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April 1, 2024

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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

ENTERED
Office of Proceedings
April 1, 2024
Part of
Public Record

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 Reply in Opposition to the Emergency Motion filed on March 11, 2024 by the Lake Providence Port Commission, Northern Louisiana Railroad, and 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.**

**DELTA SOUTHERN RAILROAD, INC.’S REPLY IN OPPOSITION TO EMERGENCY
MOTION FOR RULING BY ALJ MCCARTHY OR, IN THE ALTERNATIVE, FOR
REFERRAL BY ALJ MCCARTHY TO THE BOARD, ON THE SCOPE OF
DISCOVERY PERMITTED AT THIS TIME UNDER THE BOARD’S DECISIONS
DATED NOVEMBER 20, 2023 AND DECEMBER 11, 2023**

Delta Southern Railroad, Inc. (“DSRR”) hereby replies to the Lake Providence Port Commission (“LPPC”), North Louisiana and Arkansas Railroad, Inc. (“NLA”), and Southeast Arkansas Economic Development District (“SEAEDD”)’s (together “LPPC parties”) meritless attempt to limit DSRR’s right to conduct discovery to prepare its defense against LPPC’s Amended Feeder Line Application. LPPC is seeking to forcibly acquire DSRR’s rail line, which DSRR actively uses to serve customers and in which it has invested to ensure such service. LPPC should not be permitted to prosecute this case against DSRR while LPPC, at the same time, frustrates DSRR’s attempts to discover highly relevant evidence in aid of its defense. There is no emergency, here—only LPPC’s dilatory tactics. LPPC’s emergency motion should be denied, and DSRR’s motions to compel should be granted.¹

¹ DSRR will not burden these filings, as the LPPC parties have, with arguments about the merits of LPPC’s Amended Feeder Line Application. DSRR looks forward to providing a full defense against the LPPC parties’ allegations that DSRR provides inadequate service, among other points. Suffice it to say at this time that DSRR, through its new owner Patriot Rail, moves more than 1,000 rail cars/year over the Line and has invested over \$400,000 in upgrades on the Line alone. It is unclear whether the LPPC parties could not say the same for direct investment they have made in the rail lines they own and operate.

DSRR is fully entitled to discovery at this time, based on clear regulations governing discovery in this matter, and there is no reason to seek clarification from the Board. The Board's regulations and its organic statute, specifically 49 C.F.R. § 1114.21(a)(1) and 49 U.S.C. § 10907(c)(1), affirm that DSRR has the right to comprehensive discovery on all relevant issues without needing prior Board approval. Additionally, 49 C.F.R. § 1114.21(d) clarifies that DSRR's discovery process is not to be constrained by the sequencing or timing of any other party's discovery actions, allowing DSRR to use any discovery methods it chooses, in any order.

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 Co., LLC v. BNSF Ry. Co.*, NOR 42179, 2023 STB LEXIS 145 at *7 (STB decided Aug. 4, 2023). Indeed, a close look at STB orders in feeder line cases reveals that its procedural schedules in feeder line cases do not even mention discovery. And, the Board has done nothing to alter the generally applicable discovery rules applicable to DSRR in this matter. While the Board’s feeder line regulations *do* limit the timing and sequence of discovery by the Applicant, those rules say nothing that limits DSRR’s rights, and the general rules apply. *See* 49 C.F.R. § 1151.2(d) (setting out limited procedures for the *Applicant*, not other parties, to conduct discovery when filing its feeder line application). LPPC argues that these special procedures for Applicants must limit DSRR’s discovery rights; however, it cites no rule or Board decision to support that position—only its own say so.²

Despite the clear language of the Board’s regulations governing discovery, Applicant LPPC and its allied parties, NLA and SEAEDD, continue to obstruct DSRR’s right to discovery

² *See* Joint Reply of LPPC, SEAEDD, and NLA to DSRR’s Motions to Compel, FD No. 36447 (filed Mar. 28, 2024) (failing to cite any regulation or case that alters DSRR’s right to pursue discovery under the STB’s generally-applicable discovery rules) (“Joint Reply”).

in this case—a case initiated by LPPC and to which NLA and SEAEDD each voluntarily chose to become a party. This refusal to provide discovery is a continuing obstructionist behavior of at least NLA, whose prior attempts to avoid discovery were rejected by the Board. *See Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, La.*, FD 36447, at 3-4 (STB decided May 27, 2021) (“[T]he Board finds that NLA has participated as a party in this proceeding and that there is no basis for granting NLA relief from discovery on the ground that it is not a party.”) (Attached as Verified Statement of Katherine Pollard, **Exhibit A**). This holding by the Board settles the question of whether NLA—and SEAEDD—are entitled to relief from discovery generally. They are not; LPPC, NLA, and SEAEDD are all parties to the proceeding.

The LPPC parties’ sole basis for objecting to discovery at this time is a strained and wishful reading of the Board’s November 20, 2023 and December 11, 2023 decisions—decisions that addressed only LPPC’s ability to conduct valuation discovery after it had filed a purportedly complete application. Neither of those decisions addressed, specifically or generally, DSRR’s right to conduct discovery. And, moreover, the LPPC parties’ conduct in this proceeding has contradicted their new argument repeatedly, lending it little credibility.

Indeed, when it was convenient for NLA, it previously argued that the current procedural posture is precisely when DSRR should serve discovery – when the Board has conditionally accepted the Amended Application, and before any procedural schedule has been entered. Now, the LPPC parties (all represented by the same counsel and including NLA), criticize DSRR for seeking discovery too soon. But they provide no valid argument to explain how the Board, without saying so, stayed DSRR’s discovery of any of the LPPC parties. Tellingly, the underlying motion wholly fails to address the aforementioned Board regulations that govern discovery, the prior

positions taken by the LPPC parties, or the prior rulings in this docket, highlighting that there is no valid argument DSRR cannot conduct discovery at this time.

The LPPC parties are all parties to this proceeding. DSRR necessarily must be allowed to challenge their claims as to both DSRR's rail service as well as each statutory factor of the public convenience and necessity test under 49 U.S.C. § 10907(c)(1), as well as to challenge whether LPPC is a "financially responsible" party under 49 U.S.C. 10907(a). To do so, DSRR must conduct discovery and is entitled to full and complete responses from each of the LPPC parties.

I. BACKGROUND ON DISCOVERY

LPPC filed its initial application on November 12, 2020. After LPPC's continual filing of supplemental applications attempting to change the case, the Board stopped the proceeding in a decision of August 8, 2022, and allowed LPPC to file the Amended Application, provided that it "shall contain the information specified in 49 C.F.R. § 1151.3 in a single submission that consists of a full application with supporting exhibits, without incorporating by reference the initial application or any other filings." *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, La.*, FD 36447 at 4 and 10 (STB decided Aug. 23, 2022) (Attached as Verified Statement of Katherine Pollard, **Exhibit B**). LPPC filed its amended feeder line application ("Amended Application") on January 4, 2023, starting this matter anew and seeking a different rail line than the initial application sought to obtain through a government forced-sale.

To date, in the initial proceeding and the current proceeding over the Amended Application (which, again, is about a different line segment than the original application and therefore the scope of necessary discovery is different), LPPC and NLA have produced only a modest number of documents to date in response to requests for discovery served with regard to the original

application (about 493 and 199 pages of documents, respectively), and even fewer with respect to the requests propounded based on the amended application (zero and eighteen pages of documents, respectively). SEAEDD has produced nothing. By contrast, DSRR, a small Class III railroad, has produced since January of 2024 more than 11,794 pages of documents in response to LPPC's discovery requests related only to valuation of the Line.

The LPPC parties' attempts to avoid discovery are not new and have been rejected by the Board. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.*, FD 36447 at 4 (STB decided May 27, 2021) (finding “that NLA has participated as a party in this proceeding and that there is no basis for granting NLA relief from discovery on the ground that it is not a party. Nor has NLA pled any facts to support a finding that protection is warranted on grounds of ‘annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding,’ under the standard prescribed in § 1114.21(c)”) (Verified Statement of Katherine Pollard, **Exhibit A**).

The Board issued an order in—what it called—“[t]his proceeding” on November 20, 2023 that 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.”). The issue of DSRR taking discovery was not before the Board. The issue was whether LPPC, as the Applicant, was entitled to valuation discovery after it had claimed its application was complete. The Board ruled that it was because LPPC’s Amended Feeder Line Application was not final, even though conditionally accepted. 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.

That order did not address in any way DSRR’s right to take discovery of LPPC or NLA or SEAED, much less suspend the Board’s generally applicable rules of 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.) (emphasis added).

DSRR served discovery requests pertaining to the amended application on January 3, 2024. Subsequently, counsel for each of LPPC, NLA, and SEAEDD, respectively, began sending emails to Judge McCarthy seeking a quick decision to delay discovery by asserting a meritless argument that they now do not have to participate in discovery. DSRR filed Motions to Compel Discovery Responses from LPPC, NLA, and SEAEDD on March 8, 2024, as the proper way to resolve the dispute.³ Those motions are pending. The LPPC parties filed the underlying “emergency” motion for clarification on March 11, 2024 (“Motion for Clarification”).

ARGUMENT

I. DSRR Is Entitled to Conduct Discovery at this Time.

The Board’s regulations govern discovery and clearly provide that the relevant discovery DSRR seeks is appropriate at this time.⁴ Specifically, DSRR is permitted to discovery “regarding

³ DSRR has filed proper motions to compel against each of LPPC, NLA, and SEAEDD, separately. The appropriate process is for each to respond to the motion to compel filed against it – notwithstanding LPPC, NLA, and SEAEDD’s attempts to avoid putting each of their respective positions on the record by “jointly requesting ALJ McCarthy to schedule a conference as soon as possible to discuss the merits of their responses . . .” Motion for Clarification at 2.

⁴ See DSRR’s Motions to Compel LPPC, NLA, and SEAEDD’s discovery responses for a full discussion of the highly relevant discovery DSRR seeks.

any matter, not privileged, which is relevant to the subject matter involved in a proceeding,” 49 C.F.R. § 1114.21(a)(1). Feeder line cases are “required to be determined on the record after hearing,” and thus are not informal proceedings for which the Board does not automatically permit discovery. *See id.*; 49 U.S.C. § 10907(c)(1) (discussing Board consideration of criteria “after a hearing on the record”). Indeed, the Board’s regulations are clear that “[a]ll discovery procedures may be used by parties *without* filing a petition and obtaining prior Board approval.” 49 C.F.R. § 1114.21(b) (emphasis added). Furthermore, DSRR’s ability to conduct discovery is not limited in anyway by the sequencing or timing of LPPC’s discovery, including as related to valuation issues. *See* 49 C.F.R. § 1114.21(d) (“[M]ethods 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”) (emphasis added).

First, the LPPC parties waived their objections regarding the timing of discovery by partially responding to DSRR’s discovery – although not conducting a reasonable search, providing inadequate responses, improperly relying on discovery from other parties, and failing to produce material likely to lead to admissible evidence.

Even if not waived, the LPPC parties’ claim that the Board’s November 20, 2023 Order, as well as later orders, restricts DSRR’s right to conduct discovery is unfounded. There, the Board decided LPPC was allowed to conduct valuation discovery even though LPPC had already claimed its application was complete. That dispute turned on specific regulations that govern discovery *by Applicants* in feeder line cases, not the respondent. *Compare See* 49 C.F.R. § 1151.2(d) (setting out limited procedures for the *Applicant*, not other parties, to conduct discovery when filing its feeder line application); 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.”). The appointment of Judge McCarthy for managing discovery disputes further confirms the Board's expectation for DSRR to conduct its discovery separately and at this time. Nov. 20 Order at 17 (Ordering Paragraph 6) (“[t]his proceeding is assigned to Judge McCarthy for the handling of all discovery matters and initial resolution of all discovery disputes”). The Board’s setup for resolving discovery matters, extending beyond LPPC’s valuation discovery, clearly indicates that DSRR’s right to discovery under the Board’s regulations remains intact and unaltered in this proceeding.

Moreover, the LPPC parties timing of discovery argument is contradictory to at least NLA’s prior position. See Mot. Seeking Entry of Protective Order Requested by NLA at 20, FD 36447 (Feb. 18, 2021). Then, the case had the following posture:

- The initial application, filed on November 12, 2000, in which LPPC sought to acquire a different segment of DSRR’s Lake Providence line, was conditionally accepted by the Board upon LPPC correcting the application’s deficiencies. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.*, FD 36447 (STB decided Dec. 11, 2020) (Attached as Verified Statement of Katherine Pollard, **Exhibit C**).
- The application was finally accepted on January 11, 2021. *Lake Providence Port Comm.— Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.*, FD 36447 (STB decided Jan. 11, 2021).
- Less than four weeks later, NLA attempted to shut down DSRR’s discovery efforts claiming – DSRR waited too long to seek discovery. On February 18, 2021, NLA filed a motion for protective order under 49 C.F.R. § 1114.21(c), seeking relief from responding to certain interrogatories served by DSRR on February 5, 2021, on the grounds that NLA is not a party to this proceeding, and asserting other various objections. See Mot. Seeking Entry of Protective Order Requested by NLA at 20, FD 36447 (Feb. 18, 2021) (“In seeking expedited consideration, it is duly noted that DSR waited nearly three full months after LPPC’s Feeder Application was filed and nearly two full months after the Board found that the Application was substantially complete and conditionally accepted the Application to serve its Interrogatories.”).
- On February 26, 2021, DSRR responded in opposition to the motion for protective order and also filed a petition for issuance of a subpoena under 49 C.F.R. § 1113.2.

- On March 9, 2021, the STB suspended the procedural schedule. *Lake Providence Port Comm.— Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (STB decided Mar. 9, 2021) (Attached as Verified Statement of Katherine Pollard, **Exhibit D**).
- The Board ruled against NLA on all issues on May 27, 2021. “[T]he Board finds that NLA has participated as a party in this proceeding and that there is no basis for granting NLA relief from discovery on the ground that it is not a party. Nor has NLA pled any facts to support a finding that protection is warranted on grounds of “annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding,” under the standard prescribed in § 1114.21(c).” *Lake Providence Port Comm.— Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 at 4 (STB decided May 27, 2021) (Verified Statement of Katherine Pollard, **Exhibit A**).

In short the LPPC parties are all parties to this proceeding and their prior efforts to argue that discovery from DSRR was untimely or burdensome were rejected. Now, NLA (together with LPPC and SEAEDD) seek to argue that DSRR’s discovery is too soon.

The punchline is this: the LPPC parties cannot have it both ways by claiming, when the original application was pending, that DSRR was too late by serving discovery after the procedural schedule was entered, and now arguing DSRR is too early because there is not a procedural schedule. This proceeding commenced with LPPC’s filing of the Amended Application (seeking a different rail line than the initial application and restarting the process over) and supported by NLA and SEAEDD, and DSRR has been entitled to conduct discovery from that time regarding all issues in this new case.

Finally, there is nothing magical about a procedural schedule as the LPPC parties imply. 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, NOR 42179, 2023 STB LEXIS 145 at *7 (STB decided Aug. 4, 2023).⁵

In fact, procedural schedules issued by the Board in feeder line cases usually do not even discuss discovery – because the Board’s standard rules, recited above, apply to the responding parties. See *e.g.*, *KCVN, LLC and Colorado Pac. R.R., LLC—Feeder Line Application—Line of V and S Ry., LLC, Located in Crowley, Pueblo, Otero, and Kiowa Counties, Colorado*, F.D. No. 36005 (STB Decided April 12, 2016); *Oregon Int’l Port of Coos Bay—Feeder Line Application— Coos Bay Line of the Cent. Oregon & Pac. R.R., Inc.*, F.D. No. 35160 (STB Decided July 31, 2008).

II. LPPC Cannot Avoid Discovery By Claiming DSRR’s Highly Relevant Requests Are “Unduly Burdensome.”

In the emergency motion, the LPPC parties argue that DSRR’s discovery is “unduly burdensome” and the issues are untimely. In a letter to Judge McCarthy and counsel on March 8,

⁵ The LPPC parties use the *Navajo* decision to argue parties can only start discovery before a procedural schedule is issued in instances where the Board does not have to “preliminarily accept the complaint.” Joint Reply at 8. However, the decision does not state or suggest such a limitation on starting discovery before a procedural schedule is issued. See *Navajo Transitional Energy Company, LLC v. BNSF Railway Company*, NOR 42179 (STB decided Aug. 4, 2023). The decision came after BNSF appealed the Board’s issuance of a procedural schedule that they argued would not permit BNSF to conduct discovery to fully develop the record. The relevant portion of the decision reads as a broadly applicable statement that the Board’s regulations support discovery before a procedural schedule, citing the very regulations DSRR has used to support its position:

[T]he Board's regulations do not prevent parties from starting discovery before a procedural schedule is issued. “All discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.” See 49 C.F.R. § 1114.21(b). Parties conduct discovery in Board proceedings without Board involvement unless a dispute arises. See 49 C.F.R. § 1114.21(f) (“Unless otherwise ordered by the Board, . . . depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, shall be served on other counsel and parties, but shall not be filed with the Board”); 49 C.F.R. § 1114.31 (procedures addressing failure to respond to discovery).

Navajo, slip op. at 4. Furthermore, as the LPPC parties themselves note, there was a previous procedural schedule in this case and the parties have already exchanged discovery, with DSRR, at least, continuing to produce documents to comply with its obligations.

2024, LPPC suggested it should be exempt from fully complying with discovery given its status as a public entity and because “the taxpayers who support [LPPC] should not be required to pay for fees and the costs of experts who are assisting LPPC, et al. with the valuation and other issues.” Letter from Richard H. Streeter attached as Verified Statement of Katherine Pollard, **Exhibit E**. This argument is unavailing, as LPPC chose to initiate the proceeding.⁶ LPPC cannot claim an undue burden to comply with its discovery duties necessitated by a complicated feeder line application (with the Amended Application, which is its second application, expanding the scope of the case) that it chose to pursue. It is not entitled to special treatment; it initiated this proceeding and DSRR is entitled to discovery to defend itself against the loss of its operated, common carrier, rail line over which it actively provides more than adequate service to rail customers and in which it is actively investing.

LPPC has also contended that DSRR's document requests spanning seven years are "unduly burdensome in the extreme." Joint Reply at 3. Yet, this argument starkly contrasts with LPPC's own actions, as it has issued similar discovery requests for the exact same period—from January 2017 to the present. And, unlike the LPPC parties, DSRR has responded in good faith to the discovery requests, producing over 11,794 documents to date. Labeling DSRR's reciprocal requests as unduly burdensome suggests a double standard where LPPC seeks extensive documentation from DSRR for the exact same time period.

Moreover, the discovery DSRR seeks is all highly relevant and not unduly burdensome. 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). As fully

⁶ LPPC initiated and continues to pursue its Amended Application notwithstanding that serious questions remain about whether LPPC even has authority to pursue it, an issue DSRR has raised in Louisiana state court.

shown in DSRR's Motions to Compel, the discovery requests all pertain to these statutory factors. Additionally, DSRR tries to simplify discovery with respect to certain requests. For example, DSRR offered to reduce the burden on requests pertaining to the INFRA grant included in LPPC's application. DSRR even offered to withdraw the request related to the INFRA grant if the LPPC parties withdrew all references to it in the Amended Application and supporting documents.⁷

However, the LPPC parties stopped responding and now seek to avoid discovery altogether through the string of improper emails to Judge McCarthy that has now culminated in the underlying motion.

Clearly, this is not about the burden of discovery nor about the timing of discovery. The LPPC parties simply wish not to answer discovery. They seek to avoid a proper search of all hardcopy and electronic files and communications. They seek to avoid providing communications regarding the INFRA grant and their other attempts to secure funding. They seek to avoid producing documents that might undermine its public convenience and necessity claims. It is a basic principle in litigation that parties have obligations to respond to discovery. None of the LPPC parties are special in that regard.⁸

CONCLUSION

The issue here is a straight-forward one that does not need referral to the Board. The Board's rules are clear. DSRR is entitled to use the tools of discovery, use them in any order, and

⁷ LPPC devoted an entire section of its Amended Application to a discussion of that grant alone. SEAEDD's verified statement discussed nothing but that grant. Relevant Excerpts of the Amended Application are attached as Verified Statement of Katherine Pollard, **Exhibit F**.

⁸ It is axiomatic that government entities like LPPC, particularly when they are the plaintiff, are subject to the rules of discovery. The basic principle that "[t]he Government as a litigant is, of course, subject to the rules of discovery" is so obvious that the United States Supreme Court in making this statement did not feel the need to cite anything. *U.S. v. Proctor & Gamble Co.*, 356 U.S. 677 (1958).

use them before a procedural schedule is issued. Moreover, it is entitled to full and complete responses to each of its relevant discovery requests to each of the LPPC parties, separately. As argued fully in DSRR's three Motions to Compel, the responses it received to its discovery requests pertaining to the amended feeder line application proceeding were entirely insufficient and improperly relied on previous productions without identifying any documents.⁹

Under the Board's rules, DSRR is entitled to obtain discovery from each of LPPC, NLA, and SEAEDD now and to use the tools of discovery in any sequence it sees fit. Accordingly, DSRR respectfully requests an order that DSRR is entitled to discovery and that each of LPPC, NLA, and SEAEDD must respond fully, separately, and completely to DSRR's relevant discovery requests.

Respectfully submitted,

/s/ Noah P. Sullivan
John M. Scheib
Noah P. Sullivan
Jasdeep S. Khaira
Katherine E. Pollard
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757-916-3511

Attorneys for: Delta Southern Railroad, Inc.
Dated: April 1, 2024

⁹ DSRR reiterates its request in the Motions to Compel that LPPC, NLA, and SEAEDD be required to Bates number all previously produced documents referenced in their responses as it is wholly unclear what documents they variously refer to in their responses.

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

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/s/ Noah P. Sullivan

Noah P. Sullivan

Dated: April 1, 2024

**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.**

EXHIBITS AND VERIFICATION

1. My name is Katherine Pollard, and I am an attorney at Gentry Locke Attorneys.
2. Attached as **Exhibit A** is a true and correct copy of *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, La.*, FD 36447 (STB decided Aug. 23, 2022).
3. Attached as **Exhibit B** is a true and correct copy of *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 at 4 (STB decided May 27, 2021).
4. Attached as **Exhibit C** is a true and correct copy of *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.*, FD 36447 (STB decided Dec. 11, 2020).
5. Attached as **Exhibit D** is a true and correct copy of *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 (STB decided Mar. 9, 2021).
6. Attached as **Exhibit E** is a true and correct copy of a letter sent from Richard H. Streeter to Judge McCarthy on March 8, 2024.
7. Attached as **Exhibit F** are true and correct excerpts from LPPC’s Amended Application, with relevant portions highlighted.

/s/ Katherine E. Pollard

Katherine E. Pollard
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EXHIBIT A

SERVICE DATE – JUNE 1, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

Digest:¹ The Board denies a motion for protective order, denies as moot a related petition for issuance of a subpoena, and directs the parties to confer and report to the Board on any remaining discovery issues. The Board also denies two motions to strike and directs the parties to inform the Board whether they are interested in pursuing Board-sponsored mediation.

Decided: May 27, 2021

This case involves an application by a state entity to acquire an inactive rail line through a Board-ordered sale. To prepare its response to the application, the railroad that owns the line pursued discovery from the state entity's proposed operator for the line, which also operates a segment adjoining the line. This triggered numerous filings and led the Board to place the procedural schedule in abeyance pending further Board order. This decision resolves certain discovery issues, directs the parties to report to the Board the status of any remaining discovery issues, denies two motions to strike, and directs the parties to inform the Board whether they will participate in Board-sponsored mediation. A pending motion to dismiss will be addressed in a separate decision.

BACKGROUND

On November 12, 2020, Lake Providence Port Commission, a noncarrier political subdivision of the State of Louisiana (LPPC or Applicant), filed an application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire from Delta Southern Railroad, Inc. (DSR), a 20-mile rail line between milepost 471.0 and milepost 491.0, together with various ancillary tracks, in East Carroll and Madison Parishes, La. (the Line), for future operation by North Louisiana & Arkansas Railroad (NLA). (Appl. 1-3, 5.)² Concurrently, LPPC and SEAEDD filed a petition

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The application explains that the Line is one segment of the 91.3-mile McGehee-Tallulah Railroad Corridor (the Corridor), which runs from milepost 408.9 in McGehee, Ark., to

seeking expedited consideration and acceptance of LPPC's application prior to submission of evidence regarding the Line's valuation. DSR filed a reply in opposition to the petition to expedite on December 2, 2020, and stated that it would respond to the application, if accepted, in accordance with the procedural schedule set by the Board. (DSR Reply 1, Dec. 2, 2020.)

By decision served December 11, 2020 (December 11 Decision), the Board found that the application was substantially complete, except for the absence of information pertaining to the net liquidation value (NLV) of the Line, and conditionally accepted the application subject to Applicant's submission of an NLV estimate and supporting information by December 28, 2020. December 11 Decision, FD 36447, slip op. at 1-2. The Board also stated that LPPC should submit a copy of any contract with NLA pertaining to the Line as soon as the parties reach an agreement. Id. at 6 n.17.

On December 22, 2020, LPPC submitted an estimate of the NLV and supporting evidence, along with the lease agreement between LPPC and NLA that would govern NLA's operation of the Line. By decision served January 15, 2021, the application was accepted and a procedural schedule was adopted, under which verified statements and comments addressing the application were due March 16, 2021, and verified replies were due April 5, 2021.

On February 18, 2021, NLA filed a motion for protective order under 49 C.F.R. § 1114.21(c). On February 26, 2021, DSR filed a response in opposition to NLA's motion and a petition for issuance of a subpoena under 49 C.F.R. § 1113.2. NLA filed a reply on March 1, 2021, in opposition to DSR's petition for issuance of a subpoena.

On March 2, 2021, DSR filed a motion to dismiss and request to hold the proceeding in abeyance pending disposition of the dismissal motion and unresolved discovery issues. On March 5, 2021, LPPC, SEAEDD, MPPC, and NLA (collectively, the Project Participants) filed a reply in opposition to DSR's motion, jointly requesting that the Board deny all relief requested

milepost 500.2 in Tallulah, La. (Appl. 1.) According to the application, LPPC and NLA jointly own the northernmost segment extending from milepost 408.9 to milepost 433.0 at Lake Village, Ark. Southeast Arkansas Economic Development District (SEAEDD), a noncarrier, owns the segment between milepost 433.0 and milepost 454.8 at or near the Louisiana/Arkansas border. LPPC owns the segment between milepost 454.8 and milepost 471.0, at or near Lake Providence, East Carroll Parish, La. DSR owns the segment that extends from milepost 471.0 to approximately milepost 500 at Tallulah, La. (Id. at 6-7; but see, e.g., id. at 1 (stating that the end milepost for DSR's segment is 500.2).) NLA currently operates all segments of the Corridor not owned by DSR. (See id. at 3, 6.)

According to the application, an Infrastructure for Rebuilding America (INFRA) grant for restoration of the Corridor was awarded to SEAEDD on behalf of a public-private partnership composed of SEAEDD, LPPC, the Madison Parish Port Commission (MPPC), NLA, and DSR, (Appl. 2, 10-11), and grant funds are to be used to reopen the entire Corridor (the Project), including the Line at issue, which is currently impassable, (id. at 2). LPPC asserts that it filed the application because DSR has refused to commit the funds needed to restore the Line, and that the proposed acquisition is therefore necessary to realize the goal of reopening the entire Corridor. (Appl. 2, 4-5; id. Ex. 3, V.S. Hargrove ¶¶ 13-16; id. Ex. 6, V.S. Gilfoil ¶¶ 13-14.)

by DSR. On March 8, 2021, DSR filed a motion to strike the March 5 reply. By decision served March 9, 2021, in light of the numerous recent filings and the upcoming March 16, 2021 deadline for submission of verified statements and comments addressing the application, the procedural schedule was suspended pending further Board order.

