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May 28, 2025

ENTERED

Office of Proceedings

May 29, 2025

Part of

Public Record

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

Dear Ms. Brown:

Respondent, Delta Southern Railroad Inc. (“DSRR”), yesterday filed to request expedited consideration and dismissal, with prejudice, of the Lake Providence Port Commission’s (“LPPC”) Feeder Line Application for the Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana. DSRR requests to substitute the attached revised pleading, which includes the state court order that DSRR previously submitted to the Board on June 27, 2024 as an attachment to its motion to dismiss. Given the short passage of time, no parties will be prejudiced by this substitution.

Thank you for your consideration.

/s/ *John M. Scheib*

Attorney for:

Delta Southern Railroad, Inc.

Attachment

cc: Parties 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 RENEWED MOTION TO DISMISS
EXPEDITED CONSIDERATION REQUESTED**

John M. Scheib
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Richmond, VA 23219
757-916-3511

Attorneys for:
Delta Southern Railroad, Inc.

Dated: 5/28/25

**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 RENEWED MOTION TO DISMISS
EXPEDITED CONSIDERATION REQUESTED**

Respondent, Delta Southern Railroad Inc. (“DSRR”), requests that the Board remove this proceeding from abeyance and grant the pending motion to dismiss, with prejudice, Lake Providence Port Commission’s (“LPPC”) Feeder Line Application for the Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana. DSRR requests that the Board do so expeditiously as this proceeding has been pending for more than four years and the state courts have issued a final order that LPPC lacks authority under its enable statute to pursue the Application and has ordered LPPC to “discontinue its pursuit of ownership or control of property outside the East Carroll Parish in its feeder line application before the United States Surface Transportation Board.” The order of the Trial Court is attached as Exhibit 1.

LPPC filed its Feeder Line Application with the Surface Transportation Board (“STB”) on November 12, 2020. On June 27, 2024, DSRR filed a Motion to Dismiss and for Attorney’s Fees. (“Motion to Dismiss”). After subsequent filings and litigation in Louisiana state court, the

STB decided to hold proceedings in FD 36447 in abeyance pending “resolution of these state law issues.” *See Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (Aug. 1, 2024 Decision)*, FD 36447, slip op. at 3 (STB served Aug. 2, 2024). Those issues are now resolved with final action by the Supreme Court of Louisiana.

On May 27, 2025, LPPC filed, and the Supreme Court of Louisiana granted, its Motion to Dismiss Original Application. *See* Order, attached as Exhibit 2. Thus, the decision of the Louisiana Court of Appeals for the Second Circuit, about which DSRR provided notice to the Board on March 6, 2025, is final. That decision affirmed the Sixth Judicial District Court of the Parish of East Carroll, Louisiana (Trial Court No. 23,740), which held (1) LPPC lacks statutory authority to acquire property outside East Carroll Parish and is acting “*ultra vires*” and (2) issued of a writ ordering LPPC to discontinue its pursuit of ownership or control of property outside of East Carroll Parish in its feeder line application.

WHEREFORE, DSRR respectfully requests that the Board remove the proceeding from abeyance and grant the motion to dismiss with prejudice expeditiously LPPC’s Feeder Line Application. Attorneys’ fees issue need not delay dismissal of this action and can be addressed separately as is done in courts. A draft order is attached as Exhibit 3.

/s/ *John M. Scheib*

John M. Scheib
Gentry Locke Attorneys
919 E Main St Ste 1130 Richmond, VA 23219
757-916-3511
Attorney for:
Delta Southern Railroad, Inc.

Dated: May 28, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email on counsel for all parties of record.

/s/ *John M. Scheib*

John M. Scheib

Dated: May 28, 2025

EXHIBIT 1- TRAIL COURT ORDER

EXHIBIT 2 – LOUISIANA SUPREME COURT ORDER

6TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST CARROLL

STATE OF LOUISIANA

CASE NO.: 23740

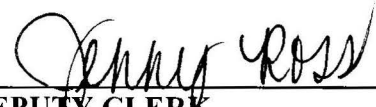
DIVISION "B"
HON. JAMES BODDIE,
AD HOC, PRESIDING

DELTA SOUTHERN RAILROAD, INC.

