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June 27, 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
June 27, 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 the Delta Southern Railroad, Inc.'s Motion to Dismiss and for Attorneys' Fees. DSRR also requests expedited consideration because the parties are spending substantial sums of money on discovery in, and the Board is wasting resources on, a matter that a Louisiana court has ruled LPPC does not have the power to pursue. 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/ John M. Scheib

John M. Scheib
Gentry Locke Attorneys
1010 W. Main Street, Suite 750
Norfolk, VA 23510
757-916-3511

Attorney for:
Delta Southern Railroad, Inc.

cc: Judge Thomas McCarthy
Counsel of Record

**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 MOTION TO DISMISS AND FOR
ATTORNEYS’ FEES**

--- EXPEDITED CONSIDERATION REQUESTED ---

John M. Scheib
Gentry Locke Attorneys
1010 W. Main Street, Suite 750
Norfolk, VA 23510
757-916-3511

Attorney for:
Delta Southern Railroad, Inc.

Dated: June 27, 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.**

**DELTA SOUTHERN RAILROAD INC.’S MOTION TO DISMISS AND FOR
ATTORNEYS’ FEES**

--- EXPEDITED CONSIDERATION REQUESTED ---

Delta Southern Railroad, Inc. (“DSRR”) hereby files this Motion to Dismiss and for Attorneys’ Fees in this proceeding, which involves an amended feeder line application filed on January 4, 2023, by the Lake Providence Port Commission (“LPPC”) (“Amended Application”).

I. The Louisiana State Court Has Ruled LPPC Has No Authority to Pursue Their Feeder Line Application, and the Board Must Grant DSRR’s Motion to Dismiss.

In an order filed on June 24, 2024, the Sixth Judicial District for the Parishes of East Carroll, Madison, and Tensas granted DSRR’s Writ of Quo Warranto ordering LPPC to “cease its *ultra vires* actions and discontinue pursuit of its feeder line application that exist outside the Parish of East Carroll.” The Court’s order is attached as Attachment A. Thus, the Board must dismiss this proceeding because LPPC has no authority to pursue the Amended Application. DSRR, additionally, requests that the Board consider this motion to dismiss on an expedited basis because the parties are incurring substantial sums of money—and the Board is wasting resources including

the time and effort of an administrative law judge—in discovery in a proceeding that LPPC lacks the power to pursue. *See* Verified Statement of Rob Thrall, attached hereto as Attachment B.

LPPC filed its Amended Application on January 4, 2023, seeking to dispossess DSRR of a 20-mile railroad line (and associated ancillary trackage) extending between mileposts 471.0 and 491.0, in East Carroll and Madison Parishes, Louisiana (the “Line”). During the course of discovery, it came to the attention of DSRR that LPPC’s authority is substantially limited by its enabling statute in Louisiana. LPPC exists as a creature of Louisiana statute, and Louisiana law expressly states that LPPC “shall exercise the powers herein conferred upon it, *within the port area, consisting of the entire parish of East Carroll* as the boundaries and limits of said parish are presently fixed by law.” La. Rev. Stat. Ann. § 34:1503(A) (emphasis added).

On March 4, 2024, DSRR filed a Petition for Writ of Quo Warranto and Mandamus (the “Petition”) in Louisiana state court to prohibit LPPC from pursuing its feeder line application and direct LPPC’s Port Director and Commissioners to withdraw the application in accordance with their clear duty to only exercise powers within East Carroll Parish.¹ On March 12, 2024, DSRR filed a notice in this docket informing the Board of this development and including a copy of the Petition filed with the Sixth Judicial District for the Parishes of East Carroll, Madison, and Tensas.

¹ DSRR filed its Petition in the Louisiana state court as the Board does not possess authority to decide issues of state law. *See e.g., Reading, Blue Mountain & Northern Railroad Company—Petition for Declaratory Order*, FD 35956, 2016 STB LEXIS 155 at *7 (STB served June 3, 2016) (an “interpretation of state law... should be left to the state courts”). The Board further has no mechanism whereby it can seek adjudication of state law issues that weigh on proceedings before it. However, the Louisiana court was expressly authorized by articles 3901 and 3902 of the Louisiana Code of Civil Procedure to issue an order prohibiting the LPPC from exceeding its powers, and by article 3864 to order the respondents to take the required ministerial act of terminating this proceeding. As the state court held that Louisiana law mandates LPPC withdraw its application since it constitutes an ultra vires action in attempting to acquire property outside the boundaries of East Carroll Parish, the Board should dismiss this proceeding.