The Project Participants responded on March 12, 2021 to DSR's motion to strike. On March 22, 2021, DSR requested leave to file and filed a reply to the Project Participants' March 12 response. On March 24, 2021, the Project Participants filed a motion to strike the March 22 reply, to which DSR responded on March 26, 2021.

DISCUSSION AND CONCLUSIONS

As discussed below, the Board will deny NLA's motion for a protective order and will deny as moot DSR's related petition for issuance of a subpoena. The parties will be directed to confer and report to the Board on any remaining discovery issues by June 15, 2021. DSR's motion to strike the response to its motion to dismiss, and the Project Participants' motion to strike DSR's March 22 reply, will be denied. Finally, the parties will be directed to inform the Board by June 15, 2021, whether they will participate in Board-sponsored mediation. The pending motion to dismiss will be addressed in a separate decision.³

Discovery Issues. In its February 18, 2021 motion for a protective order filed under 49 C.F.R. § 1114.21(c), NLA sought relief from responding to certain interrogatories served by DSR on the grounds that NLA is not a party to this proceeding and, in addition, asserted various relevance, burden, and confidentiality objections. (NLA Mot. for Protective Order 2-3.) However, NLA thereafter joined the pleading filed in opposition to DSR's motion to dismiss. (See Project Participants Reply 1, 18, Mar. 5, 2021.) In addition, as the first exhibit of that pleading, NLA submitted a document styled "Supplemental Response to [DSR's] First Set of Interrogatories Nos. 1 through 6," which contains information pertaining to the interrogatories NLA had previously refused to answer and states that copies of all emails reflecting the referenced conversations would be produced under seal. (Project Participants Reply 3-7, Ex. NLA Suppl. Response 1-2, Mar. 5, 2021.)⁴

In these circumstances, the Board finds that NLA has participated as a party in this proceeding and that there is no basis for granting NLA relief from discovery on the ground that it

³ On May 11, 2021, LPPC filed a pleading styled "Supplementary New Evidence and Legal Argument," which will also be addressed in a separate decision, along with any reply filed by DSR, as described below.

⁴ Furthermore, as DSR has noted, NLA purports to have an interest in establishing an active interchange at its point of connection with DSR, and LPPC has designated NLA as the proposed operator of the Line if the application is approved. (See DSR Pet. for Subpoena 2-3; Appl. 5, 18-19; *id.* Ex. 4, V.S. Robbins ¶¶ 7-8.)

is not a party.⁵ Nor has NLA pled any facts to support a finding that protection is warranted on grounds of “annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding,” under the standard prescribed in § 1114.21(c). In its motion for protective order, NLA did raise various relevance, burden, and confidentiality objections. These remaining disputes are more appropriate for resolution by the parties through a meet-and-confer conference (as discussed below) if possible, and if not, through Board resolution under the process prescribed in 49 C.F.R. § 1114.31.⁶ Accordingly, NLA’s motion for a protective order under § 1114.21(c) will be denied. In light of the Board’s finding that NLA has participated as a party and the resulting denial of NLA’s motion for a protective order, DSR’s petition for issuance of a subpoena will be denied as moot.

In its discovery filings, DSR states that it had offered to confer with NLA on discovery issues. (DSR Reply 2, Feb. 26, 2021; see also DSR Pet. for Subpoena, Ex. A.) Because it appears that the parties have not yet conferred on the issues raised in NLA’s motion and DSR’s reply, they will be directed to confer on these and any other discovery issues, and to report to the Board by June 15, 2021, on the status of any remaining discovery issues in the case.⁷

DSR’s Motion to Strike. As noted above, on March 2, 2021, DSR filed a motion to dismiss the application (which the Board will address in a separate decision), to which the Project Participants responded on March 5, 2021. On March 8, 2021, DSR moved to strike the response, asserting that it impermissibly sought “to introduce new allegations and argument into the record in a manner that is procedurally prejudicial to DSR” due to the then-impending

⁵ The Board further notes that, while unnecessary to utilize here because NLA has already been participating as a party, the Board has the authority to direct persons to participate as a party in a proceeding. See 49 C.F.R. § 1101.2(d); Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087, slip op. at 4 (STB served Feb. 22, 2008) (directing entities that were integral to proposed transaction to participate as parties).

⁶ NLA’s concern about producing commercially sensitive information can be addressed by entry of a protective order under 49 C.F.R. § 1104.14 that limits the dissemination of such information and requires its filing under seal. The Board also notes that, based on NLA’s subsequent filings, its relevance and burden objections may have been resolved. (Compare, e.g., NLA Mot. for Protective Order 5-8 (objecting to relevance and burden of providing information sought in Interrogatories 1 through 6 for last six years) with Project Participants Reply, Ex. NLA Suppl. Response 1-5, Mar. 5, 2021 (providing responsive information including from 2016).) Additionally, the Board notes that NLA did not object to DSR’s related document request and that NLA has stated that it would produce copies of all emails reflecting conversations described in the supplemental responses. (Project Participants Reply, Ex. NLA Suppl. Response 1-2, Mar. 5, 2021.)

⁷ See CF Indus., Inc. v. Kaneb Pipe Line Partners, L.P., NOR 42084, slip op. at 2 (STB served Nov. 23, 2004) (“[T]he parties should discuss and attempt to resolve the disputed discovery requests. As a general rule, the Board expects parties to try to resolve their differences on their own before involving the Board.”); Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 2 (STB served Apr. 3, 2015) (directing the parties, who had not yet conferred, to meet and confer on discovery issues).

deadline for DSR's substantive filing in response to the application. (DSR Mot. to Strike 1, 3.) In the alternative, DSR asks the Board to strike the additional evidence and argument included in the reply, which, in DSR's view, were submitted to "shore up the fatal deficiencies" in the application. (*Id.* at 1, 3, 7.) The Project Participants responded to the motion to strike on March 12, 2021. The response contends that DSR's claims of procedural prejudice have been mooted by the Board's March 9, 2021 order suspending the procedural schedule; disputes DSR's claim that the application failed to articulate any DSR service inadequacy; and asserts that respondents should be permitted to address arguments that could lead to the dismissal of the application if not rebutted. (Project Participants Reply 1-3, Mar. 12, 2021; *see also id.* at 5-6, 13 (stating that the new material is responsive to arguments raised in DSR's motion to dismiss).)

The Board will deny the motion to strike. DSR's claims that the response to its motion to dismiss and the material in question are "highly prejudicial" new arguments and evidence, (DSR Mot. to Strike 3), are not persuasive. Although DSR contends that the evidence and argument are "new," it also describes them as "cumulative." (*Id.*) The Board agrees. In the application, LPPC alleged that DSR had "repeatedly refused to come to the interchange point at the Port of Lake Providence" and gave examples of such refusals. (Appl. 18-19.) In their reply to the motion to dismiss, the Project Participants elaborated on this point by giving additional examples of shippers unable to move traffic over the Line because DSR has refused to maintain the Line or an active interchange. (Project Participants Reply 1-2, 5-7, 13-14, Mar. 5, 2021). Given the cumulative nature of the new evidence, DSR has not shown how it is prejudiced by it. Indeed, in DSR's own view, the new "cumulative" evidence pertains only to overhead traffic and thus fails to undermine DSR's main point, namely that "the Line has no customers, and no shippers that use the Line (there are none, currently) have alleged, much less demonstrated, inadequate DSR service." (DSR Mot. to Strike 4.) Moreover, because the procedural schedule has been suspended, DSR will have sufficient time to prepare a substantive response to this material in advance of any rescheduled date for the submission of opening comments on the application, should the matter not be resolved by mediation or otherwise dismissed.⁸ In these circumstances, the Board finds that the motion to strike should be denied.⁹

The Project Participants' Motion to Strike. On March 22, 2021, DSR requested leave to file and filed a reply to the Project Participants' March 12 response to DSR's motion to strike. According to DSR, it filed the reply "to defend itself against procedural abuse" and "to rebut false claims that DSR is unable and unwilling to handle through traffic in interchange with [NLA]." (DSR Reply 1 n.1, Mar. 22, 2021.) DSR argues that the joinder of NLA and MPPC in recent pleadings filed on Applicant's behalf prejudices DSR, (*id.* at 1-2), reiterates that DSR is

⁸ If, after the parties meet and confer, DSR believes it has a legitimate need for additional discovery or briefing concerning the alleged new arguments and evidence, it may so advise the Board in the report on the status of any remaining discovery issues.

⁹ The case that DSR cites in support of its motion to strike is inapposite. Although a motion to strike was granted in Union Pacific Railroad—Abandonment—Wallace Branch, Idaho, 9 I.C.C.2d 496 (1993), the agency made no finding of prejudice. *See id.* at 496-97 n.2. In any event, as DSR acknowledges, the movant there claimed prejudice "due to the insufficient time to be able to respond substantively" to the new material that had been presented. (*See* Mot. to Strike 3 n.1.)

willing and able to interchange traffic with NLA, (*id.* at 3-4), and additionally claims that “no such requests [to move traffic via the DSR-NLA interchange] have arisen to DSR’s knowledge in the recent past,” (*id.* at 3). The Project Participants moved to strike, contending that DSR’s March 22 reply repeats arguments raised in its earlier motions and that DSR’s claims of prejudice have no merit. (Project Participants Mot. to Strike 1-3, Mar. 24, 2021.)

In the interest of having a complete record, the Board will accept DSR’s March 22 reply and deny the March 24 motion to strike. However, the Board disagrees with DSR’s claims that it has been prejudiced by NLA and MPPC’s appearances in this proceeding in recent pleadings. With respect to NLA, DSR’s concern that NLA “has invoked non-party status” with respect to discovery requests, (*see* DSR Reply 2, March 22, 2021), has been addressed in this decision. With respect to MPPC, DSR argues that prejudice arises because it is unclear whether DSR “would have a full and fair opportunity to undertake discovery of MPPC.” (*Id.*) The Board disagrees. MPPC’s involvement in the Corridor restoration project has been known to DSR from the outset. (*See* Appl. 8 (identifying MPPC as a Project partner); *id.* Ex. 7 (V.S. Murphy [Executive Director, MPPC]).) DSR could have sought discovery from MPPC (as it did from NLA) but chose not to do so and instead sought discovery only from the other Project partners (LPPC, SEAEDD, and NLA). Moreover, the recent pleadings in which MPPC has joined contain no evidence or argument about MPPC.¹⁰ In short, DSR has not shown that MPPC’s joinder in these pleadings has prejudiced DSR, or that DSR must be afforded additional time to take discovery if NLA’s or MPPC’s joinder is permitted.

Board-Sponsored Mediation. In its March 8, 2021 motion to strike, DSR contends that “DSR is currently willing and able to accommodate DSR-NLA interchange if so requested,” (DSR Mot. to Strike 5), and states that “DSR could provide overhead service (notwithstanding that no one has requested service for some time), even with the car storage business that DSR accommodates over a portion of the inactive Line,” (*id.*).¹¹ In addition, DSR notes, in its motion to dismiss, that options available to LPPC to advance its vision for the Corridor could include “negotiations with DSR to explore arrangements that are mutually advantageous to both parties.” (Mot. to Dismiss 10.) Similarly, the application indicates that DSR expressed interest in working with LPPC to try to “come up with a creative solution to sell a portion of the right of way to the port” in August 2020, to which LPPC appears not to have replied. (Appl. 17; *id.* Ex. 6, V.S. Gilfoil ¶ 10.) At the same time, the application asserts, and the Project Participants continue to contend, that DSR has refused to maintain the Line and to accept interchanges. (*See, e.g.*, Appl. 14, 18-19; *id.* Ex. 4, V.S. Robbins ¶¶ 7-8; *id.* Ex. 6, V.S. Gilfoil ¶¶ 13-14; Project Participants Reply 4, 9, Mar. 12, 2021.) According to the application, LPPC perceived that it had no choice but to file a feeder line application, but it remains committed to working with DSR to achieve the goal of reopening the Corridor. (Appl., Ex. 6, V.S. Gilfoil ¶ 13 (LPPC determined that it “had no choice but to file a feeder application to acquire the track”); *id.* ¶ 15 (LPPC “will do everything in its power” to work with the parties, including DSR, to accomplish this goal).)

¹⁰ The Board also notes that the discovery DSR served on the other Project partners included multiple requests that required the respondents to provide information about MPPC. (*See* DSR Pet. for Subpoena, Ex. A, Interrogs. 2, 5, 9, 10, 15, 16, 17, 19, 24.)

¹¹ DSR reiterates these points in its March 26, 2021 reply. (*See* DSR Reply 3-4, Mar. 26, 2021.)

In these circumstances, the Board believes that mediation could be beneficial. Because the Board favors the resolution of disputes through alternative dispute resolution whenever possible, the Board requests that the parties inform the Board by June 15, 2021, if they are interested in participating in Board-sponsored mediation.¹²

LPPC's May 11, 2021 Pleading and Future Filings. As noted above, on May 11, 2021, LPPC filed a pleading styled "Supplementary New Evidence and Legal Argument." In light of the Board's March 9, 2021 order suspending the procedural schedule, the Board will not consider or take action on that pleading at this time. However, DSR will be permitted to file a response to that pleading, if it wishes to do so, by June 21, 2021. The parties are to refrain from submitting any further filings relating to the merits of their respective positions pending further Board order.

It is ordered:

1. NLA's motion for a protective order is denied, and DSR's petition for issuance of a subpoena is denied as moot.
2. The parties are directed to confer, as discussed above, and report to the Board on the status of any remaining discovery issues in this proceeding by June 15, 2021.
3. DSR's motion to strike the Project Participants' response to DSR's motion to dismiss is denied.
4. The Project Participants' motion to strike DSR's March 22, 2021 reply is denied and the reply is accepted into the record as discussed above.
5. The parties shall inform the Board whether they agree to participate in Board-sponsored mediation by June 15, 2021.
6. DSR may reply to LPPC's May 11, 2021 pleading by June 21, 2021.
7. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

¹² While parties participating in mediation are encouraged to work out as many issues as possible, the scope of the mediation would not, under 49 C.F.R. § 1109.1, encompass any grant, denial, stay, or revocation of regulatory authority.

EXHIBIT B

SERVICE DATE – AUGUST 23, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

Digest:¹ This decision allows the Lake Providence Port Commission to file an amended feeder line application that involves a longer line than originally proposed. The Board also denies as moot three motions pertaining to the initial application, grants a motion to strike a rebuttal filing in support of the motion to file a supplemental application, and orders the current owner to provide specified information about the line within ten days.

Decided: August 23, 2022

This proceeding involves efforts by the Lake Providence Port Commission (LPPC or Applicant), a noncarrier political subdivision of the State of Louisiana, to acquire portions of the Tallulah-McGehee rail corridor owned by Delta Southern Railroad, Inc. (DSR), through a Board-ordered sale. The initial application, in which LPPC sought to acquire only a segment of DSR's Lake Providence line, was accepted as complete and a procedural schedule was established early last year. DSR thereafter pursued discovery in order to prepare its response to that application, and, separately, moved to dismiss the proceeding.² This triggered numerous filings and led the Board to suspend the procedural schedule pending further Board order.

Thereafter, the Board issued a decision in June 2021 that resolved certain discovery issues, denied two motions to strike, and directed the parties to report the status of any remaining discovery issues and whether they were amenable to mediation. The Board issued another decision in October 2021 that acknowledged the parties' reports that discovery issues had been resolved and ordered Board-sponsored mediation.

Mediation concluded earlier this year without a settlement. LPPC has now moved to file a supplemental application to acquire DSR's entire rail line on the Tallulah-McGehee corridor,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² DSR also sought to hold the case in abeyance while the discovery issues and motion to dismiss were resolved.

including an approximately 7.5-mile segment (Southern Segment)³ over which DSR transports southbound freight traffic to interchange with Kansas City Southern Railway Company (KCS) at Tallulah, La.

As described below, this decision grants LPPC's motion to file a supplemental application that includes DSR's entire line and, as a result, denies as moot three motions pertaining to the initial application. The decision also grants a motion to strike a rebuttal filing in support of the motion to file a supplemental application and orders DSR to provide specified information about the line in question within ten days.

BACKGROUND

On November 12, 2020, LPPC filed an application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire from DSR a 20-mile segment of rail line between milepost 471.0 and milepost 491.0, together with various ancillary tracks, in East Carroll and Madison Parishes, La., for future operation by North Louisiana & Arkansas Railroad (NLA). (Appl. 1-3, 5.)⁴ Concurrently, LPPC and SEAEDD filed a petition seeking expedited consideration and acceptance of LPPC's application prior to submission of evidence regarding the valuation of that line. DSR filed a reply in opposition to the petition to expedite on December 2, 2020, and stated that it would respond to the application, if accepted, in accordance with the procedural schedule set by the Board. (DSR Reply 1, Dec. 2, 2020.)

By decision served December 11, 2020, the Board found that the application was substantially complete, except for the absence of information pertaining to the net liquidation

³ As discussed below, there are questions regarding the length of the Southern Segment.

⁴ The application explained that the line at issue is one segment of the 91.3-mile McGehee-Tallulah Railroad Corridor (the Corridor), which runs from milepost 408.9 in McGehee, Ark., to milepost 500.2 in Tallulah. (Appl. 1.) According to the application, LPPC and NLA jointly own the northernmost segment extending from milepost 408.9 to milepost 433.0 at Lake Village, Ark. Southeast Arkansas Economic Development District (SEAEDD), a noncarrier, owns the segment between milepost 433.0 and milepost 454.8 at or near the Louisiana/Arkansas border. LPPC owns the segment between milepost 454.8 and milepost 471.0, at or near Lake Providence, East Carroll Parish, La. DSR owns the segment that extends from milepost 471.0 to approximately milepost 500 at Tallulah. (*Id.* at 6-7; *but see, e.g., id.* at 1 (stating that the end milepost for DSR's segment is 500.2).) NLA currently operates all segments of the Corridor not owned by DSR. (*See id.* at 3, 6.)

According to the application, an Infrastructure for Rebuilding America (INFRA) grant for restoration of the Corridor was awarded to SEAEDD on behalf of a public-private partnership composed of SEAEDD, LPPC, the Madison Parish Port Commission (MPPC), NLA, and DSR, (Appl. 2, 10-11), and grant funds are to be used to reopen the entire Corridor (the Project), including the line initially at issue, which is currently impassable, (*id.* at 2). LPPC stated that it filed the application because DSR has refused to commit the funds needed to restore the line, and that the proposed acquisition was therefore necessary to realize the goal of reopening the entire Corridor. (Appl. 2, 4-5; *id.* at Ex. 3, V.S. Hargrove ¶¶ 13-16; *id.* at Ex. 6, V.S. Gilfoil ¶¶ 13-14.)

value (NLV) of the line, and conditionally accepted the application subject to Applicant's submission of an NLV estimate and supporting information by December 28, 2020. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447, slip op. at 1-2 (STB served Dec. 11, 2020). The Board also stated that LPPC should submit a copy of any contract with NLA pertaining to the line as soon as the parties reached an agreement. Id. at 6 n.17. LPPC submitted an estimate of the NLV and supporting evidence, along with the lease agreement that would govern NLA's operation of the line, on December 22, 2020. By decision served January 15, 2021, the application was accepted as complete and a procedural schedule was adopted, under which verified statements and comments addressing the application were due March 16, 2021, and verified replies were due April 5, 2021.

Thereafter, a series of motions and other filings were made by NLA, LPPC, and DSR, including a motion to dismiss filed by DSR. By decision served March 9, 2021, in light of the numerous filings and then-impending deadline for submitting verified statements and comments addressing the application, the procedural schedule was suspended pending further Board order.

By decision served June 1, 2021, the Board resolved certain discovery issues and denied two motions to strike arising from DSR's motion to dismiss. See Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (June 2021 Decision), FD 36447, slip op. at 3-6 (STB served June 1, 2021).⁵ The Board also directed the parties to report the status of any remaining discovery issues and whether they were amenable to mediation. Id. at 4, 6-7. On June 15, 2021, counsel for LPPC, SEAEDD, MPPC, and NLA (collectively, the Project Participants) submitted supplemental discovery responses on behalf of NLA, provided a status report on outstanding discovery issues, and advised the Board that the Project Participants did not wish to engage in mediation. (Project Participants Letter 2, June 15, 2021.) Counsel for DSR reported that DSR would evaluate the supplemental discovery responses and advise the Board of any remaining concerns, and that DSR was amenable to mediation. (DSR Letter 1-2, June 15, 2021.) DSR thereafter advised the Board that it would not pursue a motion to compel and that it deemed discovery concluded. (DSR Letter 2, June 30, 2021.)

The Project Participants filed a motion to re-set the procedural schedule on September 7, 2021,⁶ to which DSR replied on September 20, 2021, noting that favorable action on the motion to dismiss would obviate the need for further action in this docket and reiterating its support for Board-ordered mediation. By decision served October 21, 2021, the Board acknowledged the parties' reports that discovery issues had been resolved, ordered Board-sponsored mediation, and stated that it would address pending motions after the completion of mediation if the parties were

⁵ Further background on filings submitted between February and June 2021 is available in the June 2021 Decision.

⁶ On October 12, 2021, a letter in support of the Project Participants' motion was filed by U.S. Representatives Eric A. Crawford and Julia Letlow and U.S. Senators John Boozman, Bill Cassidy, Tom Cotton, and John Kennedy.

unable to fully resolve their disputes.⁷ See Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447, slip op. at 4 (STB served Oct. 21, 2021).

By letter dated January 19, 2022, the mediators informed the Board that mediation had concluded without a settlement. As permitted by a subsequent Board order, LPPC filed a response to DSR’s May 28, 2021 motion to strike on February 18, 2022, and a corrected response on February 22, 2022.

On March 4, 2022, LPPC moved to file a supplemental application to acquire DSR’s entire line from milepost 471.0 to its point of interchange with KCS, located at or around milepost 498.6⁸ (the Lake Providence Line).⁹ (LPPC Mot. 1, Mar. 4, 2022.) LPPC asserts that its request is “consistent with Board precedent,” (*id.* at 1-2), and notes that DSR had argued earlier in this proceeding that if LPPC wanted to supplement its request for a Board-ordered sale, “the appropriate course would be for LPPC to seek leave to amend its Feeder Line Application.” (LPPC Mot. 2, Mar. 4, 2022 (quoting DSR Mot. to Strike 3, Mar. 8, 2021).) LPPC states that it is seeking to file a supplemental application because “[it] has concluded that the needs of existing and new shippers will be best served if LPPC is authorized to purchase and rehabilitate the entire Line that runs between MP 471, near Lake Providence, to MP 498.4 in Tallulah, LA.” (LPPC Mot. 2, Mar. 4, 2022.)

DSR replied to LPPC’s motion on March 24, 2022, arguing that the Board should dismiss this docket pursuant to DSR’s pending motion to dismiss, (DSR Reply 2, Mar. 24, 2022), and that, if LPPC’s motion to file a supplemental application were granted, “the Board must also re-start the feeder line process under 49 C.F.R. § 1151.” (DSR Reply 4, Mar. 24, 2022).¹⁰ On April 4, 2022, LPPC filed a pleading styled “Verified Rebuttal and Supporting Verified Statements in Support of Motion to File a Supplemental Application to Acquire the Entire Lake Providence Line Between MP 471.0 and MP 498.6,”¹¹ which DSR moved to strike on April 25,

⁷ The pending motions pertaining to the initial application are DSR’s motion to dismiss and request to hold the proceeding in abeyance pending disposition (filed March 2, 2021); DSR’s motion to strike LPPC’s supplementary new evidence and legal argument (filed May 28, 2021); and the Project Participants’ motion to re-set a procedural schedule (filed September 7, 2021).

⁸ As detailed below, the Board has questions regarding the southern terminus of the Lake Providence Line, and LPPC will be directed to clarify the endpoint of the line it seeks to acquire.

⁹ As described below, DSR also operates a second rail line, which extends from Monroe, La. to Sterlington, La., pursuant to a lease agreement with Union Pacific Railroad Company (UP).

¹⁰ See also *id.* at 8-9 (arguing that current Application should be dismissed because “there is no service demand that is going unmet” and that, if allowed, the supplemental application should “restart the regulatory processes set out at 49 C.F.R. § 1151.2.”).

¹¹ The rebuttal takes exception to contentions made in DSR’s response to LPPC’s motion and presents additional evidence and argument in support of LPPC’s request to file a supplemental application to acquire DSR’s entire Lake Providence Line. It also raises an issue

2022, as an unauthorized and untimely filing. LPPC replied to DSR's motion to strike on April 27, 2022, and DSR sought leave to file a response to that reply on May 11, 2022.

DISCUSSION AND CONCLUSIONS

The Board will grant LPPC leave to file a full amended application and will recommence the process for considering that application under 49 C.F.R. part 1151. LPPC is directed to comply with the service requirements specified in 49 C.F.R. § 1151.2(a), and to submit all evidence and argument in support of its request for a Board-ordered sale of DSR's Lake Providence Line in the amended application in accordance with the requirements specified in 49 C.F.R. § 1151.3, without incorporation by reference of its previous application or any other filings. The Board will thereafter assess the completeness of the amended application in accordance with the criteria specified in 49 C.F.R. § 1151.2(b) and issue a decision on that matter within 30 days.

Because LPPC's motion to file a supplemental application will be granted as discussed herein, the pending motions pertaining to LPPC's initial application—which sought to acquire only a portion of the Lake Providence Line—will be denied as moot, DSR's April 25, 2022 motion to strike LPPC's April 4, 2022 rebuttal filing will be granted, and DSR's May 11, 2022 request for leave to reply to LPPC's response to the motion to strike will be denied as moot. DSR will also be directed to provide the information specified below about the Lake Providence Line.

LPPC's March 4, 2022 Motion to File a Supplemental Application. As DSR points out, the case that LPPC cites in claiming that supplementation of LPPC's application is "consistent with Board precedent," (LPPC Mot. 1-2, Mar. 4, 2022), arose in a different context and involved different facts. (*See* DSR Reply 3-4, Mar. 25, 2022.)¹² LPPC cites no case involving

about the line in question on which the Board will direct DSR to provide further information, as discussed below.

¹² Specifically, in that case a feeder line applicant was afforded the opportunity to supplement an application that had been found substantively incomplete by providing information relating to valuation and financial responsibility to cure deficiencies in the original application. *See Keokuk Junction Ry.—Feeder Line Acquis.—Line of Toledo Peoria & W. Ry. Between La Harpe & Hollis, Ill.*, FD 34335, slip op. at 2 (STB served Sept. 26, 2003). Here, as LPPC reiterates, (*see* LPPC Mot. 2, Mar. 4, 2022), its initial application (which was limited to only a portion of DSR's Lake Providence Line) was found to be complete. But *Keokuk Junction Railway* did not address whether, or under what circumstances, an applicant may amend an application to expand its request for a forced sale to include a longer rail line. The Board also notes that its prior determination that LPPC's initial application was complete was not a ruling on the merits that a Board-ordered sale would be warranted. *See, e.g., Keokuk Junction Ry.*, FD 34335, slip op. at 6 & n.12 (STB served July 9, 2003) (noting that acceptance of application as complete is not a ruling on the merits of the application); *PYCO Indus., Inc.—Feeder Line Acquis.—S. Plains Switching, Ltd.*, FD 34844 et al., slip op. at 8 (STB served July 3, 2006) (stating that PYCO had submitted sufficient information to accept the application and that the Board would rule on the merits of the application when the record was complete).

circumstances comparable to the present situation, in which LPPC is seeking to expand the feeder line application that it initially filed (which was limited to a section of line over which there has been no traffic for several years, and which LPPC claims is impassable) to now include a rail line on which there are active shippers.¹³ Nevertheless, nothing would prevent LPPC from filing such an expanded feeder line application in a separate docket; moreover, because the procedural schedule has been suspended, the comment period on LPPC's initial application has not yet commenced. Accordingly, in these circumstances, the Board finds it appropriate to grant LPPC leave to file an amended application in the present docket.¹⁴ However, because the amended application would encompass rail line that has been in ongoing use by shippers, the procedures specified in 49 C.F.R. § 1151.2 must be satisfied anew with respect to that application in order to comply with the regulations that govern the service and assessment for completeness of applications filed under 49 U.S.C. § 10907 and to provide the opportunity for the filing of competing applications.

