R. v. Chicago & N.W. Transp. Co*, 467 U.S. 622. 633, 104 S. Ct. 2610, 81 L. Ed. 2d 527 (1984).

Following Delta Southern Railroad Company’s acquisition of the real property between milepost 498.44 and 651.6 from MoPac on January 19, 1989, Delta Southern Railroad Company made no attempt to seek authority from the ICC or the STB to provide rail transportation over the abandoned Line.

Furthermore, the diamond that had allowed MoPac to cross over what is now known as the Meridian Speedway was removed, thereby severing the rail connection between milepost 498.44 and milepost 498.5.

As part of its efforts to restore rail service between the Louisiana Ports along the Mississippi River, NLRDD is currently in court seeking to acquire, via eminent domain, the stub end of what remains of the Vidalia Branch Line, most of which has been sold by DSRR to adjacent landowners. That effort is being opposed by DSRR.

While DSRR suggests that the property that NLRDD seeks to acquire is “immediately adjoining the Line,” that suggestion is erroneous. As defined by the Eleventh Edition of Merriam-Webster.com, the word “adjoining” “definitely implies meet and touching at some point or line.”

As can be seen on Google Earth, the Meridian Speedway prevents the real property that is on the south side of the Speedway from adjoining the real property on the north side of the Speedway. Moreover, the Meridian Speedway prevents what DSRR described as “non-regulated track” in the above-noted letter to the Board, dated September 2, 2022, in FD 36447, from adjoining the former Lake Providence Branch Line that terminates at MP 498.44 on the north side of the Speedway. Given the fact that the active Line of railroad that terminates at milepost 498.44 is no longer physically connected with the track that NLRDD is seeking to acquire, it cannot be categorized as a spur,

industrial, team, switching, or sidetrack within the definition of 49 U.S.C. § 10906.²¹

As a result, DSRR has entered into agreements with KCS to transport railcars for storage on the track that extends to the south from the Meridian Speedway. Loaded cars that originate or terminate on the Lake Providence Branch Line would not move over the storage track to the south of the Meridian Speedway but would move directly to or from CPKC over the interchange track that extends from milepost 498.44 to the Meridian Speedway.

Respectfully submitted,

/s/ Richard H. Streeter

/s/ Michael F. McBride

Counsel for Lake Providence Port Commission
Southeast Arkansas Economic Development District
North Louisiana and Arkansas Railroad, Inc.

Dated: March 28, 2024

Certificate of Service

It is hereby certified that a true and accurate copy of the foregoing Reply has been served via email on all Parties of Record on the Service List (Including ALJ McCarthy) this 28th day of March 2024.

/s/ Richard H. Streeter

²¹ Prior to 2003, DSRR and the Kansas City Southern Railway (“KCS”), now CPKC, were parties to an agreement, dated July 3, 1903, by and between the Vicksburg, Shreveport & Pacific Railway Company (successor KCS) and the Memphis, Helena & Louisiana Railroad Company (“MH&L”) (successor DSRR) that permitted MH&L to construct, maintain, and operate its railroad track over and across the right of way and railroad track over what is now the Meridian Speedway.