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June 20, 2025

309687

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 20, 2025
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 Rebuttal to Lake Providence Port Commission's Substantive Reply filed on June 18, 2025 ("Substantive Reply"). Events have occurred since Delta Southern Railroad ("DSRR") filed its renewed motion to dismiss on May 29, 2025, that justify this filing.

To the extent that the Board considers this filing a reply to reply, then Delta Southern Railroad Inc. ("DSRR") reluctantly requests leave to file. DSRR is aware of the STB rule that disfavors such replies (49 C.F.R. § 1104.13) and of Chair Fuchs' concurring statement in *Norfolk S. Corp.--Acquis. of Control--Norfolk & Portsmouth Belt Line R.R.*, STB Finance Docket 36836, slip op. at 10 (STB served Mar. 14, 2025) (Board Member Fuchs, concurring) (indicating that the Board should more strictly enforce the existing regulatory prohibition against replies to replies "to ensure fulsome initial filings, reduce burden on parties, and better use agency resources") ("Fuchs Concurrence").

In this instance, however, the motion to dismiss was filed almost one year ago -- on June 27, 2024 -- based on information that became available in discovery that Lake Providence Port Commission ("LPPC") lacked authority under the enabling statutes that LPPC identified in response to interrogatories as its source of power to pursue the application in this case. Response to Interrogatory No. 65. The Sixth Judicial District Court of the Parish of East Carroll, Louisiana (Trial Court No. 23,740) held that LPPC lacked authority to pursue this case and ordered LPPC to "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." *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 filed July 3, 2024). The Louisiana Second Circuit Court of

Appeals affirmed the district court order. *Delta South. R.R. v. Lake Providence Port Comm’n*, 2025 La. App. LEXIS 308 (La. App. 2 2025). And the Supreme Court dismissed a petition for certiorari on May 27, 2025. See Exhibit 2, Delta South. R.R. Inc.’s Renewed Motion to Dismiss, *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 filed May 28, 2025). Thus, the district court’s judgment became and is final and enforceable.

More recently, DSRR renewed its motion to dismiss on the grounds that LPPC lacked authority on May 29, 2025. On June 12, 2025, LPPC declined to respond substantively and advised the Board of pending, but not enacted, legislation, which DSRR did not discuss because it is irrelevant to the motion to dismiss that is pending. On June 18, 2025, LPPC responded with its Substantive Reply but did not address the basis for the motion to dismiss, which is the district court order that LPPC “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.” Rather, LPPC provided information on a newly adopted statute – SB 146 – that is not in effect and that does not have any retroactive effect, material facts omitted by LPPC. LPPC also omitted the fact that it is the subject of a contempt action before the district court for failure to abide by the district court order.

DSRR seeks leave to submit this filing to correct the record. Because the legislature passed and the Governor signed SB 146 after DSRR’s May 29, 2025 motion, and was at all times subject to potential amendment and veto, this is not a case in which DSRR’s renewed motion could have been more fulsome. See Fuchs Concurrence. It is appropriate for DSRR to address its effect and to advise the Board of the incorrect and misleading statements in LPPC’s June 18, 2025 “Substantive Reply”.

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*

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**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 REBUTTAL TO LAKE PROVIDENCE
PORT COMMISSION’S SUBSTANTIVE REPLY**

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Attorneys for:
Delta Southern Railroad, Inc.

Dated: June 20, 2025

Delta Southern Railroad, Inc. (“DSRR”) filed the motion to dismiss that is pending before the Board almost one year ago -- on June 27, 2024. It is based on information that became available in discovery that Lake Providence Port Commission (“LPPC”) lacked authority under the enabling statutes that LPPC identified in response to an interrogatory as its source of power under Louisiana law to pursue the application in this case. *See Exhibit A (Response to Interrogatory No. 65).*

Since then, the Sixth Judicial District Court of the Parish of East Carroll, Louisiana (Trial Court No. 23,740) held that LPPC lacked authority to pursue this case and ordered LPPC to “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.”¹ The Louisiana Second Circuit Court of Appeals affirmed the district court order.² And, the Supreme Court dismissed LPPC’s petition for certiorari on May 27, 2025.³ Thus, the district court’s judgment became and is final and enforceable.