Despite being set for expedited hearing, the hearing was not held until May 23, 2024. The delay was due to the first and second judges given the case having to recuse themselves due to personal ties to LPPC and the defendants. At the May 23 hearing, the Louisiana court found for DSRR and held that any action by LPPC to take, own, and operate property outside East Carroll Parish is an *ultra vires* action. Specifically, the court ordered LPPC to “cease its *ultra vires* actions and discontinue pursuit of its feeder line application that exist outside the Parish of East Carroll.” The final order was filed on June 24, 2024.

Pursuant to La. Rev. Stat. Ann. § 34:1503(A), LPPC’s authority is limited. The Louisiana court held that LPPC is not empowered to take, own, or operate entities or assets outside of East Carroll Parish, and that LPPC exceeds its authority by attempting to acquire the Line through the Amended Application. Thus, LPPC’s feeder line application is *ultra vires*, and under Louisiana law, LPPC’s director and Commissioners have no authority to pursue it whatsoever. The Board must give effect to the Louisiana court determination that LPPC does not have the power to pursue the Amended Application and must dismiss this proceeding. DSRR respectfully requests that the Board act expeditiously to dismiss this proceeding in accordance with the Court order that LPPC “cease its *ultra vires* actions and discontinue pursuit of its feeder line application that exist outside the Parish of East Carroll.”²

II. DSRR Requests that the Board Order LPPC to Pay Reasonable Attorneys’ Fees.

DSRR has incurred substantial sums of money on an action that was *ultra vires* all along and requests reimbursement of reasonable fees. As the Board is aware, this proceeding started in November of 2021. After applicant ran into substantial problems with its case and filed repeatedly supplemental materials, on August 23, 2022, the Board permitted LPPC to restart the case by filing

² In the event that the Court issues any further relevant orders, DSRR will update the Board.

a complete, amended application. LPPC filed that amended application on January 4, 2023. Also in January 2023, the Board permitted the owner of DSRR to be replaced by Patriot Rai Company, which has owned and operated the railroad since without any inadequate service. The Board ordered discovery of DSRR by LPPC related solely to the issue of just compensation, with which DSRR has complied at a cost of more than \$150,000, which is a substantial sum for a small Class III railroad. DSRR also began to take discovery of LPPC. But LPPC resisted by playing games. LPPC made arguments that contradicted its prior position – “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.” See 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 (STB filed Apr. 1, 2024). LPPC hid behind the fact that the same lawyer represented multiple parties and trying to use them to shield each other from providing fulsome discovery. See DSRR letter (STB filed April 3, 2024). DSRR had to expend funds to file three motions to compel against LPPC and its co-parties (STB filed Mar. 8, 2024), NLA and SEAEDD, which the Administrative Law Judge indicated he would grant during the parties’ telephonic conference on April 24, 2024.

LPPC finally began to respond to discovery. In response to an interrogatory that asked the legal basis for LPPC’s authority to file the feeder line case, it became apparent that LPPC lacked authority to act with respect to property outside East Carroll Parish, Louisiana. As noted above, a Louisiana court has now ruled that in fact LPPC has been acting ultra vires all along. Since 2021, LPPC has been acting ultra vires at substantial expense to DSRR, including costs to respond to all LPPC’s filing that caused the Board to restart the case in August 2023, discovery and more. DSRR

respectfully requests that the Board order LPPC to pay for DSRR's reasonable attorneys' fees incurred only with complying with LPPC's discovery requests and fighting to obtain and discovery from LPPC and its co-parties (which discovery unveiled LPPC's ultra vires actions) and incurred after January 4, 2023. LPPC's relentless and meritless pursuit of a railroad that is providing service to its customers, indeed around 1000 cars worth per year, seemingly only because of a falling out over a grant application (which consumes more than 280 pages of the amended application and attachments) is distracting and costly enough. But worse, LPPC has been acting ultra vires all along. Although DSRR recognizes that the Board does not often grant attorney's fees, the Board has on occasion when the impact of a party's actions has been egregious. *See Consolidated Rail Corp. – Abandonment Exemption – in Hudson County, NJ*, Docket No. AB 55 (Sub-No. 686X) (STB Served Oct. 24, 2016), *aff'd Consolidated Rail Corp. – Abandonment Exemption – in Hudson County, NJ*, Docket No. AB 55 (Sub-No. 686X) (STB Served Apr. 27, 2017).