The Board's regulations specifically include a requirement that LPPC serve the application on the entities identified in 49 C.F.R. § 1151.2(a), including all rail patrons who originated or received traffic on the line during the 12-month period preceding the month in which the application is filed, see § 1151.2(a)(2), and the national offices of rail unions with employees on the line, see § 1151.2(a)(6). In addition, the application must include the information specified in 49 C.F.R. § 1151.3, in the form of verified statements, and must contain detailed evidence that permits the Board to find, inter alia, that transportation over the line is inadequate for the majority of shippers who transport traffic over the line (49 C.F.R. § 1151.3(a)(11)(i)(B)),¹⁵ and that the sale of the line will not have a significantly adverse

¹³ (See Appl. 2 (describing the DSR line segment that LPPC initially sought to acquire as "impassable and [one] that has not been used for common-carrier rail service for at least three years"); id. at 17-18 (describing DSR position that it would only commit to rehabilitate its "Priority Miles" between MP 491 and MP 500 and "did not need to rehab [its track beyond milepost 491] to service the shippers located at the Madison Parish Port"); see also DSR Reply 2, Mar. 24, 2022 (stating that "the South Segment actively supports local traffic for customers located on it").)

¹⁴ In its motion, LPPC makes various arguments about the benefits that would arise from a Board-ordered sale of DSR's Lake Providence Line. (See LPPC Mot. 2-3, 5-6, 8, Mar. 4, 2022.) This decision, which simply grants LPPC leave to file a full amended application, does not address the merits of those arguments; the Board notes, however, that, standing alone, LPPC's contentions would not suffice to support acceptance of an amended application to acquire the Lake Providence Line. Rather, as discussed herein, the contents of the amended application must contain the information specified in 49 C.F.R. § 1151.3, which includes information pertaining to the statutory criteria specified in 49 U.S.C. § 10907(c)(1), (see LPPC Reply 2, Apr. 27, 2022 (acknowledging "the five statutory requirements that Congress imposed when it enacted the feeder development line provisions")), and must include detailed evidence that permits the Board to find that all of the criteria stated in 49 C.F.R. § 1151.3(a)(11)(i) are satisfied.

¹⁵ The amended application should consider all shippers that currently use the Southern Segment of DSR's line to move traffic between the Madison Parish Port and the DSR-KCS

financial effect on DSR (49 C.F.R. § 1151.3(a)(11)(i)(C)), or an adverse effect on the overall operational performance of DSR (49 C.F.R. § 1151.3(a)(11)(i)(D)).¹⁶ The information shall be provided in a single submission that consists of a full application, without incorporating by reference the prior application or any other previous filings.¹⁷ LPPC has submitted numerous filings in this proceeding asserting various arguments on the merits throughout those filings. To ensure the fair and orderly resolution of LPPC's feeder line request, LPPC must include in its amended application all of the arguments and evidence on which it will rely. Additionally, to facilitate the development of a clear and coherent record, LPPC must present each witness's sworn testimony in support of the application in a single verified statement from each witness.

Lastly, LPPC's motion asks the Board "to require DSR to provide LPPC verified data that will allow LPPC to prepare its valuation of the [l]ine." (LPPC Mot. 15, Mar. 4, 2022.) That request is premature and misplaced under the governing regulations. See 49 C.F.R. § 1151.2(d). The regulation provides that "[i]f an applicant seeking to file an initial or competing application is unable to obtain required information that is primarily or exclusively within the personal knowledge of the owning carrier, the applicant may file an incomplete application if it files at the same time a request for discovery under 49 C.F.R. part 1114 to obtain the needed information from the owning carrier." See § 1151.2(d)(1). Insofar as LPPC is unable to obtain information primarily or exclusively within the knowledge of DSR that is required to prepare a complete application, LPPC may file a concurrent request for discovery, with its amended application, to obtain the information from DSR. Any such request will be resolved in accordance with the procedures specified in 49 C.F.R. § 1151.2(d).

Pending Motions Pertaining to the Initial Application. Because LPPC will be granted leave to file an amended application, the pending motions pertaining to the initial application will be denied as moot. DSR's motion to dismiss the initial application was based on two alternative grounds: that (1) the application in question failed to allege or show that any shipper

interchange at Tallulah. (See Appl., Ex. 7 (V.S. Murphy) ¶ 4) (stating that DSR is the only rail carrier that provides service to customers located in the Madison Parish Port).)

¹⁶ As noted in LPPC's March 4, 2022 motion, (id. at 15), DSR also operates a second line, which extends from Monroe to Sterlington, pursuant to a lease agreement with UP, the owner of that line. (See also Appl., Ex. 1 (INFRA Grant Application, page 12) (stating that DSR has two separate rail lines and operates as two divisions—the Sterlington Division in Monroe, and the Lake Providence Division in Tallulah—under common staff headquartered at the Madison Parish Port, transporting grain, aggregates, agricultural products, cotton, coal, chemicals, fertilizer, forest products, sand clay, and soda ash).) Accordingly, the amended application must address the impact that a forced sale of DSR's entire Lake Providence Line would have on DSR's financial health and overall operational performance.

¹⁷ This directive addresses LPPC's request that the Board "authorize LPPC's submission of a full supplemental Feeder Application." (See LPPC Mot. 12, Mar. 4, 2022.) The Board further notes that the regulations under part 1151 provide for incorporation by reference of a prior application only when that application continues to serve as the operative request for a Board-ordered sale of a rail line under 49 U.S.C. § 10907 but has been found incomplete. See 49 C.F.R. § 1151.2(b)(2).

has requested service to or from a point on the line at issue or that DSR has refused to make the necessary efforts to provide such service, and (2) no shipper located on other segments of the Corridor has claimed that existing through routes (via UP and KCS) are inadequate. (See Mot. to Dismiss 4-6, Mar. 2, 2021.) The expanded scope of the application, to now include the Southern Segment of DSR's Lake Providence Line, would have a bearing on the evidence and argument pertinent to each of these claims. Accordingly, the motion to dismiss the initial application will be denied without prejudice to DSR's ability to file a new motion as DSR deems warranted following LPPC's filing of an amended application.

DSR's motion to strike Applicant's supplementary evidence and argument in support of the initial application, and the Project Participants' motion to re-set the procedural schedule pertaining to the initial application, have also become moot in light of this decision, and are accordingly denied.

DSR's April 25, 2022 Motion to Strike LPPC's Rebuttal Filing. As noted above, on April 4, 2022, LPPC filed a pleading styled "Verified Rebuttal and Supporting Verified Statements in Support of Motion to File a Supplemental Application to Acquire the Entire Lake Providence Line Between MP 471.0 and MP 498.6," which DSR moved to strike on April 25, 2022. The rebuttal filing takes exception to statements made in DSR's response to LPPC's motion to file a supplemental application and presents additional evidence and argument in support of LPPC's request. Additionally, as discussed below, it raises an issue about the line in question that DSR will be directed to address.

Nothing in this rebuttal filing bears on the Board's reasons for granting LPPC leave to file an amended application. Accordingly, the Board will grant the motion to strike the rebuttal filing, which LPPC did not seek leave to submit, see 49 C.F.R. § 1104.13(c) ("A reply to a reply is not permitted."), and which is not pertinent to the Board's decision. As discussed above, LPPC will be permitted to submit the evidence and argument it wishes to present in support of its request for a Board-ordered sale of the Lake Providence Line in the amended application (and must do so without incorporation by reference of its previous application or any other filings). LPPC will thus be able to present the evidence and argument it deems relevant to the amended application at that time. The Board cautions LPPC that the amended application must include all historical information known or reasonably available to LPPC in support of its case-in-chief for a Board-ordered sale.¹⁸

Although the Board will grant the motion to strike, LPPC's rebuttal filing refers to one issue, which is a matter of public record, that DSR will be directed to address. LPPC states that in 1999, when DSR acquired the rail line from McGehee to Tallulah pursuant to a notice of exemption in Docket No. FD 33802, "DSR did not seek or obtain authority to operate over the segment of the [Lake Providence] Line between MP 489.44 and MP 498.4, where the Line connects with KCS," but that "DSR has operated over that segment of the Line since 1999."

¹⁸ In particular, the amended application should identify with specificity all shippers who contend that they have been refused interchange by, or otherwise received inadequate service from, DSR, and provide detailed supporting evidence of the alleged refused or inadequate service. See 49 C.F.R. § 1151.3(a)(11)(i)(A) & (B).

(LPPC Rebuttal 14 (citing Delta S. R.R.—Acquis. & Operation Exemption—Delta S. R.R., FD 33802 (STB served Oct. 20, 1999).) DSR did not address this contention in its motion to strike LPPC’s rebuttal filing. As described in the notice of exemption in Docket No. FD 33802, it does not appear that DSR sought or obtained acquisition or operating authority over the line located between milepost 489.44 and milepost 498.4, and the Board has not found any indication that DSR obtained such authorization in another proceeding. At the same time, DSR’s website represents that its “Tallulah line includes 29.2 miles of main line track, plus another mile of sidings and right of way which originates from a connection with [KCS] in Tallulah, Madison Parish”¹⁹—which, measured from milepost 471.0, appears to suggest that DSR believes the Lake Providence Line extends to milepost 500.2.

Accordingly, to clarify these apparent discrepancies and ensure that DSR has complied with the regulations in 49 C.F.R. part 1150 applicable to the acquisition and operation of rail lines, DSR will be directed to provide the following information by September 2, 2022.

(1) the mileposts that correspond to (i) the southern terminus of DSR’s Lake Providence line and (ii) DSR’s point of interchange with KCS;

(2) if the southern terminus of DSR’s Lake Providence line is a point beyond milepost 489.44, the basis of DSR’s authority to own and operate the segment between milepost 489.44 and the southern terminus; and

(3) if no such authority exists, the action DSR intends to take to rectify the failure to seek and obtain such authority.²⁰

¹⁹ See DSR Home Page, <https://deltasouthern.net>.

²⁰ We note that in this proceeding, LPPC has been inconsistent in defining the southern terminus of the line it seeks to acquire from DSR. Although the title of the LPPC’s March 4 motion identifies that location as “MP 498.6,” (see LPPC Mot. 1, Mar. 4, 2022), the motion itself states that LPPC “will seek to acquire the segment of line between MP 471.0 and MP 498.4, where freight traffic is interchanged with [KCS],” (*id.*; see also *id.* at 2, 10, 13 (referencing desire to purchase and rehabilitate line between milepost 471.0 and milepost 498.4)). In addition, the initial application identifies milepost 500.2 as the southern terminus of DSR’s Lake Providence line and the point of interchange with KCS, (see Appl. 1; *id.* at Ex. 1 (INFRA Grant Application), pages 5, 8), while in the March 4 motion, LPPC describes DSR’s “entire” line as comprised of the segment between milepost 471.0 and approximately milepost 498.6 of the Corridor, (see LPPC Mot. 1-2, Mar. 4, 2022; see also *id.* at 4-5, 8, 12 (referencing importance of rehabilitating “the entire” Line)). If LPPC disagrees with DSR’s supplement regarding the southern terminus of DSR’s Lake Providence line or the point of interchange with KCS, LPPC should explain the basis for its view in its amended application. In addition, LPPC should clarify the milepost designation of the southernmost point LPPC seeks to acquire in its amended application.

It is ordered:

1. Applicant's motion to file a supplemental application to acquire DSR's Lake Providence Line is granted, as described above. The amended application shall be served on the parties specified in 49 C.F.R. § 1151.2(a) and shall contain the information specified in 49 C.F.R. § 1151.3 in a single submission that consists of a full application with supporting exhibits, without incorporating by reference the initial application or any other filings.

2. DSR's motion to strike LPPC's rebuttal filing in support of its motion to file a supplemental application is granted, and DSR's May 11, 2022 request for leave to reply to LPPC's response to the motion to strike is denied as moot.

3. DSR is directed to provide the information specified above by September 2, 2022.

4. The pending motions pertaining to the initial application are denied as moot.

5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

EXHIBIT C

51972
DO

SERVICE DATE – DECEMBER 11, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

Decided: December 11, 2023

This proceeding involves efforts by the Lake Providence Port Commission (LPPC), a noncarrier political subdivision of the State of Louisiana, to acquire portions of the McGehee-Tallulah rail corridor owned by Delta Southern Railroad, Inc. (DSR), a Class III rail carrier, through a Board-ordered sale under 49 U.S.C. § 10907 and 49 C.F.R. part 1151. LPPC's initial feeder line application (which sought to acquire only a portion of DSR's line) was accepted and a procedural schedule was established in early 2021. LPPC thereafter sought leave to file a supplemental application to acquire DSR's entire line, which the Board granted by decision served August 23, 2022. LPPC filed an amended feeder line application on January 4, 2023.

By decision served November 20, 2023, the Board denied a motion to reject LPPC's amended feeder line application and terminate this proceeding filed by DSR. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (Nov. 20 Decision), FD 36447 (STB served Nov. 20, 2023). The November 20 Decision stated that if LPPC filed and served by November 30, 2023, a certificate of service for the amended application in compliance with 49 C.F.R. § 1151.2(a) and § 1151.3(a)(16), together with the described verification and any agreement between LPPC and the proposed operator pertaining to the line, the Board expected to promptly issue a decision conditionally accepting the amended application, and discovery relating to valuation could proceed under the process described in the decision. Nov. 20 Decision, FD 36447, slip op. at 16.¹ The November 20 Decision waived any provisions that could otherwise support rejection of the amended application because those materials were not included in that filing. Id. at 6 n.12 (citing waiver authority and precedent). It also directed LPPC to serve on the entities listed in § 1151.2(a) copies of all LPPC filings in this docket that post-date the amended application and assigned an administrative law judge to address any discovery disputes. Id. at 13-15.

¹ As noted in the November 20 Decision, there was no indication in the record that a copy of the amended application had been served on the entities listed in 49 C.F.R. § 1151.2(a), which is required to render an application complete. Nov. 20 Decision, slip op. at 13. Additionally, the contents of the amended application were not fully verified. Id. at 12.

On November 30, 2023, LPPC filed a certificate pursuant to § 1151.3(a)(16) stating that the service requirements of § 1151.2(a) had been met, together with the requested verification, a copy of the operative agreement, and a second certificate of service certifying that these documents had been served on the entities listed in § 1151.2(a) on November 29, 2023. On December 1, 2023, LPPC filed a supplemental certificate of service to clarify that LPPC had also served copies of all of its post-January 4, 2023 filings on these entities on November 29, 2023. As LPPC has complied with the requirements described in the November 20 Decision, the Board will conditionally accept LPPC's amended application. LPPC's request for discovery relating to valuation may move forward under the process specified in the November 20 Decision.²

As directed in the November 20 Decision, the parties are reminded to notify the Board in writing upon the completion of discovery. See Nov. 20 Decision, FD 36447, slip op. at 15, 17. LPPC will have 45 days from the date of that notice to file and serve revised valuation calculations and supporting evidence for its amended application, if desired (and shall file and serve notification if no changes are required). Upon the completion of these steps, notice of LPPC's amended feeder line application will be published in the Federal Register and a procedural schedule will be issued. Id.

It is ordered:

1. The amended feeder line application is conditionally accepted.
2. LPPC's request for discovery relating to valuation may proceed under the process specified in the November 20 Decision.
3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

² See Nov. 20 Decision, FD 36447, slip op. at 14, 17 (directing the parties to (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 disputes within 30 days after the service date of a decision conditionally accepting the amended application).

EXHIBIT D

SERVICE DATE – MARCH 9, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

Decided: March 9, 2021

On November 12, 2020, Lake Providence Port Commission, a noncarrier political subdivision of the State of Louisiana (LPPC or Applicant), filed an application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire from Delta Southern Railroad, Inc. (DSR), a 20-mile rail line between milepost 471.0 and milepost 491.0, together with various ancillary tracks, in East Carroll and Madison Parishes, La. (the Line), for future operation by North Louisiana & Arkansas Railroad (NLA). (Appl. 1-3, 5.)¹ Concurrently, LPPC and SEAEDD filed a petition seeking expedited consideration and acceptance of LPPC's application prior to submission of evidence regarding the Line's valuation. DSR filed a reply in opposition to the petition to expedite on December 2, 2020, and stated that it would respond to the application, if accepted, in accordance with the procedural schedule set by the Board.

By decision served December 11, 2020 (December 11 Decision), the Board found that the application was substantially complete, except for the absence of information pertaining to the net liquidation value (NLV) of the Line, and conditionally accepted the application subject to Applicant's submission of an NLV estimate and supporting information by December 28, 2020. December 11 Decision, FD 36447, slip op. at 1-2. The Board also stated that LPPC should submit a copy of any contract with NLA pertaining to the Line as soon as the parties reach an agreement. Id. at 6 n.17.

¹ The application explains that the Line is one segment of the 91.3-mile McGehee-Tallulah Railroad Corridor (the Corridor), which runs from milepost 408.9 in McGehee, Ark., to milepost 500.2 in Tallulah, La. (Appl. 1.) According to the application, LPPC and NLA jointly own the northern-most segment that extends from milepost 408.9 to milepost 433.0 at Lake Village, Ark. Southeast Arkansas Economic Development District (SEAEDD), a noncarrier, owns the segment between milepost 433.0 and milepost 454.8 at or near the Louisiana/Arkansas border. LPPC owns the segment between milepost 454.8 and milepost 471.0, at or near Lake Providence, East Carroll Parish, La. Finally, DSR owns the segment that extends from milepost 471.0 to approximately milepost 500 at Tallulah, La. (Id. at 6-7; but see, e.g., id. at 1 (stating that the end milepost for DSR's segment is 500.2).) NLA currently operates all segments of the Corridor not owned by DSR. (See id. at 3, 6.)

On December 22, 2020, LPPC submitted an estimate of the NLV and supporting evidence, along with the lease agreement between LPPC and NLA that would govern NLA's operation of the Line. By decision served January 15, 2021, the application was accepted and a procedural schedule as set out at 49 C.F.R. § 1151.2 was adopted. Under the current procedural schedule, verified statements and comments addressing the application are due March 16, 2021, and verified replies are due April 5, 2021.

On February 18, 2021, NLA filed a motion for protective order under 49 C.F.R. § 1114.21(c), seeking relief from responding to certain interrogatories served by DSR on February 5, 2021, on the grounds that NLA is not a party to this proceeding, and asserting other various objections. On February 26, 2021, DSR responded in opposition to the motion for protective order and also filed a petition for issuance of a subpoena under 49 C.F.R. § 1113.2. NLA filed a reply opposing DSR's petition for issuance of a subpoena on March 1, 2021.

On March 2, 2021, DSR filed a motion to dismiss and request to hold the proceeding in abeyance pending disposition of the dismissal motion and unresolved discovery issues. On March 5, 2021, LPPC, SEAEDD, Madison Parish Port Commission, and NLA filed a reply in opposition to DSR's motion jointly requesting the Board to deny all relief requested by DSR. On March 8, 2021, DSR filed a motion to strike the March 5 reply.

In light of the numerous recent filings and the approaching deadline for submission of verified statements and comments addressing the application, the procedural schedule will be suspended pending further Board order. The Board will address the recent filings and the issues raised therein in a subsequent decision.

It is ordered:

1. The procedural schedule is suspended pending further Board order.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

EXHIBIT E

Connor Brightwell, Esq.

Good Morning, Mr. Brightwell. As you will recall, on February 20, 2024, I forwarded via email to you a request that ALJ McCarthy determine whether the Surface Transportation Board (“STB”), in its Order served December 11, 2023, had limited discovery at this point in time to discovery relating to valuation.

Because counsel for Delta Southern Railroad, Inc. (“DSRR”) have raised an issue concerning the appropriateness of my informal request, I must ask whether it will be necessary to file a formal motion seeking a ruling or whether Judge McCarthy will provide guidance regarding whether DSRR may continue at this time to seek yet another round of discovery from Lake Providence Port Commission (“LPPC”), Southeast Arkansas Economic Development District (“SEAEDD”) and North Louisiana and Arkansas Railroad (“NLA”).

It should be noted that in its email response, dated February 20, 2024, to my informal request for a determination of the issue posed, DSRR made no attempt to respond to the merits of LPPC’s, SEAEDD’s and NLA’s interpretation of the STB’s decision, dated December 11, 2023, that authorized LPPC and affiliated parties to seek discovery relating to valuation. Nor has DSRR taken the opportunity to do so in the past two weeks.

In my February 20, 2024, I attached responses to DSRR’s discovery requests from LPPC, SEAEDD, and NLA, which were submitted in good faith and in an effort to be cooperative and attempt to avoid unnecessary discovery disputes. These 2024 responses were in addition to two previous rounds of discovery requests propounded by present and former counsel for DSRR.

LPPC, et al. do not believe that their good-faith attempts to be cooperative with DSRR, despite the limitation imposed by the STB on discovery at this time, should be bootstrapped by DSRR into compelling LPPC, SEAEDD, and NLA to have to respond still further to DSRR.

However, because our clients do not wish to further delay a decision on the ultimate issues, should Judge McCarty determine that DSRR is entitled to further discovery at this time, they will attempt to comply to the maximum extent, but they have produced voluminous responses already. Anything further would be unduly burdensome. They also will not produce privileged communications.

You and ALJ McCarthy should be aware that LPPC is a public entity, and the taxpayers who support it should not be required to pay for fees and the costs of experts who are assisting LPPC, et al. with the valuation and other issues in responding to unnecessary, unduly burdensome, and irrelevant discovery requests.

Respectfully submitted,

/s/ Richard H. Streeter

Cc: John Scheib, Esq. (counsel for DSRR)

Noah Sullivan, Esq. (counsel for DSRR)

Michael F. McBride, Esq. (co-counsel for LPPC, et al.)

EXHIBIT F

RICHARD H. STREETER
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ENTERED
Office of Proceedings
January 4, 2023
Part of
Public Record

January 4, 2023

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 Comm.—Feeder
Line Application—Line of Delta South. R.R. Located in East Carroll
And Madison Parishes, LA.

Dear Ms. Brown:

Accompanying this letter for filing in the above-referenced document is the expanded Feeder Line Application of Lake Providence Port Commission (“LPPC”), which is a political subdivision of the State of Louisiana. The filing of this expanded Feeder Line Application, which seeks to force the sale of Delta Southern Railroad, Inc.’s (“DSRR”) track between milepost 471.0, at Lake Providence, LA, and milepost 498.44 at Tallulah, LA, was authorized by the Board in its Decision dated August 23, 2022. This filing contains color images.

Pursuant to a directive received from the Office of Proceedings on August 24, 2022, a duplicate filing fee is not required. LPPC, pursuant to 49 C.F.R. § 1002.2(e), once again requests that its original filing fee, which was contemporaneously filed with LPPC’s original Feeder Line Application on November 12, 2020, should be refunded pursuant to the Board’s general policy of waiving such fees when the applicant is a state government entity.

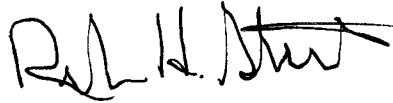
Pursuant to the Board’s decision, dated August 23, 2022, because LPPC has been unable to receive needed information to prepare a going concern value assessment based on DSRR’s current revenues a request for discovery under 49 C.F. R part 1114 is attached hereto. In addition, a true copy of the Expanded Feeder Line Application is being served on DSRR’s counsel by first-class mail, postage prepaid of this date. A copy of this letter, and the attached

Ms. Cynthia T. Brown
January 4, 2023
Page 2 of 2

request for discovery is being served electronically at thealey@fletcher-sippel.com.

If you have any questions, please give me a call.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. H. Streeter", with a stylized flourish at the end.

Richard H. Streeter

Cc: Tom Healey, counsel for DSRR
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 36447

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

**FIRST SET OF INTERROGATORIES AND
DISCOVERY REQUESTS OF
LAKE PROVIDENCE PORT COMMISSION**

The Lake Providence Port Commission (“LPPC”) hereby serve their First Discovery Requests upon the Delta Southern Railroad, Inc. (“DSRR”) pursuant to 49 C.F.R. Part 1114. Responses and responsive documents, as well as any objections, must be delivered by January 25, 2023 to counsel for LPPC, Richard H. Streeter, ATTORNEY AT LAW, 5255 Partridge Lane, N.W. Washington, D.C. 20016.

I. DEFINITIONS

As used in these Interrogatories and Requests for Production of Documents (collectively “Requests”), the following terms shall have the meaning set forth below:

1. “Analyses” means any documents containing or consisting of studies, reports, memoranda, summaries, statistical compilations, presentations, reviews, audits, and other types of written, printed, or electronic submissions of information, and specifically includes all supporting hard-copy or electronic workpapers necessary to replicate the analyses’ results.
2. “Communicate” or “communication” mean every manner or means of disclosure, transfer, or exchange and every disclosure, transfer, or exchange of information, whether orally

file, the file containing the documents should be produced), unless otherwise agreed to by the parties. All files containing responsive documents should be identified by the file name and number.

9. All Requests are continuing, and amended or supplemental responses shall be provided if and when responsive new information and documents are discovered by You.

10. Identify all persons who provided information for each response.

11. Unless otherwise stated, the discovery data should be provided for MP 471.0 through MP 498.44, inclusive, covering the time period from January 1, 2017 to the present.

12. Where these Requests seek data in a computer-readable format, machine-readable format, or in its native format, this data is defined as an electronic file which contains structured, relational data, and is managed within a commercially available and relational database system (for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API (Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations, thereby making the data accessible independent of the host system.

13. If the source table is stored within a non-relational system, such as a 'flat file,' or a custom system (not commercially available), provide the data in standard sequential or delimited text files. The text files should be MS-DOS or MS-Windows compatible text formats.

a. For each computer file supplied provide:

- i. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textual representation of the database relational model for each system to include all named tables of data within the system's relational model. Assure the data tables contain the primary and foreign key fields necessary to establish proper parent-child relationships, and for every table provide a list of fields,

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 36447
LAKE PROVIDENCE PORT COMMISSION—FEEDER LINE
APPLICATION-LINE OF DELTA SOUTHERN RAILROAD
LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

FEEDER LINE APPLICATION

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January 3, 2023

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Complex Chemical was unable to ship its products directly to McGehee to be interchanged with UP. In other words, it became a captive shipper. While this benefited DSRR, it served only to increase Complex Chemical's cost of transportation. That, of course, has backfired in that it has caused Complex Chemical to support LPPC's acquisition of the entire Line between mileposts 471.0 and the point of interchange with KCS.

3. DSRR'S Repeated Refusals to Commit to Use INFRA Grant Funds to Rehabilitate 20 Miles of its Track Reflects Golden Gate's Indifference to the Public Interest in Promoting the Provision of Adequate Rail Service.