DSRR submits this rebuttal to note material information omitted from and to correct the false or misleading statements made in LPPC’s Substantive Reply filed on June 18, 2025.⁴ The

¹ *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 filed July 3, 2024) (attaching the district court’s amended order).

² *Delta South. R.R. v. Lake Providence Port Comm’n*, 2025 La. App. LEXIS 308 (La. App. 2 2025).

³ *See Delta South. R.R. Inc.’s Renewed Motion to Dismiss, 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 Exhibit 2 (STB filed May 28, 2025).

⁴ Substantive Reply of Lake Providence Port Comm’n to Renewed Motion to Dismiss of Delta South. R.R. Inc., *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 3-4 (STB filed June 18, 2025) (“Substantive Reply”).

district court's order remains final and enforceable even with the adoption of SB 146, which has not taken effect and does not apply retroactively. Dismissal of this proceeding is required. Given LPPC's longstanding *ultra vires* actions that have caused DSRR to incur unnecessary attorneys' fees and costs to defend itself in this illegally pursued proceeding, DSRR is entitled to attorneys' fees and costs.

I. SB 146 Does Not Save this Proceeding.

Recently, the Louisiana legislature adopted, and on June 11, 2025, the Governor signed into law SB 146. For the first time in the history of LPPC's existence, that bill will provide LPPC the authority to acquire property outside East Carroll Parish, which has been the express statutory limitation on LPPC's power. La. R.S. § 1503(A).

Despite LPPC's claim that SB 146 is now effective,⁵ LPPC omitted the fact that the Louisiana Constitution provides that SB 146 is not effective until August 1, 2025. (La. Const. art. 3, § 19). LPPC also did not inform the Board that SB 146 does not apply retroactively to cure LPPC's ongoing illegal, *ultra vires* action because it does not include a provision that expressly makes it retroactive. La. R.S. § 1:2 (stating that no statute therein may be applied retroactively unless it is expressly so stated). Rather than supporting LPPC's position, SB 146:

- Confirms that LPPC lacked authority to pursue acquisition of property outside East Carroll Parish throughout this proceeding;
- Confirms that LPPC has acted *ultra vires* as determined by the district court; and
- Does not cure LPPC's *ultra vires* actions in this proceeding.

Thus, SB 146 does not affect the district court's ruling that LPPC must "cease its *ultra vires* actions and discontinue pursuit of its feeder line application that exist outside the Parish of

⁵ Substantive Reply at 3-4.

East Carroll” in any way. LPPC actions in this proceeding, including the filing of any complaint that sought property outside East Carroll Parish and seeking discovery of DSRR, are *ultra vires*. In short, SB 146 may allow LPPC to file a case at the Board to acquire property outside East Carroll Parish after August 1, 2025, but SB 146 does not save this proceeding.

Next, LPPC failed to disclose to the Board that it is subject to an ongoing contempt proceeding filed on June 11, 2025, in district court in Louisiana for failure to comply with that court’s order. See Exhibit B (Rule for Contempt and Incorporated Memorandum). The court has not yet set a date for that hearing.

Additionally, LPPC’s conjecture, without any proof, that “counsel [for DSRR] presumably advised Patriot Rail and DSRR about LPPC’s statutory right to pursue the feeder line application” before Patriot Rail filed its Notice of Exemption in Finance Docket 36642 to acquire DSRR and implication that DSRR should have filed a challenge to LPPC’s illegal actions under LPPC’s enabling statute sooner are a sanctionable attempt to besmirch DSRR and its counsel. Substantive Reply at n.3. The statement in the verified Notice of Exemption was factual – “*this transaction* [the one at the STB] does not foreclose LPPC from pursuing an amended feeder line application.” *Id.* Moreover, only through discovery, which LPPC fought to avoid (*see infra* n.8), did DSRR obtain information that led to a challenge to LPPC’s lack of authority under Louisiana law.⁶

⁶ In response to Interrogatory No. 65, which asked “[p]lease describe in detail the legal basis for LPPC’s authority to acquire and/or operate the Line, including the portion outside of East Carroll Parish, Louisiana,” LPPC responded that “Louisiana Revised Statutes 34:1503 authorizes LPPC to ‘construct, own, operate and maintain terminal rail facilities and other common carrier rail facilities for the purpose of rendering rail transportation to and from the facilities to be erected, owned and operated by the commission in both intrastate and interstate commerce.’” See Exhibit A (Interrogatory 65).