Respectfully submitted,

/s/ John M. Scheib

John M. Scheib

Gentry Locke Attorneys

1010 W. Main Street, Suite 750

Norfolk, VA 23510

757-916-3511

Attorney for:

Delta Southern Railroad Inc.

Dated: June 27, 2024.

CERTIFICATE OF SERVICE

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

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

Mr. Michael F. McBride
Van Ness Feldman
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
mfm@vnf.com

/s/ John M. Scheib

John M. Scheib

Dated: June 27, 2024

ATTACHMENT A

DELTA SOUTHERN RAILROAD, INC.

STATE OF LOUISIANA

VERSUS

PARISH OF EAST CARROLL

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

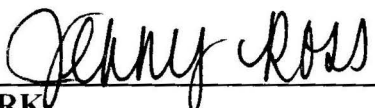
SIXTH JUDICIAL DISTRICT

CIVIL DOCKET NO. 23740

DIVISION B

FILED: JUN 24 2024

DEPUTY

**BY: 
CLERK**

JUDGMENT AND ORDER

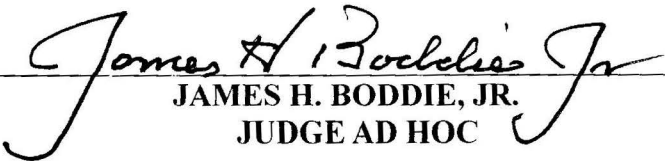
The above captioned matter came on for hearing on May 23, 2024, with trial being conducted in the Madison Parish Courthouse by agreement of and for the convenience of the Court and all parties. **CONSIDERING** the Petition for Writs of Quo Warranto and/or Mandamus filed by **DELTA SOUTHERN RAILROAD, INC.** as well as the Answer filed by **LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN, ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND JAMES THOM, IV.**, the pre-hearing briefs, the evidence received, the arguments of counsel in the above captioned matter, and the Constitution and law of the State of Louisiana, and for the reasons announced in open court during the trial on May 23, 2024,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff, **DELTA SOUTHERN RAILROAD, INC.**'s Petition for Mandamus is **DENIED**.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff, **DELTA SOUTHERN RAILROAD, INC.**'s Petition for Writ of Quo Warranto is **GRANTED** and that the writ shall issue ordering that the **LAKE PROVIDENCE PORT COMMISSION** cease its *ultra vires* actions and discontinue pursuit of its feeder line application that exist outside the Parish of East Carroll.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that all costs of these proceedings are to be borne by Defendants to the extent allowable by law.

JUDGMENT RENDERED IN OPEN COURT in Tallulah, Madison Parish, Louisiana
on May 23, 2024, **AND SIGNED IN CHAMBERS** at Ruston, Louisiana, this
19 day of June, 2024.


JAMES H. BODDIE, JR.
JUDGE AD HOC

ATTACHMENT B

**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.**

VERIFIED STATEMENT OF ROB THRALL

1. I am Rob Thrall, and am I am the SVP Business Development at Patriot Rail Company, which owns and operates Delta Southern Railroad, Inc. (“DSRR”).
2. DSRR has been engaged in this proceeding since Patriot Rail acquired DSRR in January 2023.
3. Discovery in the matter has cost DSRR substantial sums of money well in excess of \$150,000, which is a large sum for a small Class III railroad and is money that we would rather have had available to supplement the more than \$400,000 we have invested in the DSRR since acquiring it.
4. DSRR provides service to its customers and moves about 1,000 cars per year, and has received no complaints about adequacy of service in the time since Patriot Rail Company acquired it.
5. DSRR has now served discovery on Lake Providence Port Commission (“LPPC”) as well. That discovery is no doubt expensive for LPPC to work on. That discovery is on-going.
6. DSRR has also served discovery on other parties – Northeast Louisiana Railroad and Southeast Arkansas Economic Development District. That discovery is pending and an expense for those parties as well.
7. In addition, the Board appointed an administrative law judge and is devoting time to this matter.

8. Given the ruling of the Louisiana court that LPPC lacks authority under its enabling statute to pursue this matter, DSRR requests expedited consideration and dismissal of this action so that the wasteful spending can end and resources be devoted to the railroad.

Verification

I, Rob Thrall, verify under penalty of perjury that I am SVP Business Development at Patriot Rail Company, that I have read the foregoing Verified Statement and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on June 25, 2024



Rob Thrall