On September 26, 2016, Marino hosted a meeting in DSRR's new headquarters in the Madison Parish Port that was attended by representatives of NLA (Tim Robbins), LPPC (Wyly Gilfoil and Lee Denny), SEAEDD (Glenn Bell) and MPPC (Terry Murphy). During the meeting, the parties identified the series of problems that needed to be addressed.⁵⁰ The following April, they reached an agreement that they would advertise a request for proposal ("RFP") for professional consulting services to secure federal awards for the rail/port infrastructure improvement project. In June 2017, the group issued its notice of award to HDR for consulting services.

The projections prepared by HDR for use in the INFRA Grant Application, which are of record as part of Exhibit 1 and included here in Exhibit B, reflect the projected traffic that was anticipated after the *entire* Line is rehabilitated. Given Ryan's admission in his email dated December 4, 2019, that he was "not

⁵⁰ A photograph of a chalk board reflecting some of the topics that were discussed is included in Exhibit I, V.S. Hargrove at Attachment No. 1.

privity to what was discussed the past two years,” it appears that Ryan either was not aware of DSRR’s projections or that he chose to ignore them.⁵¹

In his Verified Statement, Daniel Robbins has explained that HDR’s projections of greatly increased rail traffic were based on information provided to HDR by DSRR and NLA in early 2019.⁵² DSRR projected that it would move approximately 1,200 railcars in 2024 following rehabilitation, while NLA projected that it would move approximately 1,000 cars over UP, and 1,000 cars of local traffic on NLA. The remainder of the 6,248 rail cars or approximately 3,048 railcars were projected to move in interchange between DSRR and NLA. See Exhibit B, Feeder Line Application, Exhibit No. 1, INFRA Grant Application, Appendix C, at p. 18, Section 5.3, Table 4: Demand Projections, Build case. See also p. 38 of Appendix C, Section 9.3, entitled “Annual Demand Projections (2 of 2).” This table, which contains projections that span from 2018 to 2053, repeats the information in Table 4, that the number of railcars is projected to increase from 2,804 in 2022 to 6,248 in 2024.⁵³ These projections plainly confirm that the grant of LPPC’s Feeder Line Application and the removal of DSRR will result in the future growth of rail service and the economy of the region.

⁵¹ See Exhibit D, V.S. Gilfoil at ¶23; and Exhibit I, V.S. Hargrove at Attachment 4.

⁵² See Exhibit J, V.S. Robbins at ¶33.

⁵³ In Section 9.2, which is entitled Annual Demand Projections (1 of 2), Train ton-miles per year moving over the Line are projected to grow from 25,482,337 ton-miles in 2022 to 56,786,733 in 2024.

In November 2017, SEAEDD, along with LPPC, MPPC, Yellow Bend Port, NLA and DSRR, jointly submitted an INFRA application to the DOT pursuant to the Infrastructure for Rebuilding America (“INFRA”) Program for Fiscal Year 17-18. The application projected that the reconstruction of the entire Corridor would cost \$49,236,051 and sought Federal funding totaling \$29,891,000. DSRR’s estimated cost of rehabilitating the Line between milepost 471.0 and 491.0 to FRA Class 2 status was \$11,448,000, while bridge upgrades totaled \$1,000,000. On June 8, 2018, SEAEDD was notified that the 17-18 INFRA application was not funded.

Recognizing that Federal financial assistance would be essential if rail service over the entire Corridor is to survive, SEAEDD, once again acting as the lead entity for the unique public-private partnership (“PPP”), submitted the 2019 INFRA application on March 2, 2019.⁵⁴ This application projected that the cost of reconstructing the entire Corridor would total \$45,004,421. SEAEDD requested \$25,689,421 of Federal Funding. As reflected at Table 8: *Benefit Estimates by Benefit Category*, it was projected that benefits, depending on the discount rate, would range between \$99,672,770 and \$194,268,012. Shipper cost savings from truck to rail diversion alone totaled \$62,472,452 (based on a 7% discount rate), and \$122,830,587 (based on a 4% discount rate).

⁵⁴ See Exhibit B for a complete copy of the 2019 INFRA Application. A detailed Project Description and Project Details are at pp. 3-10.

By email dated July 10, 2019, Paul Baumer, on behalf of Chief Infrastructure Funding Officer Dan DeBono at the DOT, requested Patrecia Hargrove, who is FRA's designated point of contact, to commit, by close of business on the following day, to the completion of *the full project* with only \$10,516,259 of INFRA Grant money. This level of funding would require SEAEDD, LPPC, MPPC, NLA and DSRR (hereinafter jointly referred to as the "Stakeholders") to cover the shortfall of \$15,173,162 of additional funds that would be required to cover the rehabilitation of the entire corridor.⁵⁵ Because Baumer's email to SEAEDD was sent at 7:18 PM on July 10, SEAEDD had only one day to respond.

As Director Hargrove explains in her Verified Statement, upon receipt of the notice from DOT:

After reviewing the email from Paul Baumer, I immediately notified our consultants at HDR, which was hired for INFRA engineering services, and Wyly Gilfoil at LPPC to advise them that we needed to decide how we would respond to DOT's request that I provide a description of which sources I would expect to use to make up the difference between the request and the award amount. Given the urgency, on the following afternoon, all parties, including John Marino and Jon Ryan from Continental Rail, participated in the call. During the call, Mr. Marino strongly urged the group to accept US DOT's reduced amount. After further discussions, his recommendation carried the day. I then timely responded to Paul Baumer and advised him that SEAEDD and its partners would accept a reduced INFRA grant award of \$10,516,259, which reflects a \$15,173,162 reduction in the total amount requested.

By accepting a reduced award, we had to meet the critical goals and objectives of the overall project. The primary

⁵⁵ See Exhibit I, V.S. Hargrove at ¶10.

goal, which was shared by all, involved the rehabilitation of the *entire* rail corridor, which was estimated to cost \$18.6 million. We clearly realized that several components of the Project would have to be delayed, such as infrastructure investments associated with connectivity to local shippers and multimodal connections between the ports, the Mississippi River and the rail corridor. We anticipated that some of the funding gap could be made up through local port funds, the LADOTD Port Priority Program, and potentially more private funding from the short line railroads.⁵⁶

On July 15, 2019, SEAEDD and LPPC representatives, on behalf of the Stakeholders, participated in an initial conversation with DOT concerning the need to reduce the scope of work because of the reduced award amount. In addition, the Stakeholders began their own review of ways to revise the project's scope of work to line up with the reduced award amount. As Hargrove has explained in her Verified Statement, the revised scope of work had to be submitted to DOT for approval. On July 18, 2019, SEAEDD received an email notice that DOT had designated the Project as being a "Nationally Significant Freight and Highway Project" and awarded \$10,516,259 to be used for the express purpose of rehabilitating *the entire corridor*.

Thereafter, the Stakeholders and HDR, continued their efforts to revise the project scope of work. No one ever suggested that the 20-mile segment from 471.0 to milepost 491.0 would not be rehabilitated. Nor did anyone question that the overall goal of the Project was to rehabilitate the entire Corridor. However, on November 26, 2019, Jon Ryan sent an email to Doree Magiera at

⁵⁶ *Id.* at ¶¶ 11-12.

HDR and submitted what he labeled as the “DSRR SEAEDD Grant Budget.”⁵⁷

As Ryan explained:

Attached please find the construction costs to upgrade the existing rail per the grant specifications. Based upon the attached budget, we plan to begin the rehabilitation at the KCS interchange and work north which based upon the current grant amount and our match would upgrade approximately 6 miles of track (highlighted yellow in the attached). As part of the track upgrades we plan to incorporate an existing agreement with KCS to install a new interchange track and lead of approximately 1,700 feet of track. Under this agreement the KCS is to provide the rail, rock, ties and OTM and we are to provide the labor. We believe incorporating this project into the grant specs will help serve our existing customers and attract new customers. As part of this agreement, we plan to extend this new lead an additional three quarters of a mile north as indicated in the attached budget. This new interchange track will require surveying costs.

As we move forward with the project we believe there are other areas we have identified that we believe it would be cost beneficial to create a new line rather than upgrade the existing line. We would like the grant description to include the flexibility to incorporate this into the construction plan. These areas are currently past the limits of the priority 6 miles but could be incorporated into the grant based upon cost savings.⁵⁸

As his comments plainly reflect, Ryan’s plan deviates from the scope of rehabilitation that DOT had established. Furthermore, by focusing on DSRR’s existing customers and potential new customers, he signaled that he was focused on the track between the Madison Parish Port and the KCS and had no intent to spend funds to rehabilitate the much longer segment of track between

⁵⁷ See Exhibit I, V.S. Hargrove at Attachment 3.

⁵⁸ *Id.*

the Lake Providence Port and the Madison Parish Port. Instead, Ryan would force LPPC to fund the rehabilitation of that track. In other words, he had no intent to comply with the scope of rehabilitation that DOT had established.

After Magiera conferred with Hargrove and Gilfoil, she forwarded an email, dated December 4, 2019, to Ryan and tersely advised him that “[t]he latest DSRR spreadsheet does not follow the intended rail rehabilitation scope of work that has been discussed the past two years and presented to the FRA as part of the grant applications.”⁵⁹ In addition, she posed several comments regarding the proposed use of the INFRA Grant request.

Later that day, Ryan responded that “I am not privy to what was discussed the past two years so I cannot speak to that.” In addition, he responded to Magiera’s questions by inserting his answers to her comments, as follows:

Magiera: The current INFRA Build grant request includes approximately \$7,561,250 for Rail Infrastructure Rehabilitation to bring the existing main line track from Tallulah to Lake Providence Port to 25 mph Class 2 track.

Ryan: The spreadsheet that was transmitted does follow the rail rehabilitation scope of upgrading to Class 2 track in order to accommodate 25 MPH. It will be necessary to replace ties, ballast, track and OTM over the entire corridor.

* * *

Magiera: There was also \$200,000 for bridge upgrades to 286K.

⁵⁹ See Exhibit I, V.S. Hargrove at Attachment 4.

Ryan: My understanding is this is correct the bridges have been upgrade[d] to 286k. But there are still some defects that will need to be corrected.

* * *

Magiera: It is our understanding the bridge upgrades were completed and that the existing main line track has been rehabilitated from Tallulah to Madison Port under separate funding.

Ryan: No we have not completed the rehabilitation of mainline track from Tallulah to Madison Parish port for Class 2 track with the ability to run 25MPH.

* * *

Magiera: The awarded INFRA Build grant has provided \$2.5 million for Rail Infrastructure Rehabilitation in Segment D. We are looking for the DSR's priorities or task breakdown for rehabbing the existing main line track between Madison Port and Lake Providence Port to 25 mph Class 2 track. The original estimate was calculated with 50% tie replacement and approximately 6-in of ballast across 25 miles of track. Therefore with approximately 1/3 of the requested funding, would the ties or the ballast be the priority? Or does the required rehabilitation vary through different sections of this line? Please utilize the main line track rehabilitation cost estimate and reduce to match the \$2.5 million in funding.

Ryan: My understanding is that this will require ballast, ties, rail and OTM to accomplish the goal of upgrading the track to class II. The \$2.5 is a good start but is nowhere near (sic) the amount required to achieve the ultimate goal. The railroad currently operates on 85lbs track under accepted track conditions.⁶⁰

On December 10, 2019, Ryan forwarded yet another proposal that outlined "Priority Uses DSRR." As he stated in this email to Ms. Magiera, "[p]lease find the updated uses for the SEAEDD grant money that has been

⁶⁰ *Id.*

allocated to the DSRR to rehabilitate our portion of the corridor. We believe the plan laid out below will accomplish the overall goal for this section of track leading to Madison Parish port.”⁶¹

As shown in the Table below,⁶² DSRR’s “plan” consisted of a chart that covered the cost of ties, ballast, tamping, and labor for ballast/miscellaneous for DSRR’s tracks between mileposts 500 and 491 (“Priority Miles”) that totaled \$2,503,596.

MP	40% Ties per mile	Priority – Miles				Total	
		3,500 Tons Ballas per mile	Tamping	Labor for Ballast/ Miscellaneous			
500	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
499	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
498	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
497	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
496	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
495	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
494	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
493	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
492	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
491	\$120,680	\$108,500	\$6,000	\$15,180		\$250,360	
	\$1,206,800	\$1,085,000	\$60,000	\$151,796	1/	\$2,503,596	1/

1/ Does not foot due to rounding.

No mention whatsoever was made regarding the 20-mile segment of tracks between MP 471.0 and MP 491.0. As the entirety of the INFRA Application and the subsequent Grant reflects, the rehabilitation of that 20-mile stretch of the Corridor is essential. If West Branch is unwilling to expend

⁶¹ *Id.* at Attachment 5.

⁶² Reproduced from Ryan’s email. The identical Table would be forwarded to Patrecia Hargrove by John Marino on August 21, 2020.

funds to rehabilitate the track to FRA Class 2 standards, it should be forced to sell the tracks to LPPC.

On March 17, 2020, SEAEDD submitted its request for FRA to approve scope changes to the Project to fit the new budget that reduced the Non-Federal Cost share to \$10,861,267.⁶³ Although the reduced share reflected the elimination of certain components, such as a Mississippi River dock component, it did not impact the need to rehabilitate the tracks between MP 471.0 and 491.0.

Following receipt of a letter from FRA approving the requested changes to the scope of work, Hargrove prepared and forwarded a proposed Consortium Agreement to the Partners for their approval.⁶⁴ On July 30, 2020, she forwarded the “Consortium Agreement Final Draft” to all the consortium members. As she explained in her email:

During the life of the INFRA project, SEAEDD as the Grantee and Grant Administrator must oversee the management of the project. Because this project is comprised of 5 consortium members, it is necessary for all members to agree to work together toward the successful completion of this project. The agreement outlines roles and responsibilities for all consortium members involved, as well as funding flow/process, reporting, etc.

Please review the agreement and make any comments and/or revisions. The goal is to have an agreement in place prior to the signing of the grant agreement, which is expected to be completed and submitted to SEAEDD for execution by the end of August.⁶⁵

⁶³ See Exhibit I, V.S. Hargrove at Attachment 6.

⁶⁴ See Exhibit I, V.S. Hargrove at ¶19.

⁶⁵ *Id.*

On August 14, 2020, Ryan responded by emailing “an updated draft with our comment so our scope matches the grant.” The “comment” consisted of DSRR’s unilateral change in the draft Consortium Agreement pertaining to the number of miles on DSRR’s tracks that would be upgraded from FRA excepted track to FRA Class 2 track. Ryan simply struck “20” miles and replaced it with “10” miles.⁶⁶ No further explanation was provided. Recognizing the potential negative impact of Ryan’s unilateral change, Hargrove forwarded Ryan’s email to Wyly Gilfoil and asked him to review it. Gilfoil agreed with Hargrove’s assessment and agreed to speak with John Marino.

On the morning of August 20, 2020, Bryant Killen, LPPC’s Deputy Director, and Gilfoil had a speaker phone conversation with Marino to urge him again to comply with the intent of the INFRA Grant Application by upgrading the 20 miles of track south of Lake Providence. During that conversation, Marino suggested that LPPC buy the track owned by DSRR in East Carroll Parish to below Tallulah. He stated a price tag of around a million dollars a mile estimating the cost would be between \$13 and \$16 million. He then said this would be the best option and, while he hated to use the cliché “win-win,” it would be the only way in this instance that the line would be cleared of stored cars. Unprompted, he then said he “would move the cars somewhere else, no problem.” Gilfoil informed Marino that because LPPC is a government agency, he was required to obtain an appraisal before he could make a commitment.⁶⁷

⁶⁶ *Id.* at ¶20.

⁶⁷ See Exhibit D, V.S. Gilfoil at ¶30.

Following that conversation, Gilfoil received an email from Marino thanking Gilfoil for the call. The email also included the following sentences:

In an effort to work with you and the port I think we can come up with a creative solution to sell a portion of the right of way to the port. This could be beneficial for a port customer for many reasons – one most important being access to two class one railroads.⁶⁸

Gilfoil did not respond to Marino and advised Hargrove of his conversation.

After learning that Gilfoil had not been able to obtain assurances from Marino that DSRR would rehabilitate the tracks between MP 471 and MP 491, Hargrove forwarded an email to Marino on August 18, 2020, in which she explained that:

I need to have an answer in writing by 12 noon CDT on Friday, August 21, 2020 describing Delta Southern Railroad's intentions as far as the Consortium Agreement and the Grant Agreement to repair the track between Talla Bena, Louisiana and Lake Providence, Louisiana to a minimum of FRA Class I standards and provide service as described in the narrative of the INFRA application and INFRA award.⁶⁹

She also had a follow-up call with Marino in which she questioned why DSRR had changed the mileage that it would rehabilitate when the proposed Consortium Agreement reflected the scope of work that FRA had approved. Marino replied that he saw no reason for DSRR to upgrade the track beyond MP 491 to FRA Class 1 standards because DSRR didn't have any business in that direction and did not need to rehabilitate that section of its track to service the shippers located at the Madison Parish Port. Marino also noted that there

⁶⁸ *Id.* at ¶31.

⁶⁹ See Exhibit I, V.S. Hargrove at Attachment 9.

was no need to rehabilitate the six (6) miles of track that DSRR was using to receive income from storing railcars that were parked north of MP 491. Marino also indicated that DSRR did not intend to cease using the track for storage purposes. In response, Hargrove reminded Marino that because the intent of the grant funding was that the entire corridor would have access to UP to the North and KCS to the south, the future storage of railcars would be inconsistent with the unquestioned goal of the Project.⁷⁰

On August 21, 2020, Marino responded to Hargrove's email of August 18, 2020. In his email he stated that "[t]he Delta Southern will commit to completing the grant work outlined in our original estimates as detailed below." The document that he forwarded was Ryan's December 10, 2019 "plan" that solely focused on the segment of DSRR's track between milepost 491 and milepost 500. Because Marino's email confirmed that DSRR and its owner would not commit to the rehabilitation of the 20-mile segment of its line, LPPC, with the approval of SEAEDD, MPP and NLA, decided to file the original Feeder Line Application to acquire the segment of the Corridor between MP 471 and MP 491.⁷¹

Shortly thereafter, Hargrove advised FRA that DSRR would not commit to rehabilitating the segment.⁷² She also explained that LPPC would take steps to acquire the 20-mile segment from DSRR as soon as it could determine the NLV of the property. In response, Hargrove was advised that FRA's approval of the

⁷⁰ *Id.* at ¶22.

⁷¹ *Id.* at ¶23.

⁷² *Id.* at ¶24.

changes set out in SEAEDD's letter, dated March 17, 2020, had no impact on SEAEDD's prior commitment to rehabilitate the 20-mile segment. FRA also indicated that the change of ownership of the segment would not adversely impact the INFRA Grant funding *if* the segment were re-opened for rail service. Unable to obtain a commitment from DSRR, LPPC filed its original Feeder Line Application.

DSRR's claim that there is no need to rehabilitate the *dormant, long-out-of-service track* underscore's its lack of understanding of rail service requirements. The photograph of multiple tank and covered hopper cars that were being stored on DSRR's track alongside U.S. Highway 65 was taken on January 17, 2021, which was two (2) months after LPPC filed its original Feeder Line Application. It clearly demonstrates the fallacy that tracks that are used for storage do not need to be adequately maintained.



Respectfully submitted

/s/ Richard H. Streeter

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January 4, 2023

EXHIBIT A

US DOT Grant Agreement, August 2019

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

Grant Agreement – Attachment 1

INFRA TERMS AND CONDITIONS

August 2019

PART I. ATTACHMENT OVERVIEW AND DEFINITIONS

Attachment 1 is part of the Agreement and contains the standard terms and conditions governing the execution of the Project and the administration of the Agreement. By entering into this Agreement with the Federal Railroad Administration (FRA), the Grantee agrees to comply with these terms and conditions and all applicable Federal laws and regulations, including those discussed in this Agreement. Terms that appear frequently throughout the Agreement are defined, as follows:

- a. **Agreement** means this Grant Agreement, including the cover sheet and all attachments and amendments. As used on the Agreement cover sheet, section 9 “Previous Agreements” refers to the amount of the original Agreement, together with, if applicable, all amounts from amendments to the Agreement that precede the current amendment. As used on the Agreement cover sheet, section 10 “This Agreement” refers to the amount being added or subtracted with the current amendment, if applicable, or the original Agreement. As used on the Agreement cover sheet, section 11 “Total Agreement” refers to the combined amounts of section 9 “Previous Agreements” and section 10 “This Agreement”.
- b. **Application** means the signed and dated application submitted by or on behalf of the Grantee, as may be amended, seeking Federal financial assistance for the Project, together with all explanatory, supporting, and supplementary documents, assurances and certifications filed with and accepted by FRA or DOT.
- c. **Approved Project Budget** is in Attachment 4 to this Agreement and means the most recently dated written statement, approved in writing by FRA, of the estimated total cost of the Project. The term “Approved Project Budget” also includes “Financial Plan” as used in 2 C.F.R. § 200.308.
- d. **Approved Project Schedule** is in Attachment 3 to this Agreement.
- e. **Authorized Representative** means the person(s) at FRA or the Grantee who is able and approved to communicate on behalf of the organization, perform the referenced action, or commit the organization to the referenced action, pursuant to the organization’s internal policies, procedures, or reporting structure.
- f. **DOT** means the United States Department of Transportation, including its operating administrations.
- g. **Effective Date** means the earlier of the federal award date and the beginning of the Project Performance Period.
- h. **Federal Contribution** means the amounts obligated, whether paid or not, by FRA to the Grantee under this Agreement as shown in the “Federal” column in sections 9, 10 and 11 of the Agreement cover sheet.

- i. **Federal Funding Period** means the period that FRA provides funds under this Agreement as shown in section 5 of the Agreement cover sheet.
- j. **Federal Government** means the United States of America and any executive department or agency thereof.
- k. **Federal Railroad Administration or FRA** is an operating administration of the DOT and the Federal Awarding Agency for this Agreement.
- l. **Grantee** means the entity identified on the Agreement cover sheet that receives Federal grant assistance directly from FRA for the accomplishment of the Project referenced in this Agreement.
- m. **Grant** as used in this Agreement means funding awarded through a grant agreement as well as funding awarded through a cooperative agreement as each of those terms is defined in 2 C.F.R. Part 200.
- n. **Non-Federal Contribution** means any amount, as shown under the “Non-Federal” column in sections 9, 10 and 11 of the Agreement cover sheet, including matching funds as used in 2 C.F.R. Part 200, not funded by FRA under this Agreement, regardless of whether the source of any or all of such contribution is a Federal source.
- o. **Pre-Agreement Costs** means “pre-award costs,” as that term is defined in 2 C.F.R. § 200.458.
- p. **Project** means the task or set of tasks set forth in the Statement of Work.
- q. **Project Performance Period** means “period of performance” as defined in 2 C.F.R. § 200.77 and described in 2 C.F.R. § 200.309, and is shown in section 4 of the Agreement cover sheet.
- r. **Statement of Work** means a detailed description of the work the Grantee will complete with the grant funding from this Agreement, and appears in Attachment 2 to this Agreement.
- s. **Total Federal Assistance** means the combined total of the Federal Contribution and the portion, if any, of the Non-Federal Contribution that is from a Federal source.

Additional definitions are found in 2 C.F.R. Part 200, Subpart A, and these Subpart A definitions are incorporated herein by reference and made a part hereof. Defined terms in Subpart A incorporated herein are not capitalized in this Agreement.

PART II. GENERAL TERMS AND CONDITIONS

1. Grant Agreement:

This Agreement constitutes the entire agreement between the Grantee and FRA. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement is governed by and subject to 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT's implementing regulations at 2 C.F.R. Part 1201.

2. FRA Role:

This Agreement is between FRA and the Grantee. FRA is responsible for funding disbursements to the Grantee under this Agreement. FRA will also conduct oversight and monitoring activities to assess Grantee progress against established performance goals and the Statement of Work, as well as to assess compliance with terms and conditions and other requirements of this Agreement.

If this award is made as a Cooperative Agreement, FRA will have substantial programmatic involvement. Substantial involvement means that, after award, technical, administrative, or programmatic staff will assist, guide, coordinate, or otherwise participate with the Grantee in Project activities.

FRA may provide professional staff to review work in progress, completed products, and to provide or facilitate access to technical assistance when it is available, feasible, and appropriate, which may include the following:

- a. Financial Analyst. The Financial Analyst will serve as the Grantee's point of contact for systems (e.g., GrantSolutions and the Delphi eInvoicing System) access and troubleshooting as well as for financial monitoring. The Financial Analyst is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, the delivery schedule, Project Performance Period or other terms or conditions.
- b. Grant Manager. The Grant Manager will serve as the Grantee's point of contact for grant administration and will oversee compliance with the terms and conditions in this Agreement. The Grant Manager reviews financial reports, performance reports, and works with the Regional Manager to facilitate effective Project delivery. The Grant Manager is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, Project Performance Period, or other terms and conditions.
- c. Regional Manager. The Regional Manager will be the Grantee's point of contact for the technical aspects of Project delivery. The Regional Manager coordinates Project deliverable review, evaluates Grantee technical assistance needs, and generally assesses Project progress and performance. The Regional Manager is not authorized to unilaterally change the Statement of Work, make any changes which affect this

Agreement's monetary amount, Project Performance Period, or other terms and conditions.

- d. Contact Information. FRA strongly prefers electronic submission of most documents (instructions for electronic submission are included under various requirements outlined in Part II of this attachment). If the Grantee must mail documentation, that documentation should be delivered to the Grant Manager at:

Federal Railroad Administration
Office of Railroad Policy and Development
Mail Stop 20
1200 New Jersey, SE
Washington, DC 20590
ATTN: (ASSIGNED GRANT MANAGER)

3. Applicability of Title 23, United States Code:

This grant provides funds authorized under 23 U.S.C. § 117; as such Grantee agrees to comply with the requirements in Title 23, United States Code including those in Attachment 5, Applicable Federal Law and Regulations. The Federal Highway Administration will assist FRA in providing technical assistance and in its oversight and administration of this grant, including through participation in monitoring/project delivery meetings with the Grantee as applicable.

4. Grantee Responsibility and Authority:

The Grantee affirms that it had and has, as applicable, the legal authority to apply for the Grant, to enter into this Agreement, and to finance and carry out the proposed Project. The Grantee further affirms that any required resolution, motion or similar action has been duly adopted or passed as an official act authorizing the filing of the Application, where applicable, including all understandings and assurances contained therein, and the entering into of this Agreement. The Grantee will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Agreement without the written approval of the FRA, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Grantee. The Grantee agrees that this will be done in a manner acceptable to the FRA.

5. Project Scope, Schedule, and Budget:

The Grantee agrees to carry out, complete and ensure the use of the Project in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, including the Approved Project Budget, the Statement of Work, the Approved Project Schedule, grant guidance, the Application as applicable, and all

applicable laws, regulations, and published policies.

- a. Scope. The Grantee will furnish all personnel, facilities, equipment, and other materials and services, except as otherwise specified herein, that are necessary to complete the approved Project, in accordance with the representations, certifications and assurances set forth in the Grantee's Applications(s) as applicable, and any amendments thereto, incorporated herein by reference and made a part hereof.
- b. Schedule. The Grantee will complete this Project, as documented in the Statement of Work, within the Project Performance Period. Schedule and Project Performance Period extension requests may be permitted, at the discretion of the FRA, subject to applicable law. The Grantee should request such an extension no later than 90 days prior to the Project Performance Period end date.
- c. Budget. The Grantee will complete the Project within the funding limits and parameters specified on the Agreement cover sheet and the Statement of Work.