The party that knew or should have known its own statutory authority when it started this proceeding was LPPC, its counsel, and Mr. Gilfoil, the 30-year port director whose verified statement is attached to LPPC's Substantive Reply. Presumably knowing that LPPC lacked authority to seek property outside East Carroll Parish under the plain language of LPPC's enabling statute, LPPC through its counsel nevertheless took an *ultra vires* and illegal action on August 23, 2023, when it sought leave to amend the application in this case to seek property outside East Carroll Parish.

Mr. Gilfoil's latest verified statement lists prior LPPC activity, none of which are relevant. Mr. Gilfoil contends that he "relied on the foregoing approvals which broadly authorized LPPC to acquire segments of a rail line," even though those approvals conflicted with the express and plain language of LPPC's enabling statute. Substantive Reply, Gilfoil VS at ¶7. What Mr. Gilfoil does not mention in his verified statement, and what he should know as the long-standing port director, is LPPC's enabling statute, which expressly limited LPPC's activity to East Carroll Parish only. La. R.S § 1503(a). Illegal actions remain illegal even if one could generously infer that "LPPC's [illegal] actions were sanctioned by appropriate Louisiana governmental authorities." Substantive Reply at 6 and Gilfoil VS at ¶¶ 7 & 9. Robbing a store is still illegal even if the mayor of the town says it is okay.

LPPC does not disclose to the Board that its argument that illegal actions were sanctioned are not new – they were rejected by the district court. LPPC made the same argument about its reliance on its prior activities to the district court in Louisiana to justify its illegal actions against DSRR. See Exhibit C (Transcript pages 4-6) (arguing bond authority actions expanded LPPC's power despite statutory limitations) & 10-11 & 16 (arguing prior acquisitions as proof of LPPC's

power to violate its statute). The judge rejected those arguments. *See* Exhibit C (Transcript pages 6 & 11). The Board should too.

II. LPPC's Illegal and *Ultra Vires* Actions Have Been Costly to DSRR

As the Board is aware, this proceeding started in November of 2021. After applicant ran into substantial problems with its case and had repeatedly filed supplemental materials, on August 23, 2022, the Board permitted LPPC to restart the case by filing an amended application, which LPPC filed on January 4, 2023. This new application sought DSRR's property located outside LPPC's express statutory limits of East Carroll Parish in violation of Louisiana law.

Because of LPPC's unlawful pursuit of this case, including the filing of the amended application, pursuit of discovery of DSRR, baseless opposition to DSRR taking discovery, and the like, DSRR has incurred hundreds of thousands of dollars of unnecessary legal fees and expenses, including more than \$150,000 just to comply with discovery requests from LPPC that occurred only because of LPPC's unlawful application.⁷

Those costs were substantially increased by LPPC's and its counsel's gamesmanship to prevent DSRR from gaining discovery, which is well documented.⁸ In its Substantive Reply,

⁷ Verified Statement of Rob Thrall, Delta South. R.R. Inc.'s Motion to Dismiss and for Attorneys' Fees, *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 filed June 27, 2024) ("Thrall VS").

⁸ LPPC attempts to thwart DSRR's right to discovery include: (1) Motion Seeking Entry of Protective Order Requested by N. La. & Ark. R.R., *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 filed Apr. 19, 2025) (arguing DSRR could not take discovery of North Louisiana and Arkansas); (2) 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 Nov. 20, 2023 and December 11, 2023, *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 filed Mar 11, 2024) (seeking to avoid discovery of LPPC, Southeast Arkansas Economic Development District, Madison Parish Port Commission and North Louisiana & Arkansas); and (3) Joint Reply

LPPC misleadingly attempts to refashion itself as the party who kindheartedly permitted discovery despite the record showing its clear and repeatedly obstinate behavior related to the ongoing discovery in this case.⁹ Substantive Reply at 3-4. LPPC’s actual behavior was documented for the Board in DSRR’s filings of April 1, 2024, and April 3, 2024, and will not be rehashed here.¹⁰ Suffice it to say that LPPC’s attempt to repaint itself as choosing to respond to discovery is belied by the facts, the record, and, perhaps most importantly, the order of Board-appointed Administrative Law Judge McCarthy. See ALJ Order (rejecting LPPC’s motion to prevent DSRR from taking discovery of LPPC and other parties).