VERSUS

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

FILED: JUN 26 2024


DEPUTY CLERK

71137

AMENDED JUDGMENT & ORDER

The above-captioned matter came on for hearing on May 23, 2024, with the 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 of Defendants 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-entitled matter; and the Constitution and Laws of the State of Louisiana, and for the reasons announced in open court during the trial on May 23, 2024,

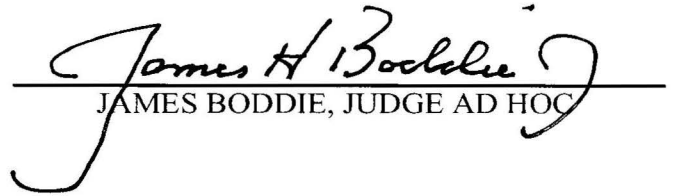
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff Delta Southern Railroad, Inc.'s, Petition for Mandamus is DENIED;

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 and be made executory ordering that the Lake Providence Port Commission cease its *ultra vires* actions and discontinue its pursuit of ownership or control of property outside of East Carroll Parish in its feeder line application before the United States Surface Transportation Board, STB Docket No. FD 36447.

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.

Signed at Tallulah, Louisiana, this 26 day of June, 2024.


JAMES BODDIE, JUDGE AD HOC

SUBMITTED BY:

/s/ Leila A. D'Aquin

EDWARD T. HAYES, #25700

LEILA A. D'AQUIN, #18884

ALEX P. TILLING, #29686

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-and-

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Counsel for Delta Southern Railroad, Inc.

EXHIBIT 2- ORDER OF THE LOUISIANA SUPREME COURT



Supreme Court
STATE OF LOUISIANA
New Orleans

CHIEF JUSTICE

JOHN L. WEIMER

JUSTICES

WILLIAM J. CRAIN

JOHN MICHAEL GUIDRY

CADE R. COLE

JAY B. MCCALLUM

JEFFERSON HUGHES

PIPER D. GRIFFIN

Sixth District

First District

Second District

Third District

Fourth District

Fifth District

Seventh District

VERONICA O. KOCLANES
CLERK OF COURT

400 Royal St., Suite 4200
NEW ORLEANS, LA 70130-8102

TELEPHONE (504) 310-2300
HOME PAGE <http://www.lasc.org>

May 27, 2025

James Edward Paxton
124 Hancock St
St Joseph, LA 71366-

John D. Crigler, Jr.
124 Hancock St
St Joseph, LA 71366-

Re: DELTA SOUTHERN RAILROAD,
INC. VS. LAKE PROVIDENCE PORT
COMMISSION, ET AL.
2025-C-00549

Dear Counsel:

This is to advise that the court took the following action on your Motion To Dismiss filed in the above entitled matter.

CONSIDERING the foregoing Motion to Dismiss Original Application on Behalf of LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN, ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND JAMES THOM, IV. ("Applicant"):

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Original Application filed on behalf of Applicant is hereby DISMISSED.

Regards,

Theresa McCarthy
Second Deputy Clerk

TM: TM

ccs:

All Counsel

Hon. James H. Boddie, Jr.

Hon. Rene Thomas Williams

Hon. Robin Norman Jones

6th Judicial District Court: 23,740 - Div:B

Court of Appeal, Second Circuit: 56,112-CA

EXHIBIT 3 – PROPOSED ORDER

PROPOSED ORDER

SURFACE TRANSPORTATION BOARD DECISION

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.

On November 12, 2020, Lake Providence Port Commission filed its Feeder Line Application, which it later amended. The parties engaged in litigation in state courts in Louisiana regarding the scope of LPPC's authority under state law to pursue the property of Delta Southern Railroad ("DSR") involved in this proceeding.

The Sixth Judicial District Court of the Parish of East Carroll, Louisiana (Trial Court No. 23,740), held (1) LPPC lacks statutory authority to acquire property outside East Carroll Parish and is acting "*ultra vires*" and (2) issued a writ ordering LPPC to discontinue its pursuit of ownership or control of property outside of East Carroll Parish in its feeder line application. Based on this ruling, on June 27, 2024, DSR filed a Motion to Dismiss and for Attorney's Fees. ("Motion to Dismiss"). The Board by decision served August 2, 2024, held this proceeding in abeyance pending the outcome of the state court litigation. On May 27, 2025, DSR notified the Board that the state court action is final after the Louisiana Court of Appeals for the Second Judicial Circuit affirmed the lower court and a petition for certiorari to the Louisiana Supreme Court was withdrawn. DSR renewed its motion to dismiss with prejudice. The state court litigation is now final.

Therefore the Motion to Dismiss with prejudice is granted. The Board will consider DSR's petition for attorney's fees in a separate decision.

It is ordered:

1. DSR's motion to dismiss with prejudice is granted.
2. The Board will consider DSR's petition for attorneys' fees in a separate decision.
3. This decision is effective on its service date.