- 1) Project Costs and Funding Contributions. The Federal Contribution, Non-Federal Contribution and total estimated Project costs toward this Project are documented in sections 9, 10 and 11 of the Agreement cover sheet and may not be changed without a written request and justification from the Grantee, written approval from FRA, and an amendment or closeout to the Agreement. FRA will fund the Project at the lesser of the Federal Contribution and the difference between the total actual Project cost and the Non-Federal Contribution. If the actual Project costs are less than the total estimated Project costs, then the Grantee may either:

(a)submit for approval a written proposal to use the difference between total estimated Project costs and the actual Project costs, for additional activities that are within the scope of this award, or if such proposal is not submitted or approved,

(b)submit for approval the reduced cost in their final reports documenting the reduction to the Federal Contribution by the difference between the total estimated Project costs and the actual Project costs, and refund any amounts owed to FRA as a result.

Notwithstanding the above, funds authorized under 23 U.S.C. § 117 may not exceed 60% of the total Project costs, and Total Federal Assistance may not exceed 80% of the total Project cost, consistent with 23 U.S.C. § 117(j).

- 2) Non-Federal Contribution. The Grantee is responsible for completing the Project, including providing the Non-Federal Contribution, consistent with the Approved Project Budget and 23 U.S.C. § 117(j), and any other funds necessary for completing the Project. The Grantee affirms that it will complete all actions necessary to provide the Non-Federal Contribution at or before the time that such funds are needed to meet Project expenses. The Grantee also affirms that it has

sufficient funds available to assure operation and maintenance of items funded under this Agreement that it will own or control.

- 3) Use of Limited Non-Highway Funds. The Grantee acknowledges that the DOT selected the Project for award with the expectation that no more than the "INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)" that is listed in the Approved Project Budget would be subject to the limitation at 23 U.S.C. 117(d)(2). The Grantee will not request reimbursements that are subject to the limitation at 23 U.S.C. 117(d)(2) and, in aggregate, exceed the "INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)" that is listed in the Approved Project Budget.
- 4) Project Budget Detail. The Grantee agrees to carry out the Project according to the Approved Project Budget. The Grantee agrees to obtain the prior written approval from FRA for any revisions to this Approved Project Budget that equal or cumulatively exceed 10 percent of any budget task line item (or pertain to a cost category involving contingency or miscellaneous costs).

e. Property and Equipment.

- 1) The Grantee will operate the property and equipment funded with this Agreement for the originally authorized purpose.
- 2) If the Grantee is not the entity operating the property and/or equipment funded with this Agreement, then the Grantee represents that it will ensure the property and equipment funded with this Agreement will be used for the originally authorized purpose, if necessary, through appropriate arrangements with:
 - i. The entity or entities operating the property and/or equipment funded with this Agreement; and
 - ii. If applicable, the owner of right-of-way used by the property and/or equipment funded with this Agreement.

- f. Pre-Agreement Costs. Grantee may request approval of Pre-Agreement costs incurred after the date DOT notifies the Grantee of its proposed selection for award. Such a request must demonstrate the purpose and amount of the costs, and whether such costs serve as cost-sharing or matching funds. If FRA approves Pre-Agreement Costs, within the constraints described in the Statement of Work, the Grantee may seek reimbursement for these costs on or after the start of the Federal Funding Period specified on the Agreement cover sheet. Such costs are allowable for reimbursement only to the extent that they are otherwise allowable under the terms of this Agreement, and are consistent with 2 C.F.R. § 200.458 and 23 C.F.R. 1.9(b).

6. Grant Amendments:

- a. Other than close-out, modifications to this Agreement may be made only in writing, signed by an Authorized Representative for FRA and the Grantee, and specifically referred to as an amendment to this Agreement.
- b. Required modifications include, but are not limited to, the following:
 - 1) the Project's activities differ from those described in the Statement of Work;
 - 2) changes to the Project Performance Period or the Federal Funding Period;
 - 3) the Project's "Other Federal Funds" increases from the amount listed in the Approved Project Budget;
 - 4) the Project's "State Funds," "Local Funds," or "Other Funds" decrease from the dollar amounts listed in the Approved Project Budget regardless of whether the Non-Federal Contribution remains the same; or
 - 5) the "INFRA Grant Amount subject to 23 U.S.C. 117(d)(2)" changes from the amount listed in the Approved Project Budget.
- c. FRA may accept or reject proposals from the Grantee under section 5(c) and this section, and in doing so may elect to consider only the interests of the DOT.

7. Flow Down Provisions:

The Grantee will ensure persons or entities that perform any part of the work under this Agreement, including Subrecipients, as defined in 2 C.F.R. § 200.93, or Contractors, as defined in 2 C.F.R. § 200.23, will comply with applicable federal requirements and federal guidance, and the applicable requirements of this Agreement. Grantee agrees that flowing down such requirements does not relieve it of any obligation to comply with the requirements itself.

For each of the Grantee's subawards or contracts to perform all or part of the work under this Agreement:

- a. The Grantee must include applicable grant regulations in the subaward or contract and ensure compliance with these provisions, including applicable provisions of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT's implementing regulations at 2 C.F.R. Part 1201 *See* 2 C.F.R. § 200.101.
- b. The Grantee must include applicable federal statutory and regulatory requirements in the subaward or contract and ensure compliance with these requirements, including applicable limitations on use of federal funds.
- c. The Grantee must include any other applicable requirements of this Agreement in the subaward or contract and ensure compliance with these requirements.
- d. The Grantee will require provisions for the further flow down of the regulations and requirements in subsections (a) and (b) of this section to each subsequent subaward

or subcontract, as required.

8. Successors and Assigns:

The Grantee is not authorized to assign this Agreement without FRA's express prior written consent.

9. Execution:

This Agreement may be executed by the Grantee and FRA in separate counterparts, each of which when so executed and delivered will be deemed an original.

10. Changed Conditions of Performance (Including Litigation):

The Grantee agrees to immediately notify FRA, in a written statement to the FRA Grant Manager, of any change in local law, conditions, or any other event that may affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Grantee agrees to immediately notify the FRA Grant Manager of any decision pertaining to the Grantee's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable federal laws or regulations. Before the Grantee may name FRA as a party to litigation for any reason, the Grantee agrees first to inform the FRA Grant Manager in writing; this provision applies to any type of litigation whatsoever, in any forum.

11. Severability:

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement will continue in full force and effect to the extent not inconsistent with such holding.

12. Right of FRA to Terminate:

- a. The Grantee agrees that, upon written notice, FRA may, in whole or in part, suspend, terminate, or suspend and terminate the Federal Contribution if:
 - 1) Grantee fails to meet or violates the terms, conditions or obligations specified under this Agreement;
 - 2) Grantee fails to make reasonable progress on the Project;
 - 3) Grantee fails to provide the Non-Federal Contribution;
 - 4) Grantee violates any other provision of this Agreement that the FRA determines significantly endangers substantial performance of the Project;
 - 5) FRA determines that the purposes of the statute(s) under which the Project is authorized or funded would not be adequately served by continuation of the Federal Contribution; or
 - 6) FRA determines that termination of this Agreement is in the public interest.

- b. In general, suspension and/or termination of any part of the Federal Contribution will not invalidate obligations properly incurred by the Grantee and concurred in by FRA before the termination date; to the extent those obligations cannot be canceled. However, FRA reserves the right to require the Grantee to refund the entire amount of the Federal Contribution provided under this Agreement or any lesser amount as may be determined by FRA in its sole discretion, if FRA determines that the Grantee has misused the Federal Contribution, including by:
- 1) Failing to make adequate progress;
 - 2) Failing to make reasonable use of the Project property, facilities, or equipment, or
 - 3) Failing to adhere to the terms of this Agreement.

13. Term:

This Agreement is in effect from the Effective Date until the end of the closeout period, regardless of whether FRA suspends or terminates all or part of the Federal Contribution provided herein. The expiration of any time period for performance or funding established for this Project does not, by itself, constitute an expiration or termination of this Agreement.

The end of the closeout period of this Agreement does not affect continuing obligations under 2 C.F.R. Part 200, including those in 2 C.F.R. § 200.344. Any right or obligation of the parties in this Agreement or the closeout notification which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

PART III. GRANT MANAGEMENT TERMS AND CONDITIONS

Performance and Reporting Provisions

14. Deliverables and Products:

The Grantee will submit deliverables, including publications or other products, to FRA as stipulated in this Agreement. Substantive changes to the nature of the deliverables or significant timeline modifications require advanced written approval and may require an Amendment to this Agreement.

The Grantee will submit deliverables that adhere to all applicable laws, regulations, and FRA guidance within the timeframes established. In some instances, as articulated in the Statement of Work, the Grantee may be required to submit deliverables and obtain approval from FRA prior to continuing all or a portion of the work on the Project. Accordingly, the Grantee must account for FRA deliverable review time when planning work or submissions.

Whether for technical examination, administrative review, publication, or approval, all deliverable submissions will be of a professional quality and suitable for their intended

purpose.

15. Quarterly Progress Reports:

The Grantee will submit one completed progress report quarterly (totaling four annually), in the form/format provided by FRA at <http://www.fra.dot.gov/Page/P0274>. For the duration of the Project Performance Period, the Grantee must report for the periods of: January 1 – March 31; April 1 – June 30; July 1 – September 30; and October 1 – December 31. The Grantee will furnish one copy of the completed progress report to the assigned FRA Grant Manager on or before the thirtieth (30th) calendar day of the month following the end of the quarter for which the report is submitted.

The Grantee will complete the report in its entirety with the most accurate information available at the time of reporting. The Grantee must be able to support the information contained in its progress reports and ensure that the activities described in the report are commensurate with reimbursement requests and/or outlay figures reported for the quarter. This report will be consistent with 2 C.F.R. § 200.301.

16. Quarterly Federal Financial Reports:

The Grantee will submit the Federal Financial Report (Standard Form 425) on the same schedule as the required quarterly progress report (listed above). Reports should be submitted online through GrantSolutions. Reports will be submitted in accordance with the form's instructions. The final SF-425 is due within 90 days after the end of the Project Performance Period, but may be submitted as soon as all outstanding expenditures have been completed. The Grantee must be able to support the information contained in its financial reports and will ensure that all data included in the reports is accurate and consistent.

17. Interim and Final Performance Reports:

If required by the Statement of Work, the Grantee will submit interim reports at the intervals specified in the Statement of Work. The Grantee must submit a Final Performance Report via email to the FRA Grant Manager when the Project(s) funded through this Agreement are completed. The Grantee must complete closeout activities and submit reports, no later than 90 days after the end of the Project Performance Period for this Agreement or the FRA termination date.

If the Grantee proposed Project-Specific Performance or Accountability Measures in response to section A.2.d of the Notice of Funding Opportunity, 82 FR 31135 (July 5, 2017), for funds provided under this Agreement (NOFO), then FRA will list those measures in an Attachment 6 to this Agreement, and the Grantee agrees to comply with those measures.

18. Project Completion and Closeout:

- a. **Final Documentation.** As soon as the funded Project(s) are complete, the Grantee will submit a final SF-425, a final Progress Report, a final Performance Report, and a final payment request. Closeout activities by Grantee, including submission of the referenced documents, must be completed no later than 90 days after the end of the Project Performance Period for this Agreement or the FRA termination date.
- b. **Excess Payments.** If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee will promptly remit that excess and interest as may be required by section 21(f) of this Attachment.
- c. **Closeout.** Grantees should begin closeout procedures when their Project(s) is complete. The Project closeout period is complete when all of the following is complete: 1) the required Project work is complete; 2) all administrative procedures described in 2 C.F.R. Part 200 (all sections), as applicable, have been completed; and 3) when FRA either notifies the Grantee of closeout or when FRA acknowledges the Grantee's remittance of a proper refund. Project closeout will not invalidate any continuing obligations imposed on the Grantee by this Agreement, including 2 C.F.R. § 200.344, or by the FRA's final notification or acknowledgment.

19. Transparency Act Requirements—Reporting Subawards and Executive Compensation:

The Grantee will comply with the provisions of the Federal Funding Transparency and Accountability Act of 2006 (Pub. L. 109-282) and 2 C.F.R Part 170, incorporated herein by reference and made part hereof. For more information, visit <https://www.ftrs.gov/>.

20. Recipient Integrity and Performance Matters:

- a. **General Reporting Requirement.** If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the Project Performance Period, then the Grantee during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in subsection (b) of this section. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.
- b. **Proceedings About Which the Grantee Must Report.**

Submit the information required about each proceeding that:

- 1) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the federal government;
 - 2) Reached its final disposition during the most recent five-year period; and
 - 3) Is one of the following:
 - A criminal proceeding that resulted in a conviction, as defined in subsection (e) of this section;
 - A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - An administrative proceeding, as defined in subsection (e) of this section, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - Any other criminal, civil, or administrative proceeding if:
 - It could have led to an outcome described in subsection (b)(3) of this section;
 - It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Grantee's part; and
 - The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.
- c. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in section (b) of this section. The Grantee does not need to submit the same information a second time under assistance awards that the Grantee received if the Grantee already provided the information through SAM because the Grantee was required to do so under federal procurement contracts that the Grantee was awarded.
- d. Reporting Frequency. During any period of time when the Grantee is subject to the requirement in subsection (a) of this section, the Grantee must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the Grantee has not reported previously or affirm that there is no new information to report. Recipients that have federal contract, grant and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

e. Definitions. For purposes of this section:

- 1) Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- 2) Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- 3) Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - Only the federal share of the funding under any federal award with a Grantee; and
 - The value of all expected funding increments under a federal award and options, even if not yet exercised.

Financial Management Provisions

21. Payments:

- a. Request by the Grantee for Payment. The Grantee's request for payment of the Federal Contribution of allowable costs will be made to FRA and will be acted upon by FRA as set forth in this section. For states, payments are governed by Treasury/State CMIA agreements, and default procedures codified at 31 C.F.R. Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers" and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies. Non-states must comply with the provisions of 2 C.F.R. §200.305(b). To receive a Federal Contribution payment, the Grantee must:
 - 1) Demonstrate or certify that it has made a binding commitment of the Non-Federal Contribution, if applicable, adequate when combined with the Federal Contribution, to cover all costs to be incurred under the Project as of the date of the request. The Grantee agrees:
 - i. to refrain from requesting reimbursements subject to the limitation at 23 U.S.C. 117(d)(2) that, in aggregate, exceed the "INFRA Grant Amount

Subject to 23 U.S.C. 117(d)(2)” listed in the Approved Project Budget by source;

- ii. to refrain from requesting or obtaining any Federal Contribution that is more than the amount justified by the Non-Federal Contribution that has been provided; and
 - iii. to refrain from taking any action that would cause the proportion of the Federal Contribution at any time to exceed the percentages authorized under this Agreement and 23 U.S.C. §117(j). The phasing or expenditure rate of the Non-Federal Contribution may be temporarily adjusted only to the extent expressly provided in writing by an Authorized Representative of FRA.
- 2) Submit to FRA all financial and progress reports required to date under this Agreement; and
 - 3) Identify the funding source(s) provided under this Project, if applicable, from which the payment is to be derived.
- b. Reimbursement Payment by FRA. Unless otherwise approved by FRA, FRA will disburse funds to the Grantee on a reimbursable basis, whereby the Grantee will be reimbursed for actual expenses incurred and paid, after the submission of complete and accurate invoices and payment records. The Grantee’s request for payment will be made to FRA through the Department of Transportation’s Delphi eInvoicing System and will be acted upon as set forth in this section.
- 1) Delphi eInvoicing System first-time users must obtain access to the System by contacting the Financial Analyst. Additional information on the System can be found at www.dot.gov/cfo/delphi-einvoicing-system.html.
 - 2) Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FRA will authorize payment by direct deposit, provided the Grantee: (i) is complying with its obligations under this Agreement; (ii) has satisfied FRA that it needs the requested Federal Contribution for the period covered by the payment request (as identified on the Standard Form 270 Request for Advance or Reimbursement (SF-270)); and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FRA may reimburse allowable costs incurred by the Grantee up to the maximum amount of the Federal Contribution.

The Grantee agrees to give a written, five-day notice to the assigned FRA Grant Manager for any payment request totaling \$50 million or more. Grantees should note that FRA is unable to process single payment requests greater than \$99,999,999. The Grantee agrees to adhere to and impose upon its subrecipients all applicable foregoing "Reimbursement Payment by FRA" requirements of this

Agreement.

If the Grantee fails to adhere to the foregoing "Reimbursement Payment by FRA" requirements of this Agreement, FRA may withhold funding disbursements.

- c. Allowable Costs. FRA will reimburse the Grantee's expenditures, within the Federal Funding Period, only if they meet all of these requirements:
 - 1) Conform to the Project description, the Statement of Work, the Approved Project Budget, and all other terms of this Agreement;
 - 2) Be necessary in order to accomplish the Project;
 - 3) Be reasonable for the goods or services purchased;
 - 4) Be actual net costs to the Grantee (i.e., the price paid minus any applicable credits, refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);
 - 5) Be incurred (and be for work performed) within the Project Performance Period, unless specific authorization from FRA to the contrary is received in writing;
 - 6) Unless permitted otherwise by federal statutes or regulation, conform to federal guidelines or regulations and federal cost principles, as set forth in 2 C.F.R. Subpart E § 200.400 – 200.475.
 - 7) Be satisfactorily documented; and
 - 8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the Grantee, and those approved or prescribed by the Grantee for its subrecipients and contractors.
- d. Disallowed Costs. Disallowed costs include the following:
 - 1) Any Project costs incurred, activities undertaken, or work performed outside of the Project Performance Period, unless specifically authorized by FRA in writing, allowed by this Agreement, or otherwise permitted by federal law or regulation;
 - 2) Any costs incurred by the Grantee that are not included in the latest Approved Project Budget; and
 - 3) Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FRA.

The Grantee agrees that reimbursement of any cost under this section does not constitute a final FRA decision about the allowability of that cost and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement. The Grantee understands that FRA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FRA determines that the Grantee is not entitled to receive any part of the Federal Contribution requested, FRA will notify the Grantee stating the reasons therefor. Project closeout will not alter the Grantee's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. Project closeout will not alter FRA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FRA may offset any Federal Contribution to be made available under this Agreement, as needed, to satisfy any outstanding monetary claims that the federal government may have against the Grantee. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable federal cost principles or other written federal guidance.

- e. **Bond Interest and Other Financing Costs.** To the extent permitted in writing by FRA and consistent with 2 C.F.R. § 200.449, bond interest and other financing costs are allowable.
- f. **Requirement to Remit Interest.** The Grantee agrees that any interest earned by the Grantee on the Federal Contribution must be handled in accordance with 2 C.F.R. § 200.305, and remittance back to the federal government must be made in accordance with the provisions thereof.

22. Accounting Procedures:

- a. **Project Accounts.** The Grantee will establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 2 C.F.R. §§ 200.302, 200.303, and 200.305.
- b. **Funds Received or Made Available for the Project.** Grantees other than states will follow the provisions of 2 C.F.R. § 200.305(b)(7) with respect to the use of banks and other institutions as depositories of any advance payments that may be received under this Agreement. States will follow the provisions of 2 C.F.R. § 200.305(a).
- c. **Documentation of Project Costs and program income.** All costs charged to the Project, including any approved services contributed by the Grantee or others, will be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee will also maintain accurate records of all program income derived from Project implementation.

- d. Checks, Orders, and Vouchers. The Grantee will ensure that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project are clearly identified with a Grant Agreement number, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

23. Program Income:

The Grantee is encouraged to earn income to defray Project costs, where appropriate, and should work with the assigned FRA Grant Manager to determine how this income may be applied to the grant, in accordance with 2 C.F.R. § 200.307 and 2 C.F.R. § 1201.80. Program income not deducted from total allowable costs may be used only for the purposes and under the terms and conditions established in this Agreement. Records of program income should be maintained consistent with subsection 22(c) of this Attachment.

Project Management Provisions

24. Environmental Protection:

- a. Grantee Assistance. Grantees must comply with the governing laws and regulations referenced in this Attachment and may also be required to assist with FRA's compliance with applicable Federal laws, regulations, executive orders, and policies related to environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations (40 C.F.R. Part 1500 *et seq.*); FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545, and as updated in 78 FR 2713, January 14, 2013) or 23 C.F.R. Part 771, as applicable; Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*) and its implementing regulations (36 C.F.R. Part 800); Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303(c)), and its implementing regulations (23 C.F.R. Part 774). In providing such assistance, FRA may require that the Grantee conduct environmental and/or historic preservation analyses and to submit documentation to FRA.
- b. Timing of Grantee Action. The Grantee may not expend any of the funds provided in this Agreement on construction activities or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until FRA has provided the Grantee with a written notice authorizing the Grantee to proceed. See 23 C.F.R. 771.113(a).
- c. Minimization, Avoidance and Mitigation Measures. The Grantee must implement all measures to minimize, avoid, or mitigate adverse environmental impacts identified by

FRA in the categorical exclusion, Finding of No Significant Impact, or Record of Decision for the Project. The Grantee must also implement any additional measures identified through all other environmental or historic preservation review processes conducted to support Project construction and operation (e.g., any commitments included in a Memorandum of Agreement executed pursuant to Section 106 of the NHPA).

- d. Revisions to Minimization, Avoidance or Mitigation Measures. The Grantee must provide FRA with written notice if it has not, or cannot, implement any of the minimization, avoidance or mitigation measures identified in subsection (c). Upon receiving such notice, FRA will provide the Grantee direction in writing, which may include substitute mitigation measures. FRA may also revise its categorical exclusion, Finding of No Significant Impact, or Record of Decision.

25. Property, Equipment and Supplies:

Unless otherwise approved by FRA, the following terms and conditions apply to property, equipment, and supplies funded under this Agreement:

- a. General Federal Requirements. The Grantee will comply with the property management standards of 2 C.F.R. §§ 200.310 through 200.316, including any amendments thereto, and other applicable guidelines or regulations. Exceptions to the requirements must be specifically approved by FRA in writing. The Grantee will use Project real property, as defined by 2 C.F.R. § 200.85, in accordance with the Property Standards of 2 C.F.R. § 200.211. Notwithstanding 2 C.F.R. § 200.313, subrecipients of states will comply with 2 C.F.R. § 1201.313 with respect to the use, management and disposal of equipment acquired under this Agreement.
- b. Maintenance. The Grantee agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- c. Records. The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section.
- d. Transfer of Project Property, Equipment or Supplies. The Grantee agrees that FRA may require the Grantee to transfer title to, or direct the disposition of, any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as required by 2 C.F.R. §§ 200.311 – 200.316.
- e. Withdrawn Property, Equipment or Supplies. If any Project property, equipment, or supplies are not used for the Project for the duration of their useful lives, as determined by FRA, whether by planned withdrawal, misuse or casualty loss, the Grantee agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies will be in accordance with 2 C.F.R. §§ 200.311 – 200.316.

- f. Encumbrance of Project Property or Equipment. Unless expressly authorized in writing by FRA, the Grantee agrees not to:
- 1) Execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would dispose of or encumber the Grantee's title or other interest in any Project property or equipment; or
 - 2) Obligate itself in any manner to any third party with respect to Project property or equipment. The Grantee will refrain from taking any action or acting in a manner that would adversely affect FRA's interest or impair the Grantee's continuing control over the use of Project property or equipment.

26. Relocation and Land Acquisition:

The Grantee agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.* and the U.S. DOT implementing regulations, 49 C.F.R. Part 24.

27. Flood Hazards:

The Grantee agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition project.

28. Procurement:

- a. Federal Standards. The Grantee may acquire property, goods or services in connection the Project. If the Grantee is a state, then it will use its own procurement procedures that reflect applicable state laws and regulations in compliance with 2 C.F.R. § 200.317. A subrecipient of a state will follow such policies and procedures allowed by that state when procuring property and services under this award consistent with 2 C.F.R. § 1201.317, notwithstanding 2 C.F.R. § 200.317. An entity that is not a state or a subrecipient will comply with 2 C.F.R. §§ 200.318 – 200.326, and applicable supplementary U.S. DOT or FRA directives and regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.
- b. Cargo Preference -- Grantee will comply with the U.S. DOT Maritime Administration regulations, 46 C.F.R. Part 381 as follows:
 - 1) Use of United States-flag vessels:
 - Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Agreement, and which may be transported by ocean vessel, will be transported on privately owned United States-flag commercial vessels, if available.
 - Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section will be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

- 2) The Grantee will insert the following clauses in contracts let by the Grantee in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project.

“Use of United States-flag vessels: The contractor agrees -

- 1) To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- 2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in subsection (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.
- 3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”

- c. Notification Requirement. With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Grantee agrees to:

- 1) specify in any announcement of the awarding of the contract for such goods or services the amount of Federal Contribution that will be used to finance the acquisition; and
- 2) express said amount as a percentage of the total costs of the planned acquisition.

- d. Debarment and Suspension; and Drug-Free Work Place. The Grantee agrees to obtain certifications on debarment and suspension from its third-party contractors and subrecipients and otherwise comply with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. Part 1200, and Government-wide Requirements for Drug-Free Workplace (Grants), 49 C.F.R. Part 32.

- e. Reserved.

29. Rights in Intangible Property:

- a. Title to Intangible Property. Intangible property, as defined in 2 C.F.R. § 200.59, acquired in the performance of this Agreement vests upon acquisition in the Grantee. The Grantee must use that property for the originally-authorized purpose, and must not encumber the property without approval of FRA. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions of 2 C.F.R. § 200.313(e).
- b. Copyright. The Grantee may copyright any work that is subject to copyright and was developed or for which ownership was acquired under this Agreement. FRA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- c. Patents. The following provisions will apply to patents under this Agreement:
 - 1) The Grantee is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”.
 - 2) If the Grantee secures a patent with respect to any invention, improvement, or discovery of the Grantee or any of its subrecipients or contractors conceived or first actually reduced to practice in the course of or under this Project, the Grantee agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal purposes.
- d. Research Data. For any research data (as defined in 2 C.F.R. § 200.315(e)(3)) acquired under a grant or contract, FRA has the right to:
 - 1) Obtain, reproduce, publish, or otherwise use the research data produced under this Agreement; and
 - 2) Authorize others to receive reproduce, publish, or otherwise use such data.
- e. Freedom of Information Act (FOIA). Responding to a FOIA request under this Agreement will be handled in accordance with the provisions of 2 C.F.R. § 200.315(e), including any definitional provisions set forth therein. The “Federal awarding agency” is FRA, and the “non-Federal entity” is the Grantee for purposes of this clause.

30. Acknowledgment of Support and Disclaimer:

- a. Acknowledgement and Disclaimer. An acknowledgment of FRA support and a disclaimer of said support must appear in any Grantee publication developed under a research and development grant, or any other product based on or developed under the Agreement as directed by FRA, whether copyrighted or not, in the following terms:
 - 1) “This material is based upon work supported by the Federal Railroad Administration under [Grant/Cooperative Agreement number], [date of award].”
 - 2) “Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT.”
- b. Signs. The Grantee is encouraged to erect at the site of any construction, and to maintain during construction, signs identifying the Project and indicating that FRA is participating in the development of the Project.

31. Reprints of Publications:

At such time as any article resulting from work under this Agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to the FRA Grant Manager, clearly referenced with the appropriate identifying information.