LPPC’s characterizations of DSRR’s discovery requests as “unwarranted” (Substantive Reply at 3) and assertions that DSRR “had no right to engage in such discovery in 2024” are also

of Lake Providence Port Commission, Southeast Arkansas Economic Development District and North Louisiana and Arkansas Railroad, Inc. to Delta Southern Railroad, Inc.’s Motions to Compel Discovery, *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 filed Mar 28, 2024) (arguing DSRR did not have the right to discovery).

⁹ The Board placed this case in abeyance prior to DSRR completing discovery of other parties to the proceeding, including those who provided verified statements. If this proceeding continues or a new proceeding is filed, DSRR intends to exercise its rights to discovery under 49 C.F.R. § 1114.21(d), including to depositions, in any order on all aspects of 49 U.S.C. 10907(c). See Order Resolving LPPC’s Emergency Motion and Ordering DSRR and LPPC to Meet and Confer, *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 3 (STB served Apr. 15, 2024) (McCarthy, J.) (“ALJ Order”). The ALJ Order is attached as Exhibit D.

¹⁰ See e.g., Delta South. R.R. Inc. Letter, *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 filed Apr. 3, 2024); Delta South. R.R. 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 Nov. 20, 2023 and December 11, 2023, *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 filed Apr. 1, 2024).

false.¹¹ Substantive Reply at 7. Something is not true just because LPPC says it – or says it multiple times. Substantive Reply at 3-4 & 7. In fact, ALJ McCarthy flatly rejected LPPC’s aggressive attempts to deny DSRR discovery in LPPC’s unlawfully initiated proceeding:

LPPC’s position, at least in its emergency motion, is not that the discovery sought by DSRR is irrelevant or subject to privilege, but rather that the Board has “waved the discovery starting flag” only for LPPC, and to the exclusion of DSRR. LPPC therefore requests that I draw an inference from the Board’s relative silence on DSRR’s capacity to conduct discovery and conclude that this silence reflects the Board’s reticence to allow DSRR to conduct discovery at all. I decline to draw this inference.

ALJ Order at 3.

Indeed, LPPC’s claim that “DSRR’s complaints about the cost of discovery rings hollow, given that DSRR had no right to engage in discovery in 2024” is telling. Substantive Reply at 7. First, combined with all LPPC’s filings to fight discovery (*see infra* n.8), it undermines LPPC’s attempts now to recast itself as the gracious party that permitted discovery; instead it shows LPPC’s true colors. Second, DSRR’s right to discovery is argument that LPPC has already resoundingly lost. ALJ Order at 3 (“I find that DSRR is entitled to take discovery from LPPC et al.”); ALJ Order at 4 (“DSRR is permitted to take discovery in this matter.”).

¹¹ In its Substantive Reply, LPPC repeatedly disrespects the rulings of the Board-appointed Administrative Law Judge. First, LPPC continues to characterize DSRR’s discovery as “unwarranted.” Substantive Reply at 3. Second, LPPC asserts, contrary to the ALJ Order, that “DSRR does not need discovery from LPPC to present its testimony and other evidence, in accordance with the Board’s regulations, about the value of its own line of railroad.” Substantive Reply at 6. Of course, DSRR is entitled to discovery -- and not just about line value but about all elements of 49 U.S.C. 10907(c). ALJ Order at 4 (“Given this plain language, and in light of the arguments presented by DSRR, DSRR is permitted to take discovery in this matter.”). Third, LPPC asserts that “DSRR had no right to engage in discovery in 2024.” Substantive Reply at 7. The ALJ ruled otherwise. ALJ Order at 3 (“I find that DSRR is entitled to take discovery from LPPC et al.”); ALJ Order at 4 (“Given this plain language, and in light of the arguments presented by DSRR, DSRR is permitted to take discovery in this matter.”).