Documentation and Oversight Provisions

32. Record Retention:

During the course of the Project and for three years after notification of grant closeout, the Grantee agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FRA may require. In cases where litigation, a claim, or an audit is initiated prior to the expiration of the record retention period, records must be retained until completion of the action and resolution of issues or the end of the record retention period, whichever is later. Reporting and record-keeping requirements are set forth in 2 C.F.R. §§ 200.333 – 200.337. Project closeout does not alter these requirements.

33. Audit and Inspection.

- a. General Audit Requirements. The Grantee will comply with all audit requirements of 2 C.F.R. §§ 200.500 – 200.512.
- b. Inspection by Federal Officials. The Grantee agrees to permit the Secretary and the Comptroller General of the United States, or their Authorized Representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its contractors and subrecipients pertaining to the Project.

34. Fraud, Waste or Abuse:

The Grantee agrees to take all steps, including initiating litigation, if necessary, to recover the Federal Contribution if the FRA determines, after consultation with the Grantee, that all or a portion of such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project.

35. Site Visits:

FRA, through its Authorized Representatives, has the right, at all reasonable times, to make site visits to review Project activities, accomplishments, and management control systems and to provide such technical assistance as may be required. If any site visit is made by FRA under this Agreement on the premises of the Grantee, contractor, beneficiary or subrecipient, the Grantee will provide, or will ensure the provision of all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations will be performed in such a manner as will not unduly delay work being conducted by the Grantee or any subrecipient.

36. Safety Compliance:

- a. To the extent applicable, the Grantee agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety in general, and in the performance of this Agreement, in particular.
- b. U.S. DOT has determined that Section F.2.a of the NOFO does not apply [to this Project because it is for improvements on or for a railroad].

37. Electronic and Information Technology:

The Grantee agrees that reports or information it provides to or on behalf of FRA will use electronic or information technology that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194.

Other Legislative and Regulatory Provisions

38. Reserved.

39. Ethics:

- a. **Standards of Conduct.** The Grantee will maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by the Federal Contribution provided through this Agreement. The code or standards will provide that the Grantee's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subrecipients or contractors. The Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by state or local law or regulations, such code or standards will provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee's officers, employees, board members, or agents, or by subrecipients or their agents.
 - 1) **Personal Conflict of Interest.** The Grantee's code or standards must provide that no employee, officer, board member, or agent of the Grantee may participate in the selection, award, or administration of a contract supported by the Federal Contribution if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
 - 2) **Organizational Conflicts of Interest.** The Grantee's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.
- b. **Existing Codes or Standards.** This section does not require the Grantee to implement a new code or standards of conduct where a state statute, or written code or standards of conduct, already effectively covers all of the elements of Section 38(a) of this Attachment.

40. Civil Rights:

The Grantee agrees to comply with all civil rights laws and regulations, in accordance

with applicable Federal directives. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, 42 U.S.C. § 2000d *et seq.*, the DOT Title VI regulations at 49 C.F.R. part 21, which prohibits discrimination on the basis of race, color or national origin; (b) the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the DOT ADA regulations at 49 C.F.R. parts 37-38, section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and the DOT regulations at 49 C.F.R. part 27, which prohibits discrimination on the basis of disability; (c) the Age Discrimination in Employment Act, as amended (42 U.S.C. §§ 621 – 634), and the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (d) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex; (e) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (f) any nondiscrimination regulation implemented relating to the above stated statutes; (g) any nondiscrimination Executive Order implemented relating to the above stated statutes; (h) any U.S. DOT Order implemented relating to nondiscrimination, and (i) any other applicable federal laws, regulations, requirements, and guidance prohibiting discrimination.

41. SAM Registration and DUNS Number:

The Grantee is responsible for maintaining an active SAM Registration and Data Universal Numbering System (DUNS) Number and ensuring that all SAM/DUNS information is current throughout the lifecycle of this Agreement, in accordance with 2 C.F.R. § 25.200(a)(2). If SAM/DUNS information becomes inactive, expired, or incorrect, the Grantee will not be able to do any grant-related business with FRA, including the obligation and/or payment of Federal grant funds, and FRA may take appropriate action to terminate this Agreement, in accordance with the terms of this Agreement.

42. Freedom of Information Act:

The FRA is subject to the Freedom of Information Act (FOIA). The Grantee should, therefore, be aware that all applications and related materials submitted by the Grantee related to this Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

43. Text Messaging While Driving:

The Grantee is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the government. *See* Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving,” Oct. 1, 2009 (available at <http://www.gpo.gov/fdsys/pkg/FR-2009-10-06/pdf/E9-24203.pdf>) and DOT Order 3902.10 “Text Messaging While Driving,” Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP- 2010-01, Feb. 2, 2010, available at http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf). This includes, but is not limited to, the Grantee:

- considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- encouraging voluntary compliance with the agency’s text messaging policy while off duty.

The Grantee is encouraged to insert the substance of this clause in all assistance awards.

Where a Grantee is located within a state that already has enacted legislation regarding texting while driving, that state’s law controls and the requirements of this section will not apply to or be a part of this Agreement.

44. Trafficking in Persons:

- a. Provisions applicable to a recipient that is a private entity.
 - 1) You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.

- 2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - a) Associated with performance under this award; or
 - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - 1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - a) Associated with performance under this award; or
 - b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.
- c. Provisions applicable to any recipient.
 - 1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of

2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

- 3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

- 1) “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

- 2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- 3) “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

ii. Includes:

(a) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(b) A for-profit organization.

- 4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

- 5) “Recipient” and “subrecipient” include for-profit entities for the purpose of this award term only.

PART IV. GOVERNING LAWS AND REGULATIONS

45. Governing Laws and Regulations:

a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Grantee acknowledges and agrees that its performance will be governed by and in compliance with this Agreement, 2 C.F.R. §§ 200 – 200.521, including Appendices I – XI, and DOT’s implementing regulations at 2 C.F.R. Part 1201.

b. Application of Federal, State, and Local Laws and Regulations.

- 1) Federal Laws and Regulations. The Grantee understands that Federal laws, regulations, policies, and related administrative practices in place on the date this Agreement was executed may be modified from time to time. The Grantee agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing federal requirements, the Grantee agrees to include in all subawards and contracts financed with all or part of the Federal Contribution or Non-Federal Contribution under this Agreement, specific notice that Federal requirements may change and the changed requirements will apply to the Project, as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
- 2) State, Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts state, territorial, or local law, nothing in this Agreement will require the Grantee to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable state, territorial, or local law; however, if any of the provisions of this Agreement violate any applicable state, territorial, or local law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable state, territorial, or local law, the Grantee agrees to notify the FRA immediately in writing in order that FRA and the Grantee may make appropriate arrangements to proceed with the Project.
- 3) The Grantee is required to comply with all applicable Federal laws, regulations, executive orders, policies, guidance, and requirements as they relate to the application, acceptance, and/or use of funds under this Agreement which may include, but are not limited to those referenced in this Agreement.

c. Environmental Protection. In addition to complying with other environmental protection requirements described in this Attachment, the Grantee will ensure that all work conducted under this Agreement complies with all applicable laws, regulations, executive orders, and policies related to environmental protection and historic preservation, including, but not limited to: Section 114 of the Clean Air Act (42 U.S.C. § 7414); and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318).

d. Fixing America's Surface Transportation Act, section 1105 (23 U.S.C. § 117).

Attachment 2

STATEMENT OF WORK

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

Nationally Significant Freight and Highway Projects (INFRA) Program, Fiscal Year 2019

I. AUTHORITY

Authorization	23 U.S.C. § 117(c)(1)(E) and (d)(1)(A)(iii)
Funding Authority/Appropriation	Contract authority in FAST Act Sec. 1101(a)(5), Pub. L. 114-94 (December 4, 2015)
Notice of Funding Opportunity	Nationally Significant Freight and Highway Projects (Infrastructure for Rebuilding America (INFRA) Grants) for Fiscal Year 2019; 83 FR 65789; Dec. 21, 2018

To the extent there is a conflict between Attachment 1 and this Attachment 2, Attachment 1 governs.

II. BACKGROUND

This Agreement between the Federal Railroad Administration (FRA) and the Southeast Arkansas Economic Development District (“SEAEDD” or “Grantee”) provides \$10,516,259 (“Federal Contribution” or “INFRA grant”), which, when combined with \$10,861,267 in matching funds, will fund the partial redevelopment of a multimodal freight corridor, through a mixture of rail rehabilitation, railroad bridge upgrades, and new rail infrastructure improvements (together and as further described herein and in the tasks below, the “Project”), which is located along a 91.3-mile continuous short line railroad corridor known as the McGehee-Tallulah Railroad Corridor, that parallels the Mississippi River, between the city of McGehee in rural southeast Arkansas on the northern end and the city of Tallulah in rural northeast Louisiana on the southern end (the “Corridor”).

The Project is a unique public-private partnership between the Grantee, which is a state economic development agency, two public ports (Lake Providence Port, Madison Parish Port), and two private short line railroads (North Louisiana & Arkansas Railroad (NLA) and Delta

Southern Railroad¹ (DSR)) (collectively “Project Partners”). The McGehee-Tallulah Railroad Corridor was developed in the early 1900s. It connects to two Class I railroads with regional and national connections: The Union Pacific Railroad (UP) in McGehee, AR, and the Kansas City Southern Railway (KCS) in Tallulah, LA. At points within the Corridor, the rail line is connected to local short line railroad Arkansas Midland Railroad in McGehee, AR; and the NLA and DSR connect with each other in Lake Providence, LA.

Much of the Corridor had been closed or underutilized for approximately 15 years, which is consistent with the overall economic decline of the region. During this period, there was a decrease in demand for freight rail service. Eventually, rail service ceased due to difficulties operating over substandard rail infrastructure, and DSR filed to abandon the majority of the rail corridor from Lake Providence Port northward to McGehee due to unprofitability.

In an effort to save the corridor from abandonment, the Grantee, NLA, DSR and the Lake Providence Port Commission (owner of Lake Providence Port) acquired various segments of the Corridor from UP between 1989 and 2011. Their goal was to preserve rail service to spur economic development and to provide transportation connectivity with the Class I railroads. Portions of the rail line were partially rehabilitated by the Grantee and its partners and placed back into continuous service in 2016. Although partially rehabilitated, some of the track on the main line is comprised of the original lightweight rail of 85 pounds (lb.) and is classified as FRA “Excepted” Track limiting train operations to less than 10 miles per hour (mph). Other portions include 115 lb. rail updated to Class 1 Track (max. speed is 10 mph) and Class 2 Track (max. speed is 25 mph). Furthermore, some of the railroad bridges have a load rating of 263,000 lb. and cannot support 286,000 lb. freight cars. These conditions and constraints of the existing legacy tracks and railroad bridges provide impediments to accommodating loaded freight cars with a maximum allowable gross weight of 286,000 lbs. along the entire Corridor.

III. OBJECTIVE

The objective of the Project is to upgrade the Corridor and its connecting branch lines to two ports to improve rail operations, and leverage recent rehabilitation investments and construction of new infrastructure to benefit a rural region and help catalyze greater opportunities for economic development. This will be accomplished through the rehabilitation of track and railroad bridges, and the construction of new track in certain areas.

Project benefits include:

- Enhanced railroad transportation operating capacity, efficiency, and safety
- Improved rail access/connectivity and capacity
- Enhanced economic development through additional rail business opportunity throughout the entire corridor

IV. PROJECT LOCATION

¹ As of the date of this Agreement, Delta Southern Railroad is negotiating the sale of its portion of the railroad mainline to be improved under this Agreement.

The Project limits are milepost (MP) 408.9 on the north end (McGehee, AR) to MP 500.2 in Tallulah, LA (MP 454.8 is the Arkansas-Louisiana State Line). The Project is located in Desha and Chicot Counties in Arkansas, and in East Carroll and Madison Parishes in Louisiana.

The Grantee organized the Corridor into the following four segments: Segment A (MP 408.9 to MP 433.0); Segment B (MP 433.0 to MP 454.8); Segment C (MP 454.8 to MP 471.0); and Segment D (MP 471.0 to MP 500.2).

V. DESCRIPTION OF WORK

Task 1: Project Administration

Project Administration includes such work that is necessary for the Grantee to oversee the management of this Project, including grant administration activities.

The Grantee will prepare a Detailed Project Work Plan, Budget, and Schedule for the following tasks, which may result in amendments to this Agreement. The Detailed Project Budget will be consistent with the Approved Project Budget but will provide a greater level of detail. The Detailed Project Work Plan will describe, in detail, the activities and steps necessary to complete the tasks outlined in the Statement of Work. The Detailed Project Work Plan will also include information about the project management approach (including team organization, team decision-making, roles and responsibilities and interaction with FRA), as well as address quality assurance and quality control procedures. In addition, the Detailed Project Work Plan will include the Project Schedule (with Grantee and agency review durations), a detailed Project Budget, and the anticipated National Environmental Policy Act (NEPA) class of action. The Grantee will also submit a copy of its executed Project agreements governing the Project delivery roles and responsibilities between the Grantee and the Project Partners. The Detailed Project Work Plan, Budget, and Schedule will be reviewed and approved by the FRA.

The Grantee acknowledges that work on subsequent tasks will not commence until the Detailed Project Work Plan, Budget, and Schedule has been completed, submitted to FRA, and the Grantee has received approval in writing from FRA. The FRA will not reimburse the Grantee for costs incurred in contravention of this requirement unless otherwise notified by FRA.

The Grantee will complete reports described in Attachment 1 and perform the close-out process for the Project. The closeout process includes making the final checks on contractor work, if applicable, collecting and checking final documentation, making final payment, and submitting a final performance report, along with other final reports as required under this Agreement, to the FRA within 90 days of the Project Performance Period end date. The Final Performance Report will describe the cumulative activities of the project, including a complete description of the Grantee's achievements with respect to the project objectives and milestones, overall budget/financial status, benefits obtained from the grant, and service outcomes.

Task 1 Deliverables:

- Detailed Project Work Plan, Budget, and Schedule

- SEAEDD - Project Partners project agreement
- Final Performance Report

Task 2: Environmental Review

The Grantee will complete, and submit to FRA for approval, the documentation FRA determines is necessary to comply with the NEPA and related environmental laws (collectively, “environmental documentation”). Upon request from FRA, the Grantee will submit a Project description, appropriate Project maps, or any other relevant background information, which will later be incorporated into the NEPA documentation. This information may be submitted with the Detailed Project Work Plan described in Task 1 above. FRA will use this documentation to provide the Grantee with additional direction regarding the required environmental documentation. The Grantee will submit an environmental review schedule for the completion of the environmental documentation. Once FRA accepts the environmental schedule, the Grantee will complete all required environmental documentation that covers all Project components in Segments A - D.

Task 2 Deliverables:

- Environmental review schedule
- Draft NEPA documentation
- Final NEPA documentation
- Environmental Permits, if applicable

Task 3: Engineering Design

- Subtask 3a: Track chart package for tie installation
The Grantee will prepare the Detailed Project Work Plan, track charts, maps, or tables that identify the limits of work where the tie replacement will be done; and track standards that show the railroad’s typical tie spacing and spiking patterns. The Grantee will update the Detailed Project Work Plan with the as-built information post-installation, as necessary.
- Subtask 3b: Track chart package for rail replacement
The Grantee will prepare the Detailed Project Work Plan, track charts, maps, or tables that identify the limits of work where the rail replacement will be done; and track standards that show the railroad’s typical tie spacing and spiking patterns. The Grantee will update the Detailed Project Work Plan with the as-built information post-installation, as necessary.
- Subtask 3c: Final Design Package for Rehabilitation of Railroad Bridges

Since the proposed railroad bridge improvements will be in-kind² repairs, the Grantee will submit the Final Design Package for Rehabilitation of Railroad Bridges including the scope component and specifications of the Request(s) for Bid that provides bidders the necessary information to develop a cost estimate and schedule.

- Subtask 3d: Preliminary Engineering Design for new tracks

The Grantee will complete the following for FRA approval:

- Provide scaled maps or scaled aerial photography of existing conditions at a scale of one inch = 100 to 500 feet depending on complexity of location.
- Prepare 30% preliminary engineering design plan drawings overlaid on maps/photography showing, as applicable, existing right-of-way limits along with railroad ownership; topography; design criteria and specifications; proposed track changes including removals and installations; track centers, track speeds, turnout sizes curve and spiral data; vertical profiles and grades of existing and proposed construction; typical cross sections to scale showing the proposed work to existing conditions for each change in track configuration and at other locations requiring retaining walls or right-of-way acquisitions; and public and private at-grade crossings with signal locations, if applicable.
- Prepare a Basis of Design Report (BOD) that describes the technical approach planned for the project as well as the design parameters to be used. The BOD includes: the applicable government laws and regulations; process specifications; owner's standard specifications and details; industry codes and standards; and contractor specifications, which are listed in the order of precedence in case of conflict in requirements. Prepare project specifications that contain the written instructions for constructing all of the project work, outlining in detail a description of the work, materials, construction methods, method of measurement, basis of payment, and the pay item for each item of work involved in the contract. The Project specifications should include: standard specifications, supplemental specifications, developmental specifications, special specifications and reference specifications.
- Ensure that design submittals include a title sheet and/or transmittal letter identified with a drawing revision number or date; an index identifying various plan sheets comprising the drawing set; a legend of symbols or abbreviations.

² In-kind repairs mean that new materials used in repairs or replacements match the material being replaced in composition, design, color, texture, and other visual and material properties. Substitute materials should be used only on a limited basis and only when they will match the appearance and general properties of the historic material and will not damage the historic property.

- Obtain signature approval of the engineering plans cover sheet by all appropriate stakeholders (Madison Parish Port, Port of Lake Providence, DSR, and NLA, as appropriate) impacted by the proposed track configuration plan. And, the cover sheet should be stamped by a professionally licensed engineer in the state of Louisiana.
 - Preliminary Engineering Package submitted to FRA should include design plans (30% design level), design specifications, BOD report, and the engineer's cost estimate and construction schedule.
- Subtask 3e: 100% Final Design for new tracks
The Grantee will advance the 30% PE design to 100% Final Design and submit to FRA for acceptance. The deliverable for this task will be 100% Final Design Package for New Track which will include design plans, updated BOD report, as appropriate, updated engineer's cost estimate and construction schedule.

The engineering plans cover sheet will include signatures from all appropriate stakeholders (Madison Parish Port Commission, Port of Lake Providence, DSR, as appropriate) impacted by the proposed track configuration plan. And, the cover sheet should be stamped by a professionally licensed engineer in the state of Louisiana.

Task 3 Deliverables:

- Final Design Package for Rehabilitation of Railroad bridges
- Preliminary Engineering Package for new tracks
- Final Design Package for new tracks

Task 4: Construction

The Grantee will complete the construction activities, as described in the Detailed Project Work Plan and in Subtasks 4a and 4b, within the Corridor.

Subtask 4a: Track Construction

- Segment A (MP 408.9 to MP 433.0):
 - Rehabilitate approximately 24 miles of track which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast and other track materials (OTM) (spikes, plates, track anchors etc.), as needed.
 - Rehabilitate a siding in Lake Village, AR and a siding at the Macon Lake rail station.
- Segment B (MP 433.0 to MP 454.8):
 - Rehabilitate approximately 22 miles of track which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast, and OTM as needed.
- Segment C (MP 454.8 to MP 471.0):

- Rehabilitate approximately 16 miles of track which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast, and OTM as needed.
 - Install approximately 6,600 ft. of new track for the proposed NLA-DSR interchange
 - Install approximately 1,550 ft. of new track to the Big River Rice and Grain facility in Lake Providence Port
 - Rehabilitate approximately 700 ft. of track and install approximately 1,000 ft. of new track to Shelburn Grain west of U.S. 65;
 - Install approximately 350 ft. of lead track to the John Deere facility in Lake Providence Port
 - Install approximately 1,500ft. extension of the siding track at the Lake Providence Pass
 - Rehabilitate approximately 700 ft. of track and install approximately. 1,000 ft. of new track to the Lansing Grain in Lake Providence Port
- Segment D (MP 471.0 to MP 500.2):
 - Rehabilitate approximately 20 miles of track within this Segment which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast, and OTM as needed.
 - Install new second track (approximately 12,000 feet) of the lead track to facilitate port-rail connectivity and ease congestion between the DSR mainline and the Madison Parish Port.

Subtask 4b: Railroad Bridge Construction

The Grantee will complete in-kind³ repairs, as described in the Detailed Project Work Plan, on two railroad bridges in Segment A and two railroad bridges in Segment B to accommodate 286,000 lb. gross weight railcars.

Task 4 Deliverables:

- No deliverables

VI. ENVIRONMENTAL COMPLIANCE

FRA has evaluated the actions covered in this grant in accordance with NEPA (NEPA; 42 U.S.C. 4321 et seq.), other environmental statutes, related regulatory requirements, and FRA's NEPA implementing regulations (23 CFR part 771, Environmental Impact and Related Procedures). FRA has determined that the actions funded under this grant for the preliminary engineering and compliance with NEPA and related laws and regulations are categorically excluded from detailed environmental review pursuant to 23 CFR 771.116 (c) (1), (3), and (4) . Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

³ Ibid.

In analyzing the applicability of a CE, FRA also considered whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. In accordance with 23 CFR 771.116 (a) and (b), FRA has further concluded that no unusual circumstances exist with respect to development of preliminary engineering/NEPA documentation funded under this grant that might trigger the need for a more detailed environmental review.

The obligation of the funds for final design and construction does not predetermine or prejudice the outcome of the NEPA process. The Grantee may not commence any final design or construction activities until FRA has issued a written notice to proceed that will be informed by the final NEPA document. As appropriate, FRA may require an amendment to this Agreement for consistency with the final NEPA decision.

In addition, any final design and/or construction activities must be supported by, and be consistent with, a final FRA NEPA document (i.e., CE determination, Finding of No Significant Impact, or Record of Decision). If the Project leads to work outside of that considered by FRA in making its NEPA determination that may affect the environment, the Grantee agrees that it will not allow the work to begin until it has informed FRA of such work, and received a written notice to proceed. Before providing such notice to proceed to Grantee, FRA will determine what, if any, additional environmental review is required.

VII. PROJECT COORDINATION

The Grantee shall perform all tasks required for the Project through a coordinated process, which will involve affected railroad and right-of-way owners, operators, and funding partners.

VIII. PROJECT MANAGEMENT

The Grantee is responsible for facilitating the coordination of all activities necessary for implementation of the Project. Upon award of the Project, the Grantee will monitor and evaluate the Project's progress through regular meetings scheduled throughout the Project Performance Period. The Grantee will:

- Participate in a project kickoff meeting with FRA
- Complete necessary steps to hire a qualified consultant/contractor to perform required Project work
- Hold regularly scheduled Project meetings with FRA
- Inspect and approve work as it is completed
- Review and approve invoices as appropriate for completed work
- Perform Project close-out audit to ensure contractual compliance and issue close-out report

- Submit to FRA all required Project deliverables and documentation on-time and according to schedule, including periodic receipts and invoices
- Comply with all FRA Project reporting requirements, including, but not limited to providing the following information in the quarterly progress reports, which will also satisfy performance measurement reporting:
 - a. Status of project by task breakdown and percent complete
 - b. Changes and reason for changes in and updated versions of Detailed Project Work Plan, Budget, and Schedule
 - c. Description of unanticipated problems and any resolution since the immediately preceding progress report
 - d. Summary of work scheduled for the next progress period
- Read and understand the Terms and Conditions of this Agreement (Attachment 1)
- Notify FRA of changes to this Agreement that require written approval or modification to the Agreement

Attachment 3

DELIVERABLES AND APPROVED PROJECT SCHEDULE

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

The Project Performance Period will be as stated in section 4 on the cover sheet of this Agreement (page 1). Unless otherwise approved, requests for extensions of the Project Performance Period must be submitted not later than 90 days before the end of the Project Performance Period, consistent with Attachment 1.

Approved Project Schedule

Task #	Subtask #	Task Name	Estimated Start Date	Estimated Completion Date
1		Project Administration	Continuous throughout duration of Agreement	
2		Environmental Review	11/01/2020	5/31/2021
3		Engineering	11/01/2020	1/31/2022
4		Construction		

4a	Track Construction	10/01/2021	1/31/2024
4b	Railroad Bridge Construction	10/01/2021	1/31/2024

The deliverables associated with this Agreement are listed below. The Grantee must complete these deliverables to FRA's satisfaction to be authorized for funding reimbursement and for the Project to be considered complete.

Task #	Deliverable Description	Estimated Due Date
1	Detailed Project Work Plan (including budget and schedule)	Within 30 days of Agreement date
1	Project Agreement	Within 30 days of Agreement date
1	Final Performance Report	Within the 90-days of the Project performance period end date
2	Environmental review schedule	Within 30 days of Agreement date
2	Draft NEPA documentation	1/31/2021
2	Final NEPA documentation	4/15/2021
2	Environmental Permits, if applicable	4/30/2021
3	Final Design Package for Rehabilitation of Railroad Bridges	7/31/2021
3	Preliminary Engineering Package for new tracks	4/30/2021
3	Final Design Package for new tracks	8/01/2021

Attachment 4

APPROVED PROJECT BUDGET

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

I. APPROVED PROJECT BUDGET

The total estimated cost of the Project is \$21,377,526, for which the FRA grant will contribute funds consistent with Section 5(c) of Attachment 1 to this Agreement. Any additional expense required beyond that provided in this grant to complete the Project will be borne by the Grantee.

Use of Limited Freight Funds. The Grantee acknowledges that the Government selected the Project for award with the expectation that no more than \$10,516,259 of the award would be subject to the limitation at 23 U.S.C. § 117(d)(2). The Grantee will not request reimbursements that are subject to the limitation at 23 U.S.C. § 117(d)(2) and, in aggregate, exceed \$10,516,259.

Project Budget by Task

Task #	Task Name	Federal Contribution	Non-Federal Contribution	Total Cost
1	Project Administration	\$180,000	\$0	\$180,000
2	Environmental Review	\$40,000	\$0	\$40,000
3	Engineering Design	\$1,690,877	\$6,000	\$1,696,877
4	Construction	\$8,605,382	\$10,855,267	\$19,460,649
Total Project Cost		\$10,516,259	\$10,861,267	\$21,377,526

Revisions to the Approved Project Budget will be made in compliance with Attachment 1 of this Agreement. The Grantee will allocate expenditures, by Federal and Non-Federal Contributions, when seeking reimbursement from FRA.

Project Budget by Source

Funding Source		Project Contribution Amount	Percentage of Total Project Cost
Federal Contribution (INFRA Grant)		\$10,516,259	49.19%
	<i>INFRA Grant Amount subject to 23 U.S.C. § 117(d)(2)</i>	<i>\$10,516,259</i>	<i>49.19%</i>
	<i>Amount of INFRA Grant not subject to 23 U.S.C. § 117(d)(2)</i>	<i>\$0</i>	<i>0%</i>
Non-Federal Contribution (Combined amounts from different sources)		\$10,861,267	50.81%
	<i>State Funds (Louisiana Department of Transportation & Development's Port Construction and Development Priority Program grant)</i>	<i>\$10,561,267</i>	<i>49.41%</i>
	<i>Local Funds</i>	<i>\$0</i>	<i>0%</i>
	<i>Other Funds (NLA)</i>	<i>\$300,000</i>	<i>1.40%</i>
TOTAL PROJECT COST		\$21,377,526	100.00%

Costs for completing the Project in excess of the amounts set forth in this section are the responsibility of the Grantee.