In short, DSRR has incurred substantial sums of money defending (including responding to discovery requests, seeking discovery to defend itself in this unlawful action, and the like) an action that was *ultra vires* all along, and requests reimbursement of reasonable fees and costs.

III. LPPC’s Non Sequitur Regarding Finance Docket 36809 Is Wrong

It is baffling that LPPC makes reference to Finance Docket 36809, to which it is not a party. But its statements about that case are equally false.¹² That proceeding is not in abeyance. Substantive Reply at 6 & n.10. And that petition was not filed “at the suggestion of the United States District Court for the Western District of Louisiana.” Substantive Reply at n.10. That court made no such suggestion.¹³ In fact, the party to that proceeding, the Northeast Louisiana Multimodal District (“NELMD”), seeks to collaterally attack a federal court decision that held that the track at issue is 49 U.S.C. § 10906 track and that efforts to expropriate DSRR’s property pursuant to state law were preempted. That decision was not appealed, is final, and has preclusive effect, which makes Finance Docket 36809 ripe for dismissal by the Board.

IV. DSRR Remains Focused on Serving Its Customers

Even with the distraction of this proceeding, DSRR has continued to provide adequate service to its customers. DSRR has also continued to invest more than \$400,000 in the line. Thrall VS at ¶ 3. DSRR has continued to “move[] about 1,000 cars per year and has received no complaints about adequacy of service in the time since Patriot Rail Company acquired it.” Thrall VS at ¶4. In fact, Madison Parish Port reported to the Governor of Louisiana on June 5, 2025, that “Madison Parish Port receives adequate rail service from its tenant Delta Southern Rail

¹² At least one of LPPC’s counsel is counsel to NELMD in Finance Docket 36809, which makes these false statements indefensible.

¹³ *Ne. La. R.R. Dev. Dist. v. Delta S. R.R. Inc.*, 2024 U.S. Dist. LEXIS 103125 (W.D. La. May 24, 2024) (magistrate judge recommendation); *Ne. La. R.R. Dev. Dist. v. Delta S. R.R. Inc.*, 2024 U.S. Dist. LEXIS 102844 (W.D. La. June 10, 2024).

(Patriot Rail) that assists the tenants of Madison with such services.” See Exhibit E (Madison Parish Port Letter).

V. Conclusion

DSRR’s motion to dismiss and request for attorney’s fees are far from moot. DSRR respectfully requests that the Board remove the proceeding from abeyance, grant the motion to dismiss expeditiously, and award to DSRR attorneys’ fees and costs.

Respectfully submitted,

/s/ *John M. Scheib*

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

Attorney for: Delta Southern Railroad, Inc.

Verification

I, John M. Scheib, verify under penalty of perjury that the attached exhibits are true and correct to the best of my knowledge and belief.

Executed on June 20, 2025

/s/ *John M. Scheib*

John M. Scheib

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: June 20, 2025

EXHIBIT A

Lake Providence Port Commission Response to Third Set of Discovery
Requests Propounded by Delta Southern Railroad

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Lake Providence Port Commission (“LPPC”), by counsel, responds as follows to Delta Southern Railroad, Inc.’s (“DSRR”) Third Set of Interrogatories and Requests for Production of Documents propounded on January 3, 2024.

GENERAL OBJECTIONS

LPPC’s General Objections, set forth herein, apply to each and every one of the specific Interrogatories and Discovery requests that follow. These general objections are not exhaustive and, where appropriate, LPPC will also state specific objections. LPPC’s objections shall not waive, limit, or prejudice any objections it may later assert.

1. LPPC objects to each and every Interrogatory and Request of Production of Documents (“RFP”) to the extent they seek to impose obligations on LPPC greater than or inconsistent with those imposed under 49 CFR Part 1114 Subpart B. LPPC further objects to any and all definitions and or instructions to the extent they either expand upon or conflict with 49 CFR Part 1114 Subpart B.