EXHIBIT B

**The Southeast Arkansas and Northeast Louisiana
Multimodal Freight Corridor Improvement Project
FY 19-20 INFRA Grant Application**

Southeast Arkansas Economic Development District

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project



Madison Parish Port, LA
Port of Lake Providence, LA
Yellow Bend Port, AR
Delta Southern Railroad
North Louisiana & Arkansas Railroad

FY 19-20 INFRA



Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

Project Name: Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

Project Sponsor: Southeast Arkansas Economic Development District

Was an INFRA application for this project submitted previously?

Yes; in
FY 2017

(If yes, please include title)

(Same as above)

PROJECT COSTS

INFRA Request Amount	\$25,689,421
Estimated Federal Funding (excluding INFRA)	\$0
Estimated Non-Federal Funding	\$19,315,000
Future Eligible Project Cost	\$45,004,421
Previously Incurred Project Cost	\$14,433,608
Total Project Cost	\$59,438,029

Are matching funds restricted to a specific project component? If so, which one?

No

PROJECT ELIGIBILITY

Approximately how much of the estimated future eligible project costs will be spent on components of the project currently located on National Highway Freight Network?	\$0.00
Approximately how much of the estimated future eligible project costs will be spent on components of the project currently located on National Highway System?	\$0.00
Approximately how much of the estimated future eligible project costs will be spent on components constituting railway-highway grade crossing or grade separation projects?	\$452,400
Approximately how much of the estimated future eligible project costs will be spent on components constituting intermodal or freight rail projects, or freight projects within the boundaries of a public or private freight rail, water (incl ports) or intermodal facility?	\$44,552,021

PROJECT LOCATION

State(s) in which project is located	Arkansas & Louisiana
Small or large project	Small
Urbanized Area in which project is located, if applicable	Not Applicable
Population of Urbanized Area	Not Applicable
Is the project currently programmed in the:	
• TIP	No
• STIP	Yes
• MPO Long Range Transportation Plan	Not Applicable
• State Long Range Transportation Plan	Yes *
• State Freight Plan?	Yes *

* included in both Arkansas and Louisiana Plan

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Appendices

- Appendix A:** Figures and Supporting Documentation
- Appendix B:** Letters of Support
- Appendix C:** Benefit-Cost Analysis Supplementary Documentation

EXHIBIT D

Verified Statement of Wyly Gilfoil

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF WYLY GILFOIL

1. My name is Wyly Gilfoil. I am the Port Director for the Lake Providence Port Commission (“LPPC”), the Applicant herein. My address is 409 Port Road, Lake Providence, LA 71254. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of LPPC. LPPC is a non-carrier, political subdivision of the State of Louisiana. Because LPPC is Louisiana’s largest inland waterway port and ships over 1.3 million tons of freight annually, it is clearly in the public interest to protect it, as well as the Madison Parish Port, from Delta Southern Railroad, Inc. (“DSRR”) and its owner’s predatory and unlawful efforts to interfere with the full realization of the rehabilitation of the *entire* Lake Providence Branch Line and the flow of interchange traffic over the Line.

2. LPPC has long recognized the importance of the rail corridor between McGehee, Arkansas and Tallulah, Louisiana, which historically was known as the Lake Providence Branch Line when it was operated by the Missouri Pacific Railroad Company (“MP”). Because of its importance to the

line between milepost 408.9 near McGehee and milepost 498.4 at Tallulah.”⁴

The ICC’s consistent description of the line 89.5-mile line of railroad cannot be reconciled with DSRR’s current position that DSRC was authorized to acquire and operate between milepost 408.9 and milepost 498.44.

6. LPPC’s acknowledged effort in AB-3 (Sub-72) to assure continued rail service to the Lake Providence Port was supported by many of the same companies that supported the 2019-2020 INFRA Grant Application and LPPC’s original Feeder Line Application. They include Complex Chemicals Co., Inc., Livingston Pecan and Metal Co., E. Sondheimer Co., Riceland Foods, Inc., Hollybrook Warehouse, Inc., and Epstein Gin Company, along with numerous non-shipper protestants, area cotton producers, municipal governments, state and local officials and members of Congress that also protested MP’s application.

7. LPPC’s efforts to preserve rail service over the Lake Providence Branch Line did not stop in 1988. As the Surface Transportation Board’s (“STB” or “Board”) records reflect, LPPC, between 2004 and 2011, was compelled to engage in a series of abandonment proceedings filed by William Wainwright, the CEO of Delta Southern Railroad, Inc. (“DSRR”), who acquired DSRC’s assets in 1999. Because he had managed the track for DSRC for the previous ten years, he obviously was aware of the track’s condition. He was also aware of LPPC’s and SEAEDD’s interest in the preservation of the track

⁴ See Attachment 4 hereto.

and likely realized that he could achieve a quicker return by allowing the track to deteriorate and then look for the States of Louisiana and Arkansas to acquire it through offers of financial assistance. Beginning in 2004, shortly after the Board, at the request of Arkansas Midland Railroad Company (“AKMD”) and UP, had terminated DSRR’s leasehold interest in UP’s Warren Line, Wainwright began his effort to dismantle the segment of the Lake Providence Branch Line that was owned by DSRR.⁵ As Wainwright readily admitted in pleadings filed with the Board, the track had deteriorated to the point that DSRR had been forced to embargo segments of the line. Of course, by that time, DSRR had driven off all of its customers, except the shippers that had traffic moving to and from the Madison Parish Port.⁶ As described in DSRR’s Petition for Exemption, filed December 6, 2010:

Virtually every rail length in the Rail Line has excessive defective crossties in clusters and under joints, such that crosstie

⁵ See also STB Docket No. AB-384 (Sub-No. 1X), *Delta Southern Railroad, Inc.-Abandonment Exemption – Between Lake Village, Ark. and Shelburn, LA.*; STB Docket No. AB-384 (Sub-No. 2X), *Delta Southern Railroad, Inc.-Abandonment Exemption – In East Carroll Parish, LA*; STB Docket No. AB-384 (Sub-No. 3X), *Delta Southern Railroad, Inc.-Abandonment Exemption –In Desha and Chicot Counties, AR.*

⁶ For a contemporaneous assessment of Wainwright’s maintenance program, see the Rebuttal Verified Statement of Abollah (Abe) Grazai, UP’s Track Planning Engineer in the Engineering Services Department, filed March 3, 2004, in FD No. 34479, *Arkansas Midland Railroad Company-Emergency Service Order-Line of Delta Southern Railroad, Inc.*, which is included hereto as Attachment 5. In his report, Mr. Grazai identified numerous track defects that he attributed to DSRR’s maintenance program or lack thereof. He also repudiated Wainwright’s sworn statements that he had undertaken a major track program to restore the line. While this matter involved the Warren, AR line over which DSRR was operating pursuant to the Board’s authorization in FD No. 33802, the identical problems were encountered on the tracks that LPPC acquired from DSRR.

conditions do not comply with Minimum FRA Class I track safety standards. Track alignment, cross-level and gage are also out of compliance with FRA Class I standards at numerous locations.⁷

8. The abandonment proceedings were designed to eliminate rail service over the Lake Providence Branch Line between mileposts 408.9 and 471.0. Beginning with AB-384 (Sub-No 1 X), *Delta Southern Railroad, Inc. – Abandonment Exemption – Between Lake Village, Ark. and Shelburn, LA.*, filed May 21, 2004, DSRR launched its campaign to rid itself of its obligations to provide rail service over two thirds of the Line. In the very first sentence of its Notice of Exemption, DSRR announced that it was seeking to abandon what it described as “an out of service line of railroad known as the Lake Providence Line between MP 433.0 near Lake Village, Arkansas, and MP 463.0 near Shelburn, Louisiana, a distance of 30 miles.”⁸ Because it was treated as an exemption, no investigation was made to determine DSRR’s culpability in the disappearance of active shippers. If the track was incapable of supporting rail operations, why did the Wainwrights bother to acquire it from DSRC only four (4) years earlier?

⁷ See Attachment 6 hereto at p. 6.

⁸ It is rather interesting that DSRR has resuscitated the phrase “long-out-of-service railroad line,” accompanied by “inactive rail line” and “long-dormant Line,” to describe the 20-mile segment between milepost 471.0 and 491.0 in this proceeding. Although it has successfully resisted requests for rail service over the past several years, DSRR has never obtained authority from the Board to cease any operations so that it could openly use the “out-of-service track” to concentrate on railcar storage as a source of revenues.

9. Because abandonment of this segment in 2004 would have terminated the ability to move between Arkansas and Louisiana over the Line, both LPPC and SEAEDD protested. After the Board authorized abandonment, LPPC and SEAEDD filed offers of financial assistance. When they could not reach an agreement with the Wainwrights, the Board established the compensation and conditions for financial assistance. On March 8, 2005, William Sippel advised the Board that SEAEDD did not accept the Board's terms and conditions and announced SEAEDD's intent to pursue acquisition of the line outside of the OFA process. On March 21, 2006, DSRR announced that the portion of the Line between milepost 433.0 at Lake Village, AR and 454.8 at the Arkansas/Louisiana State Line had been sold to SEAEDD for continued rail operation. In addition, DSRR requested an extension of time for providing consummation of the sale of the remaining 8.2-mile segment of the Line for continued rail operations. Those negotiations, which lasted until December 2010, were terminated when LPPC's attorney, Eric Hockey, accused DSRR of misrepresenting that it was interested in pursuing a sale for continued rail purposes. As Mr. Hockey explained,

It is clear now, from the two additional abandonments that have been filed, and from the purported notice of consummation in this proceeding, that DSR never intended or wanted to do a sale for continued rail service; rather it is seeking to force all of the traffic from the Port and the remaining shippers on the Lake Providence Line to move to and from the south, and to eliminate their shipping options.⁹

⁹ See Attachment 7 at p. 3.

Thereafter, the remaining 8.2-mile State Line-Shelburn segment was subsequently acquired by LPPC outside of the OFA process.

10. As the Board's records reflect, in November and December 2010, DSRR sought further authority to abandon two (2) other segments of the Lake Providence Branch. In AB-384 (Sub-No 2X), *Delta Southern Railroad, Inc. – Abandonment Exemption – In East Carroll Parish, LA*, sought to abandon 8.0 miles of track between Milepost 463.0 and Milepost 471.0. According to the Notice of Exemption, no local or overhead traffic had moved for the prior two (2) years. This proceeding was concluded when DSRR agreed to accept LPPC's OFA, which included the grant of trackage rights over the 1.25± miles connecting the line and the private tracks owned by LPPC. While DSRR retained ownership of the Line between milepost 471.0 and 498.4 and entered into a trackage rights agreement with LPPC to provide limited service within the Lake Providence Port, DSRR made no effort to hold out interchange service after LPPC's operator, namely North Louisiana & Arkansas Railroad, Inc. ("NL&A"), was able to reopen the track for interline service in 2016.

11. On December 6, 2010, DSRR filed its third Petition for Exemption, which was docketed as AB-384 (Sub-No. 3X), *Delta Southern Railroad, Inc. – Abandonment Exemption – In Desha and Chicot Counties, AR*. By this petition, DSRR sought approval to abandon the 24.1-mile segment of the Lake Providence Branch between MP 408.9 at or near McGehee and MP 433.0 at or near Lake Village. This matter was resolved when LPPC and Arkansas Shortline

Railroads, Inc., as guarantor for its wholly owned subsidiary NL&A, acquired the track through a joint offer of financial assistance. By Decision, late released May 19, 2011, the Offerors were authorized to acquire the line, and NL&A was authorized to operate the line. It cost LPPC \$1,123,500 to acquire the 8.0 segment between milepost 463.0 and milepost 471.0 along with the 24.1 miles of track between milepost 408.9 and milepost 433.0. Moreover, to acquire the 8.2 miles of rail and other track materials between 454.8 to milepost 463.0, LPPC had to pay National Salvage and Service Corporation \$303,400.

12. I must emphasize that the delay in reopening the Line for interchange service was due to the unquestioned need to rehabilitate the entire Line between milepost 408.9 and milepost 471.0. In fact, service was so bad that in November 2006, before LPPC/SEAEDD acquired the Line, it took DSRR six (6) weeks to move some carloads of cottonseed 64 miles from Lake Providence to McGehee. Needless to say, that was the last train that DSRR operated from Lake Providence. Given that level of service, the demand for rail service over the Line completely vanished. In the Port's Notice of Exemption, filed June 10, 2011, which was docketed as FD 35531, *Lake Providence Port Commission – Trackage Rights Exemption – Delta Southern Railroad, Inc.*, I specifically informed the Board that "[t]he Port Commission does not intend to commence operations under the trackage rights until after the OFA line and adjacent lines to the north are rehabilitated. This will not occur until well after this notice becomes effective on July 10, 2011." That it required LPPC,

SEAEDD and NL&A to expend in excess of \$10 million to get the Line into good enough shape to hold out interchange service in 2016 speaks for itself.

13. The Trackage Rights Agreement that the Wainwrights offered, which was approved by the Board, allowed LPPC to operate over DSRR's tracks between Milepost Nos. 471 and 472.25 ("the Joint Trackage"), "overhead rather than local basis, for the purpose of accessing sidetrack and lead track."¹⁰ The Agreement also provided that "DSR shall continue to have the right to use the sidetrack and/or the lead track to place loaded cars and to pick up empty cars at the Port's warehouses." As a result of the limitation on LPPC's operating rights, which was composed by the Wainwrights, LPPC cannot offer service to all of the shippers who are located within the Port.

14. Section 4 of the Trackage Rights Agreement imposes the requirement that the Port "shall provide DSR with a notice of its intent to use the Joint Trackage not later than ninety (90) [days] prior to its intended date of use (the 'Notice of Intent to Use Joint Trackage')." ¹¹ It further provides that:

Upon receipt thereof, DSR shall then, at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track condition. Thereafter, DSR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs.

It is my understanding, based on Daniel Robbins' testimony in this proceeding, that because DSRR never used the revenues that it received from the series of

¹⁰ See Exhibit J, V.S. Robbins at Attachment 1.

¹¹ *Id.*

sales to LPPC, SEAEDD and NL&A to maintain the Joint Trackage in FRA Class 1 track condition, the Section 3 provisions concerning allocation of costs has never been applied.

15. As Mr. Robbins will confirm, on March 29, 2022, NL&A's track inspector spent most of the day inspecting the track. His Track Inspection Report is attached to Mr. Robbins Verified Statement that is filed herewith. As the inspector discovered, DSRR had recently taken some steps to address the tracks condition, however, he still identified 45 defects that include tie defects, gauge defects, cross level defects, joint bar discounts, broken rail defects, joint bar defects and even a vegetation defect involving a tree down across the track.¹²

16. It is my further understanding that DSRR recently spent several days repairing its track so that it could safely move one empty flat car between milepost 491.0 and 471.0. The question the Board must ask is why it took DSRR one year and ten months after LPPC filed its original Feeder Line Application to act in response to allegations that the track was virtually impassable? Such action should have been taken in 2016 when interchange was opened following the completion of a flood mitigation project in Lake Providence. DSRR did not do so. Instead, as Mr. Robbins and Mr. Huff confirm, DSRR abruptly closed interchange without prior notice to NL&A on August 24,

¹² A copy of that report is attached to Mr. Robbins' Verified Statement (Exhibit J) at Attachment 2.

2017, due the deplorable condition of DSRR's tracks and the stored rail cars. DSRR's actions unquestionably inflicted economic harm on shippers who were forced to route traffic over two (2) Class I rail carriers at an additional expense.

17. Since 2016, LPPC has partnered with SEAEDD, Madison Parish Port Commission ("MPPC"), NL&A and DSRR ("the Partners") in the "Southeast Arkansas and Northeast Louisiana Multimodal Freight Improvement Project" ("the Project"). The Project was and is devoted to the restoration of the *entire* rail corridor that exists between McGehee, Arkansas and Tallulah, Louisiana.¹³ The Board's attention is invited to Exhibit B, *Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project, FY 19-20 INFRA*, Appendix C, Table ES-1: *Summary of Infrastructure Improvements and Associated Benefits* of the INFRA Grant Application. As summarized therein, "[u]pgrades to rail infrastructure in the McGehee-Tallulah Railroad Corridor and connections to the local Ports will improve railroad connectivity, access, capacity, efficiency, and safety."¹⁴

18. In addition to diverting shipments from trucks, the ability to use rail service to Lake Providence Port ("LPP") and the Madison Parish Port ("MPP"), will benefit the many farmers and processors that seek to use rail to deliver their agricultural products to the ports where they can be transloaded

¹³ See Stephen Steed, *Where Arkansas and Louisiana meet, economy trumps rivalries. Rail line venture offers taste of what area could become*, Arkansas Democrat-Gazette, May 21, 2017, included as Attachment 8 hereto.

¹⁴ See Feeder Line Application, Exhibit B.

on barges. Such movements will also result in the diversion of trucks from the highways and improve the environment by avoiding emissions while simultaneously achieving energy efficiencies and improving highway safety.¹⁵ As the Partners recognized, these benefits cannot be fully achieved unless the *entire Lake Providence Branch Line is rehabilitated consistent with the goals of INFRA Grant Application*. As has been the case for the past 30 years, the ultimate goal of the States of Louisiana and Arkansas is to promote the redevelopment of the Lake Providence Branch Line so that rail service will be safely and efficiently operated by a railroad that is committed to the economic development of the region.

19. For over 40 years, rail operations over much of the line have not been safely, reliably, and efficiently conducted due to years of deferred maintenance by prior owners that precipitated the near abandonment of the line in 1988 and again in 2011. In some respects, the current condition of the line resulted from the inability to obtain Railroad Rehabilitation & Improvement Financing (“RRIF”) and Small Business Administration loan guarantees. For a detailed understanding of the Project, the Board’s attention is invited to the “FY

¹⁵ As a recent study entitled *Recovery of the Columbus & Greenville Railroad*, conducted by the Mississippi State University, Department of Political Science and Public Administration and Industrial Outreach Service, demonstrates that agricultural interests are harmed by the lack of cost-effective logistics services, especially when they must rely on trucking. A copy of this study is included hereto as Attachment 9.

19-20 INFRA Application” that SEAEDD, on behalf of the partnership, filed with the United States Department of Transportation in March 2019.¹⁶

20. On July 10, 2019, Patrecia Hargrove, SEAEDD’s Executive Director, who as the Grant Administrator oversees the management of the Project and is the contact person for the Project with the United States Department of Transportation (“DOT”) and the Federal Railroad Administration (“FRA”) received an email from DOT advising her that they were offering an INFRA Grant at the reduced amount of \$10,516,259. The email also established an immediate response date that required all parties to accept the reduced amount. As a result, the five (5) Partners were required to commit that they would come up with additional private and public funds to cover the deficit needed to restore the entire track from milepost 408.9 to the point of interchange with the Kansas City Southern (“KCS”) at Tallulah, LA to FRA Class 2 status or to revise the scope of the project. The process of refining the process and deciding how the partnership would make up the difference between its request and the award amount was started on July 11, 2019, with a conference call. The call involved all of the stakeholders and HDR, which was the engineering firm that prepared the INFRA Grant Applications. During the call, John Marino, Jr., speaking on behalf of DSRR, strongly advocated for the acceptance of the reduced grant noting that it would be foolish to turn it down.

¹⁶ See Feeder Line Application, Exhibit B.

After the other stakeholders agreed with him, Ms. Hargrove notified DOT that the reduced grant would be accepted.

21. On July 15, 2019, Hargrove and I had a conference call with DOT concerning the need to reduce the project scope of work because of the reduced award. We were advised that any reduced scope of work would have to be submitted to DOT for approval. DOT emphasized that the primary goal of the Project, the rebuilding of the entire rail corridor between McGehee, AR and Tallulah, LA, could not be compromised.

22. On July 18, 2019, we received notice that the reduced grant was funded. Thereafter, an intense process of shrinking the Project by delaying some components and by eliminating others was undertaken by Ms. Hargrove with input from all participants. That process did not involve any steps to reduce the key component of the Project, namely the track that had to be rehabilitated to FRA Class 2 status. However, on November 26, 2019, Jon Ryan, who acted as Continental Rail's Vice President of Finance in a consulting role for DSRR, forwarded a "DSR SEAEDD Infra Grant Budget," that he had prepared, to Doree Magiera, who was our primary contact at HDR. His proposed budget would have used all of the grant funds that would have been allocated to DSRR to the building of a new interchange connection with KCS in Tallulah between milepost 500.0 and milepost 496.0. Because HDR employees recognized that the proposed new work that DSRR was proposing conflicted

with the grant request for rail rehab only, they forwarded his proposed budget to me and Ms. Hargrove for review.¹⁷

23. On December 4, 2019, Ms. Magiera forwarded an email to Ryan that set out that “the intended rail rehabilitation scope of work that has been discussed the past two years and presented to the FRA as part of the grant application.”¹⁸ In his response, Ryan stated that “I am not privy to what was discussed the past two years so I can not speak to that. See my comments below in red.”¹⁹

24. On December 10, 2019, Ryan forwarded a slightly different proposal that introduced a list of:

updated uses for the SEAEDD grant money that has been allocated to the DSR to rehabilitate (sic) our portion of the corridor. We believe the plan laid out below will accomplish the overall goal for this section of track leading to Madison Parish Port.²⁰

The new proposal reflected DSRR’s intent to use the grant funds to rehabilitate its track between milepost 500 and milepost 491.0 but did not address the need to rehabilitate the critical track between mileposts 491.0 and 471.0. In response to DSRR’s proposal, I worked with Ms. Hargrove in preparing the SEAEDD Infra Budget by reducing funds that had originally been intended to be used for a project in the Madison Parish Port, removing the UP interchange

¹⁷ See Exhibit I, V.S. Hargrove, at Attachment 3.

¹⁸ *Id.* at Attachment 4.

¹⁹ *Id.*

²⁰ See Attachment 10 hereto.

in Arkansas and adding some rehab money to DSRR to replace the reduced MPP draw. DSRR did not voice any objections to the proposed allocations.

25. On March 17, 2020, SEAEDD forwarded a detailed letter to FRA that explained all of the adjustments that had been made to the original SEAEDD Infra Grant Budget.²¹ SEAEDD's adjusted budget reflects an allocation of \$3,207,789 to cover the Rail Infrastructure Rehabilitation to Class II standards for the 29.2 miles that are owned by DSRR. As noted at the bottom of the chart, "*Only 21 miles of work remain as DSR has completed 7 miles of rehab. Work*" (emphasis in original). In addition, it allocated DSRR an additional \$666,076 for project development.

26. On June 1, 2020, SEAEDD received a letter from Marc R. Dixon, FRA's Project Manager for the South Central Region, announcing that SEAEDD's request to modify the Project's scope and budget had been determined to be "sufficient and will therefore advance the Project, as revised."²² A required component of the effort was the drafting of a Consortium Agreement between the five (5) partners who are stakeholders. On July 30, 2020, Ms. Hargrove emailed the initial draft of the Consortium Agreement to the stakeholders for their review and comments. As stated in her July 30 email, "[t]he goal is to have an agreement in place prior to the signing of the grant

²¹ See Exhibit I, V.S, Hargrove, at Attachment 6.

²² *Id.* at Attachment 7.

agreement, which is expected to be completed and submitted to SEAEDD for execution by the end of August.”²³ Unfortunately, that goal was not achieved.

27. On August 14, Jon Ryan responded to Ms. Hargrove by emailing “an updated draft with our comment so our scope matches the grant.” That “comment” proposed a reduction in the number of miles on DSRR’s tracks to be upgraded by striking “20” miles and replacing it with “10” miles. As I and Ms. Hargrove realized, Ryan’s proposed change did not and could not match the specific “Scope and Budget Modification Request” that was outlined in SEAEDD’s letter, dated March 17, 2020.²⁴ Those changes did not include any reduction of the 20 miles that were to be upgraded. No further explanation was provided. Because Ms. Hargrove was concerned that DSRR’s unilateral reduction in mileage openly conflicted with the terms that FRA and DOT had established, she asked for my assistance. The revised statement of work for the DSRR segment explicitly requires the Grantees to “[r]ehabilitate approx. 20 miles of rail which includes replacing the existing Excepted track with Class 2 track.” To confirm her conclusion, Ms. Hargrove requested me to review Mr. Ryan’s response, which I did. Because I agreed with her assessment, I agreed to speak with John Marino, Jr., who was Continental Rail’s CEO. Continental Rail, which was physically located in Florida, was the management team that West Branch Intermediate Holdings, LLC (“West Branch”) hired to manage

²³ *Id.* at Attachment 8.

²⁴ *Id.* at Attachment 6.

DSRR's operations. West Branch, which is in California, is a subsidiary of Golden Gate Capital, a private investment company.

28. The following Monday afternoon, August 17, 2020, I spoke with Mr. Marino. During that conversation, I told him that Ms. Hargrove and I viewed Mr. Ryan's proposed change to be very troubling as it could jeopardize the INFRA Grant. I also informed him that I would push for reallocation of the \$3.2 million plus Engineering if he refused to agree to upgrade the 20 miles to Class 2 status consistent with the underlying goal of the Project. He said he would get with Jon and consider it. In response I indicated that we would apply in the future for funds to use on the Madison Port to Tallulah track.

29. Realizing the need to clear all modifications of the Scope of Work with FRA, the other partners had a telephone call to discuss possible responses to FRA if DSRR refused to agree to upgrade the twenty miles and sign the Consortium Agreement. On August 18, Ms. Hargrove sent an email to Marino advising him that she needed to have an answer in writing by 12 noon CDT, August 21, 2020:

describing Delta Southern Railroad's intentions as far as the Consortium Agreement and the Grant Agreement to repair the track between Talla Bena, Louisiana and Lake Providence, Louisiana to a minimum of FRA Class I standards and provide service as described in the narrative of the INFRA application and INFRA award.²⁵

²⁵ See Exhibit I, V.S. Hargrove, at Attachment 9.

As is evident, by reducing the target from FRA Class 2 to Class 1, SEAEDD, in effect, would reduce the amount of Grant funds that DSRR would be required to expend *if USDOT and FRA would approve the requested modification*. I had no idea whether they would do so.

30. On the morning of August 20, 2020, Bryant Killen, LPPC's Deputy Director, and I had a speaker phone conversation with Mr. Marino to urge him again to comply with the intent of the INFRA Grant Application by upgrading the 20 miles of track south of Lake Providence. During that conversation, Mr. Marino suggested that LPPC buy the track owned by DSRR in East Carroll Parish to below Tallulah. He stated a price tag of around a million dollars a mile estimating the cost would be between \$13 and \$16 million. He then said this would be the best option and, while he hated to use the cliché "win-win," would be the only way in this instance that the line would be cleared of stored cars. Unprompted, he then said he "would move the cars somewhere else, no problem." I informed Mr. Marino that because LPPC is a government agency, I was required to obtain an appraisal before I could make a commitment.

31. Following our conversation, I received an email from Mr. Marino thanking me for the call. He also included the following sentences:

In an effort to work with you and the port I think we can come up with a creative solution to sell a portion of the right of way to the port. This could be beneficial for a port customer for many reasons – one most important being access to two class one railroads.

Let me know the next steps needed to get this to a term sheet?

Because I could not proceed without an appraisal to determine the NLV of the Line, I did not reply. I did, however, agree with the benefit to port customers that Mr. Marino identified.

32. On August 21, 2020, I learned that SEAEDD had received a responsive email from Mr. Marino confirming DSRR's lack of intent to rehabilitate the segment of its track between MP 471 and MP 491 to even FRA Class 1 status. As was made clear, the INFRA GRANT funds would be applied only to DSRR's "Priority Miles." These are the miles between MP 500.0 and MP 491.0 that allow DSRR to provide service to the MPP. As I have subsequently learned, DSRR does not appear to be authorized to operate over some of the "priority miles" that DSRR intended to upgrade with INFRA funds that were sought to upgrade the Lake Providence Branch Line between McGehee and Tallulah. That matter is presently pending before the Board.

33. Because this would leave the twenty miles of track in their current excepted status, which is contrary to the goal of reopening the entire Corridor, I was concerned that the failure to upgrade the tracks could jeopardize the INFRA Grant fund. Those concerns have been somewhat alleviated by the passage of time. However, after learning in 2021 that DSRR had concluded that the track between milepost 471.0 and milepost 491.0 was long-dormant and that track renovations required by FRA were unjustified and unwarranted, I realized that DSRR's goals clashed with LPPC's goal of rehabilitating the track to promote economic development of the region.

EXHIBIT I

Verified Statement of Patrecia Hargrove

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF PATRECIA G. HARGROVE

1. My name is Patrecia G. Hargrove. I am the Executive Director of the Southeast Arkansas Economic Development District (“SEAEDD”), which is a non-profit quasi-governmental agency. Its address is 721 South Walnut Street, Pine Bluff, AR 71601. I am also the Director of Development & Project Oversight, a position that I have held since July 2013. I have personal knowledge of the facts stated herein. I am duly authorized to present this Verified Statement on behalf of SEADD in support of the Feeder Line Application filed by LPPC.

2. Since 2017, I have headed a unique private-public partnership (“PPP”) that, until 2020, was composed of SEAEDD, the Lake Providence Port Commission (“LPPC”), the Madison Parish Port Commission (“MPPC”), the North Louisiana and Arkansas Railroad (“NLA”) and the Delta Southern Railroad (“DSRR”). DSRR removed itself from the Coalition in August 2020. The goal of the Partnership was to rebuild the Lake Providence Branch Line (“the

Line”) between milepost 408.9 at McGehee, Arkansas and the interchange with the Kansas City Southern Railroad Company (“KCS”) in Tallulah, Louisiana.

3. The Line, which was developed in the early 1900s, extended 162.7 miles between McGehee, Arkansas and Vidalia, Louisiana. For many years, the Line was known as the Lake Providence Branch Line of the Missouri Pacific Railroad Company (“MP”). However, in 1988, MP, which was then owned by the Union Pacific Railroad Company (“UP”), filed an application with the Interstate Commerce Commission (“ICC”) seeking authority to abandon the entire Line between McGehee and Vidalia, Louisiana. Shortly after the application was filed, the ICC required MP to file separate traffic and financial data for the line segments running between milepost 408.9 near McGehee and milepost 498.4 at Tallulah (“Northern Segment”) and 498.4 at Tallulah and milepost 651.6 at Vidalia (“Southern Segment”). Unlike the Northern Segment, which was being operated by MP, the Southern Segment was the subject of an embargo and had not been operated after January 1987.

4. Recognizing the importance of preserving rail service that allowed shippers to access both UP, in McGehee, and KCS, in Tallulah, LPPC, SEAEDD and several shippers opposed the abandonment. The ICC, however, found that the public convenience and necessity permitted the abandonment. However, after LPPC and the National Railway Equipment Co. (“NRE”) filed separate offers of financial assistance, the 89.5-mile segment between McGehee and Tallulah was saved from abandonment. Before the sale was consummated,

NRE's owner, with the ICC's authorization, formed a new railroad, the Delta Southern Railway Company ("DSRC"), to acquire the Line from UP.

5. Saving the 85.9-mile segment from abandonment was just the beginning. As the history of the Line reflects, William Wainwright and his wife, after working for DSRC for a decade, formed Delta Southern Railroad, Inc. ("DSRR") and acquired ownership of DSRC's assets and operations in October 1999. By the beginning of 2004, much of the Line had been allowed to deteriorate to the point that DSRR was unable to safely operate over it. Because of the condition of the rail, there was a corresponding decrease in demand for service. At which point, the Wainwrights initiated the first of three (3) abandonment proceedings that led to SEAEDD, LPPC and NLA acquiring three (3) adjoining segments of the Line between milepost 408.9 at McGehee and 471.0 at Lake Providence. It cost SEAEDD \$704,467 to acquire the track between milepost 433.0 and milepost 454.8 in 2005.

6. Recognizing the need to restore the tracks, I was asked to work with Wyly Gilfoil at LPPC to acquire funds to rehabilitate the track between Lake Village, Arkansas and Lake Providence, Louisiana from the U.S. Economic Development Department, the Arkansas Economic Development Commission GIF Funds, the Arkansas Economic Development Commission via Chicot County and the Delta Regional Authority. Our efforts secured \$6,349,537 of grant funds between 2012 and 2019. In addition, NLA was able to obtain financial assistance from its Holding Company and grant funds of \$4,000,000

that it invested in the rehabilitation of the track that it owns. While positive results were achieved, SEAEDD officials recognized that far more had to be done.

7. In mid-summer of 2015, news was released that the Wainwrights had sold the tracks to Continental Rail. The sale was initially viewed as a positive development based on the history and reputations of Continental Rail's executives' involvement in the short line rail industry through ownership of Rail America and other short line railroads. It was only in 2016 that I personally learned of Golden Gate's involvement with DSRR. As I now realize, while it operated and managed DSRR between June 2015 and December 2020, Continental Rail did not acquire DSRR from the Wainwrights. Instead, DSRR had been sold to a holding company that, in turn, was owned by Golden Gate Capital ("Golden Gate"), which I understand is a private equity enterprise that is headquartered in San Francisco, California.

8. In September of 2016, John H. Marino, Jr., Continental Rail's CEO invited Glenn Bell, SEAEDD's former Executive Director, and David Dempsey, the former Deputy Director, to a meeting at DSRR's newly established headquarters located in the Madison Parish Port. Immediately following the meeting, I was told that the meeting largely focused on the need to rebuild the entire Line between Madison Parish Port and the Lake Providence Parish Port

and to focus on the needs of the Ports.¹ That meeting led to the formation of the PPP. Recognizing that a large grant of money would hasten the rebuilding of the Lake Providence Branch, the members of the PPP (Public Private Partnership) decided to seek a grant from the United States Department of Transportation's *Infrastructure for Rebuilding America (INFRA) Program*.² If successful, the grant funds were to be used to re-develop the entire multimodal freight corridor between milepost 408.9 in McGehee, Arkansas and the interchange point with KCS in Tallulah, Louisiana. As so defined, the Line included the track that is used in interchange service with KCS. The entire rail line, which parallels the Mississippi River, is referred to in the INFRA Application as the McGehee-Tallulah Railroad Corridor ("the Corridor").

9. A complete copy of INFRA Grant Application FY 19-20 is attached to this Feeder Line Application as Exhibit B and is incorporated by reference in this Verified Statement. I will in large measure focus on the steps that were taken to reduce the scope of the Project following the United States Department of Transportation's ("US DOT") offer to grant less funding than what was originally sought by the PPP and the need to strictly adhere to the terms and conditions that accompanied the INFRA Grant. While I was the designated

¹ See Attachment No. 1, photograph of a chalk board reflecting some of the topics that were discussed.

² The *Notice of Funding Opportunity for the Department of Transportation's Nationally Significant Freight and Highway Projects (INFRA Grants) for Fiscal Year 2019* was published at 83 Fed. Reg. 65789, Dec. 21, 2018.

point of contact for SEAEDD, which is the Grantee,³ I also represented all of the Stake Holders. My first point of contact at FRA was Marc Dixon, FRA's Project Manager – South Central Region. The Board should note that the Grantee is charged with the responsibility to comply with the scope of work and must obtain prior approval from FRA before it can make any change in the scope of work. Because the primary objective is to redevelop the entire Corridor, any changes to the scope of work that would negate the ability to traverse the track between MP 471.0 and 491.0 would have to be approved by FRA. In this respect, the ITC explicitly states that the Grant Manager, who oversees compliance with the terms and conditions in the Grant Agreement, "is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, Project Performance Period, or other terms and conditions." To obtain FRA's approval of scope changes, I would have to prepare and submit a detailed letter that reflected the proposed scope changes and the rationale for those changes. Such changes took a substantial amount of time to come to a consensus that appeared to be satisfactory to all parties. Even then, shifting priorities could cause the consensus to be derailed. The breakup of the PPP in this instance provides a prime example. After working from July 15, 2019 to March 17, 2020 to finalize

³ As defined in the INFRA Terms and Conditions ("ITC"), "Grantee means the entity identified on the Agreement cover sheet that receives Federal grant assistance directly from FRA for the accomplishment of the Project referenced in this Agreement."

the proposed scope changes, on August 21, 2020, DSRR declined to commit to the key provision of the revised INFRA Grant Statement of Work.

10. A previous INFRA Application that was filed in November 2017 was denied. Thereafter, I filed SEAEDD's FY 19-20 INFRA Application on March 2, 2019, on behalf of the Southeast Arkansas Northeast Louisiana Multimodal Freight Corridor Improvement Project ("Project"). The Application requested \$25,589,421 of Federal Funding to cover a portion of the projected total cost of \$59,438,029 to reconstruct the entire Corridor. By email dated July 10, 2019, Paul Baumer on behalf of Chief Infrastructure Funding Officer Dan DeBono at the US DOT, requested me, as FRA's designated point of contact, to commit, by close of business on the following day, to the completion of *the full project* with only \$10,516,259 of INFRA Grant money. This level of funding would require SEAEDD, LPPC, MPPC, NLA and DSRR (hereinafter jointly referred to as the "Stakeholders") to cover the shortfall of \$15,173,162 of additional funds that would be required to cover the rehabilitation of the entire corridor.⁴ Because Baumer's email to SEAEDD was sent at 7:18 PM on July 10, I had only one day to respond.

11. After reviewing the email from Paul Baumer, I immediately notified our consultants at HDR, which was hired for INFRA engineering services, and Wyly Gilfoil at LPPC to advise them that we needed to decide how we would respond to DOT's request that I provide a description of which sources I would

⁴ See Attachment No. 2 hereto.

expect to use to make up the difference between the request and the award amount. Given the urgency, on the following afternoon, all parties, including John Marino and Jon Ryan from Continental Rail, participated in the call. During the call, Mr. Marino strongly urged the group to accept US DOT's reduced amount. After further discussions, his recommendation carried the day. I then timely responded to Paul Baumer and advised him that SEAEDD and its partners would accept a reduced INFRA grant award of \$10,516,259, which reflects a \$15,173,162 reduction in the total amount requested.

12. By accepting a reduced award, we had to meet the critical goals and objectives of the overall project. The primary goal, which was shared by all, involved the rehabilitation of the *entire* rail corridor, which was estimated to cost \$18.6 million. We clearly realized that several components of the Project would have to be delayed, such as infrastructure investments associated with connectivity to local shippers and multimodal connections between the ports, the Mississippi River and the rail corridor. We anticipated that some of the funding gap could be made up through local port funds, the LADOTD Port Priority Program, and potentially more private funding from the short line railroads.

13. Without waiting for a response from Baumer, on July 15, 2019, Wyly Gilfoil and I, on behalf of the Stakeholders, participated in an initial conversation with US DOT concerning the need to reduce the scope of work because of the reduced award amount. In addition, the Stakeholders began their own review of ways to revise the project's scope of work to line up with the

reduced award amount. The reduced scope of work had to be submitted to US DOT for approval. On July 18, 2019, SEAEDD received an email notice that US DOT had designated the Project as being a “Nationally Significant Freight and Highway Project” and awarded \$10,516,259 to be used for the express purpose of rehabilitating *the entire corridor*.

14. Thereafter, the Stakeholders and HDR continued their efforts to revise the Project’s scope of work. No one ever suggested that the 20-mile segment from 471.0 to milepost 491.0 would not be rehabilitated. Nor did anyone who was actively involved in the process ever question that the overall goal of the Project was to rehabilitate the *entire* Corridor.

15. However, on November 26, 2019, Jon Ryan, who was a CPA located at Continental Rail’s office in Fort Lauderdale, Florida, sent an email to Doree Magiera at HDR and submitted what he labeled as the “DSRR SEAEDD Grant Budget.” As Ryan explained:

Attached please find the construction costs to upgrade the existing rail per the grant specifications. Based upon the attached budget, we plan to begin the rehabilitation at the KCS interchange and work north which based upon the current grant amount and our match would upgrade approximately 6 miles of track (highlighted yellow in the attached). As part of the track upgrades we plan to incorporate an existing agreement with KCS to install a new interchange track and lead of approximately 1,700 feet of track. Under this agreement, KCS is to provide the rail, rock, ties and OTM and we are to provide the labor. We believe incorporating this project into the grant specs will help serve our existing customers and attract new customers. As part of this agreement, we plan to extend this new lead an additional three quarters of a

mile north as indicated in the attached budget. This new interchange track will require surveying costs.

As we move forward with the project we believe there are other areas we have identified that we believe it would be cost beneficial to create a new line rather than upgrade the existing line. We would like the grant description to include the flexibility to incorporate this into the construction plan. These areas are currently past the limits of the priority 6 miles but could be incorporated into the grant based upon cost savings.⁵

16. As his comments plainly reflect, Ryan's plan deviated from the scope of rehabilitation that US DOT had established. Furthermore, by focusing on DSRR's existing customers and potential new customers, he signaled that he had no intent to spend funds to rehabilitate the much longer segment of track between the Lake Providence Port and the Madison Parish Port. Instead, he would leave it to LPPC and MPP to fund the rehabilitation of that track. In other words, he had no intent to comply with the scope of rehabilitation that US DOT had established.

After Ms. Magiera conferred with me and Mr. Gilfoil, she forwarded an email, dated December 4, 2019, to Ryan and tersely advised him that "[t]he latest DSRR spreadsheet does not follow the intended rail rehabilitation scope of work that has been discussed the past two years and presented to the FRA as part of the grant applications."⁶ In addition, Ms. Magiera posed several comments regarding the proposed use of the INFRA Grant request.

Later that day, Ryan responded that "I am not privy to what was discussed the past two years so I cannot speak to that." In addition, he

⁵ See Attachment No. 3 hereto.

⁶ See Attachment No. 4 hereto.

responded to Ms. Magiera's questions by inserting his comments in red, as follows:

Magiera: The current INFRA Build grant request includes approximately \$7,561,250 for Rail Infrastructure Rehabilitation to bring the existing main line track from Tallulah to Lake Providence Port to 25 mph Class 2 track.

Ryan: The spreadsheet that was transmitted does follow the rail rehabilitation scope of upgrading to Class 2 track in order to accommodate 25 MPH. It will be necessary to replace ties, ballast, track and OTM over the entire corridor.

* * *

Magiera: There was also \$200,000 for bridge upgrades to 286K.

Ryan: My understanding is this is correct the bridges have been upgrade (sic) to 286k. But there are still some defects that will need to be corrected.

* * *

Magiera: It is our understanding the bridge upgrades were completed and that the existing main line track has been rehabilitate from Tallulah to Madison Port under separate funding.

Ryan: No we have not completed the rehabilitation of mainline track from Tallulah to Madison Parish port for Class 2 track with the ability to run 25MPH.

* * *Magiera: The awarded INFRA grant has provided \$2.5 million for Rail Infrastructure Rehabilitation in Segment D. We are looking for the DSRR's priorities or task breakdown for rehabbing the existing main line track between Madison Port and Lake Providence Port to 25 mph Class 2 track. The original estimate was calculated with 50% tie replacement and approximately 6-in of ballast across 25 miles of track Therefore with approximately 1/3 of the requested funding, would the ties or the ballast be the priority? Or does the required rehabilitation vary through different sections of this line?

Please utilize the main line track rehabilitation cost estimate and reduce to match the \$2.5 million in funding.

Ryan: My understanding is that this will require ballast, ties, rail and OTM to accomplish the goal of upgrading the track to class II. The \$2.5 is a good start but is nowhere near (sic) the amount required to achieve the ultimate goal. The railroad currently operates on 85lbs track under accepted track conditions.⁷

17. On December 10, 2019, Ryan forwarded yet another proposal that outlined “Priority Uses DSRR.” As he stated in another email to Ms. Magiera, “[p]lease find the updated uses for the SEAEDD grant money that has been allocated to the DSRR to rehabilitate our portion of the corridor. We believe the plan laid out below will accomplish the overall goal for this section of track leading to Madison Parish port.”⁸

As shown in the Table below, DSRR’s “plan” consisted of a chart that covered the cost of ties, ballast, tamping, and labor for ballast/miscellaneous for DSRR’s tracks between mileposts 500 and 491 (“Priority Miles”) that totaled \$2,503,596.

⁷ See Attachment No. 4 hereto.

⁸ See Attachment No. 5 hereto.

		Priority – Miles				
MP	40% Ties per mile	3,500 Tons Ballas per mile	Tamping	Labor for Ballast/ Miscellaneous	Total	
500	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
499	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
498	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
497	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
496	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
495	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
494	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
493	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
492	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
491	\$120,680	\$108,500	\$6,000	\$15,180	\$250,360	
	\$1,206,800	\$1,085,000	\$60,000	\$151,796 1/	\$2,503,596 1/	
1/ Does not foot due to rounding.						

No mention whatsoever was made regarding the 20-mile segment of tracks between MP 471.0 and MP 491.0. Because Ryan's approach could not be reconciled with the previous approach that had consistently focused on an initial rehabilitation of the overall corridor, rather than a further rehabilitation of DSRR's track between Madison Parish Port and the point of interchange with KCS, it was rejected. However, an effort was made to increase the funds that would be allocated to DSRR. The fine tuning of the modifications continued until the middle of March of 2020.

18. On March 17, 2020, SEAEDD submitted its request to FRA for approval of the scope changes to the Project to fit the new budget that reduced the Non-Federal Cost share to \$10,861,267.⁹ Although the reduced share

⁹ A copy of my letter is attached hereto as Attachment No. 6.

reflected the elimination of certain components, such as a Mississippi River dock component, it did not impact the need to rehabilitate the tracks at issue.

19. On June 1, 2020, I received a letter from FRA approving the requested changes to the scope of work.¹⁰ Thereafter, I worked with my local attorney to prepare a proposed Consortium Agreement to the Partners for their approval. On July 30, 2020, I forwarded the “Consortium Agreement Final Draft” to all the consortium members. As I explained in my email:

During the life of the INFRA project, SEAEDD as the Grantee and Grant Administrator must oversee the management of the project. Because this project is comprised of 5 consortium members, it is necessary for all members to agree to work together toward the successful completion of this project. The agreement outlines roles and responsibilities for all consortium members involved, as well as funding flow/process, reporting, etc.

Please review the agreement and make any comments and/or revisions. The goal is to have an agreement in place prior to the signing of the grant agreement, which is expected to be completed and submitted to SEAEDD for execution by the end of August.¹¹

20. On August 14, 2020, Ryan responded by emailing “an updated draft with our comment so our scope matches the grant.” The “comment” consisted of DSRR’s unilateral change in the draft Consortium Agreement pertaining to the number of miles on DSRR’s tracks that would be upgraded from FRA excepted track to FRA Class 2 track. Ryan simply struck “20” miles and replaced it with “10” miles. No further explanation was provided.

¹⁰ See Attachment No. 7 hereto.

¹¹ See Attachment No. 8 hereto.

Recognizing the potential negative impact of Ryan's unilateral change that would require US DOT's further approval, I forwarded Ryan's email to Wyly Gilfoil and asked him to review it. Mr. Gilfoil agreed with my assessment that it would not satisfy the terms of the Grant and agreed to speak with John Marino.

21. After I learned that Mr. Gilfoil had not been able to obtain assurances from Mr. Marino that DSRR would rehab the tracks between MP 471 and MP 491, I forwarded an email to Mr. Marino on August 18, 2020 in which I explained that:

I need to have an answer in writing by 12 noon CDT on Friday, August 21, 2020 describing Delta Southern Railroad's intentions as far as the Consortium Agreement and the Grant Agreement to repair the track between Talla Bena, Louisiana and Lake Providence, Louisiana to a minimum of FRA Class I standards and provide service as described in the narrative of the INFRA application and INFRA award.¹²

22. I also had a follow-up call with Mr. Marino in which I questioned him as to why DSRR had changed the mileage that it would rehabilitate when the proposed Consortium Agreement reflected the scope of work that FRA had approved. Mr. Marino replied that he saw no reason for DSRR to upgrade the track beyond MP 491 to FRA Class 1 standards because DSRR doesn't have any business in that direction and did not need to rehabilitate that section of its track to service the shippers located at the Madison Parish Port. Mr. Marino also noted that there was no need to rehabilitate the six (6) miles of track that

¹² See Attachment No. 9 hereto. My proposal would also require a resubmission of the scope of work to US DOT to obtain its approval.

DSRR was using to receive income from storing railcars that were parked north of MP 491. Mr. Marino also indicated that DSRR did not intend to cease using the track for storage purposes. In response, I reminded Mr. Marino that because the intent of the grant funding was that the entire corridor has access to UP to the North and KCS to the south, the future storage of railcars would be inconsistent with the unquestioned goal of the Project.¹³

23. On August 21, 2020, Marino responded to my email of August 18, 2020. In his email he stated that “[t]he Delta Southern will commit to completing the grant work outlined in our original estimates as detailed below.” The document that he forwarded was Ryan’s December 10, 2019 “plan” that solely focused on the segment of DSRR’s track between milepost 491 and milepost 500. Because Mr. Marino’s email confirmed that DSRR and its owner would not commit to the rehabilitation of the twenty-mile segment of its line, LPPC, with the approval of SEAEDD, MPP and NLA, decided to file the original Feeder Line Application to acquire the segment of the Corridor between MP 471 and MP 491. That Application was filed November 12, 2020, and docketed as STB Docket No. FD 36447, Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana (“Original Application”).

24. Shortly thereafter, I advised FRA that DSRR would not commit to rehabilitating the segment. I also explained that LPPC would take steps to

¹³ *Id.*

acquire the 20-mile segment from DSRR as soon as it could determine the NLV of the property. In response, I was advised that FRA's approval of the changes set out in SEAEDD's letter, dated March 17, 2020, had no impact on SEAEDD's prior commitment to rehabilitate the 20-mile segment. FRA also indicated that the change of ownership of the segment would not adversely impact the INFRA Grant funding *if* the segment were re-opened for rail service. I am aware that because we were unable to obtain a commitment from DSRR, LPPC filed its Feeder Application on November 12, 2020. SEAEDD and LPPC concurrently filed a petition seeking expedited consideration and acceptance of LPPC's application prior to the submission of evidence regarding the Line's valuation.

25. On January 14, 2021, I received a letter from Fletcher & Sippel, LLC, which for many years had represented SEAEDD before the Board. In its letter, I was advised that they had been asked to represent DSRR, following the withdrawal of its initial counsel. I did not respond immediately.

26. After all of the evidence was filed in the Original Application, the Board's Director, Office of Proceedings, by Decision served January 15, 2021, accepted LPPC's Feeder Line Application and established a procedural schedule. On that same day, the U.S. Department of State released the formal Grant Agreement that, in addition to detailing the INFRA Terms and Conditions, included the Statement of Work that not only summarized the background that created the need to rebuild entire Lake Providence Branch Line but also detailed the projects that were approved for which the INFRA

Grant funds could be used. Moreover, the Award identified the Deliverables and Approved Project Schedule, the Approved Project Budget and the Applicable Federal Laws and Regulations.

27. Five (5) days later, on January 19, 2021, I received a copy of an email from Jon Ryan that effective January 5, 2021, “Continental Rail and John Marino are no longer the manager of the Delta Southern Railroad. Subsequently Jon Ryan was hired as the CEO of the Delta Southern Railroad.” Because the original email from Ryan reflected that a copy had been sent to Javier Puig at Golden Gate Capital, I assumed that Golden Gate had made the call to terminate Continental Rail and Mr. Marino. Because I was aware that Continental Rail had previously admitted that it lacked the cash to participate in the initial INFRA Grant Application, I thought that Golden Gate, as the owner of DSRR’s stock, would assume the common carrier obligation and take steps that Continental Rail could not afford to take to restore the Line.

28. It would only be later that I would learn from Craig Huff’s testimony, that Jon Ryan, consistent with the positions that he took in 2019, had directed Huff, following J.D. Ventrcek’s resignation from Continental Rail in late 2016, to focus on railcar storage and cease his joint marketing efforts with Daniel Robbins to attract new business that would have moved in interchange. Given Mr. Ventrcek’s determination to upgrade DSRR’s track and expand interchange business, while reducing its reliance on railcar storage for third parties, I realized that Ryan was moving in lock step with Golden Gate

Capital with his conclusion that the desired track renovations of the “long-dormant” Line are unjustified and unwarranted.

29. I must strongly disagree with that conclusion. I am aware that the efforts that LPPC, SEAEDD and NLA have made to rehabilitate the Line between Lake Providence and McGehee have recently attracted two major new shippers, MD Power and ATM Gloves. The Ribbon Cutting Ceremony for the contract signing with both of these companies was held on June 10, 2022 and on November 14, 2022, the first-in-nation Waste-to-Energy Recycling Facility groundbreaking ceremony was held just north of Lake Village in Chicot County. A copy of the Talking Points of the MD Power Project is attached hereto.¹⁴

VERIFICATION

I, Patrecia G. Hargrove, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 9 day of December 2022.


Patrecia G. Hargrove

¹⁴ See Attachment No. 10 hereto.

EXHIBIT J

Verified Statement of Daniel Robbins

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF DANIEL B. ROBBINS

1. My name is Daniel B. Robbins. I am the President, and head of Marketing of the North Louisiana & Arkansas Railroad (“NLA”). My address is 4416 S. Arkansas Ave., Russellville, AR 72802. I have personal knowledge of the facts stated herein and am duly authorized to present the Verified Statement on behalf of NLA. By way of personal background, I have been engaged in the railroad industry for 31 years and have 30 years of experience as a railroad engineer. During my career, I have worked as a conductor for the Union Pacific Railroad Company (“UP”) and in various positions, including engineer for the several short line railroads that are owned by Arkansas Short Line Railroad, Inc. (“ASL”), which is NLA’s parent corporation. In addition, I am a designated supervisor of locomotive engineers and a qualified track inspector.

2. NLA is one of the two (2) private short line railroads that partnered with the Southeast Arkansas Economic Development District (“SEAEDD”) and the Lake Providence Port Commission (“LPPC”) and the Madison Parish Port Commission (MPPC) in the public-private partnership (“PPP”) that is known as

the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project. Delta Southern Railroad, Inc. ("DSRR") is the other short line railroad. In 2019, the PPP successfully obtained a FY 19-20 INFRA Grant from the U.S. Department of Transportation. The Grant funds are intended to be used to re-develop the entire McGehee-Tallulah Railroad Corridor ("the Corridor"), including the trackage between MP 408.9 and the point of interchange with the Kansas City Southern Railroad Company ("KCS").

3. NLA currently owns, or by lease, operates sections of the Corridor between MP 408.9 and MP 471.0. If LPPC is authorized to acquire the track between MP 471 and the point of interchange with the KCS in Tallulah, Louisiana, NLA will enter into an extended lease with LPPC and, following the Board's authorization, will operate over the entire Line, which has long been known as the Lake Providence Branch Line. NLA Railroad will operate the line from a point located in the middle of the line to be determined and provide tri weekly service to all stations on the line. This service will commence on the rehabilitation of Segment D, i.e., the DSRR line from Lake Providence, LA to the interchange location with KCS in Tallulah, LA. Until that time, NLA will provide tri weekly service from McGehee, AR to Lake Providence, LA and on demand service from Lake Providence, LA to Tallulah, LA.

4. The receipt of the Grant funds has enabled the owners to rehabilitate the track between McGehee and Lake Providence. Although work on the track continues, it is now possible to safely operate over it. By way of