2. LPPC objects to each and every Interrogatory and RFP to the extent it seeks materials protected by the attorney-client privilege, the attorney work-product doctrine, the First Amendment privilege to petition the government for redress of grievances, or any other applicable privilege, protection or exception from discovery or disclosure. In the event that any such privileged, protected,

or exempt information is inadvertently produced or provided, such disclosure or production is not intended as, and should not be construed as, a waiver of any applicable privilege, protection or exemption.

3. LPPC objects to each and every interrogatory and RFP to the extent they seek information or data that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence.

4. LPPC objects to each and every Interrogatory to the extent they ask for inappropriate legal conclusions, including conclusions as to the legal significance of underlying facts.

5. LPPC objects to each and every Interrogatory and RFP to the extent that they are: (a) overly broad; (b) vague or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody, or control of LPPC; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding.

6. LPPC objects to each and every Interrogatory and RFP to the extent they are duplicative.

7. LPPC objects to each and every Interrogatory and RFP to the extent they request information or material that is: (a) already in the possession of DSRR; (b) publicly available or otherwise readily available or accessible to DSRR from other sources; or (c) as accessible or available to DSRR as it is to LPPC and producing responsive information would impose substantially the same or greater burden on LPPC as it would impose on DSRR.

8. LPPC objects to each and every Interrogatory and RFP to the extent that they request information or material that relates to: (a) the use of funds from any government grant that has recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure; or (b) the use of such funds to fulfill the objectives of the grant.

9. LPPC objects to each and every Interrogatory and RFP to the extent that they are not relevant to the issue of valuation, which is the only subject as to which the Surface Transportation Board (“STB”) ordered further discovery in its Decision served herein on November 20, 2023, slip op. at 16; see also, Decision served herein on December 11, 2023, at 1, citing Decision served herein on November 20, 2023, Decision at 16.

10. These general objections are incorporated by reference into the following responses.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 53

Please Identify each commissioner or employee of LPPC whose Documents have been searched to respond to the first, second, or third set of interrogatories and RFPs (“discovery requests”) served on LPPC by DSRR in Surface Transportation Board FD No. 36447.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing stated objection, LPPC responds that Wyly Gilfoil, Port Director, Lake

INTERROGATORY NO. 64

For each grant identified in response to Interrogatory No. 62, please list the amounts of the grant money received that have been expended to date and on what activity each amount was expended.

Response: LPPC objects to this Interrogatory on the grounds that the receipt and use of grant funds to rehabilitate segments of the Lake Providence Branch Line between MP 408.9 and MP 471.0 are not relevant to the issue of valuation of the segment of the Lake Providence Branch Line between MP 471.0 and MP 498.44, which is the only subject as to which the STB ordered further discovery at this time. LPPC further responds that it objects to this Interrogatory because it requests information or material that relates to any government grant that has recognized the public interest in providing funds to be used to construct or rehabilitate rail infrastructure because such government grants have no relevance to this proceeding or to DSRR's failure within a reasonable time to make the necessary efforts to provide adequate service to shippers that were unable to transport traffic in interchange operations with NLA after January 1, 2017. The expenditure of such funds would not lead to the production of admissible evidence and would not affect the outcome of this proceeding. Notwithstanding the foregoing, no amount of grant money has been received by LPPC since January 1, 2017.

INTERROGATORY NO. 65

Please describe in detail the legal basis for LPPC's authority to acquire and/or operate the Line, including the portion outside of East Carroll Parish,

Louisiana. Include in your response specific citation to Louisiana statutory or constitutional provisions that provide such claimed authority.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, Louisiana Revised Statutes 34:1503 authorizes LPPC to “construct, own, operate and maintain terminal rail facilities and other common carrier rail facilities for the purpose of rendering rail transportation to and from the facilities to be erected, owned and operated by the commission in both intrastate and interstate commerce.”

INTERROGATORY NO. 66

Please describe in detail the legal basis for LPPC’s authority to file and pursue a feeder line application before the Surface Transportation Board. Include in your response specific citation to Louisiana statutory or constitutional provisions that provide such claimed authority.

Response: LPPC objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only subject as to which the STB ordered further discovery at this time. Notwithstanding the foregoing, LPPC states that the legal authority for LPPC’s filing of a feeder line application before the STB is recognized by 49 U.S.C. § 10907(a). Furthermore, the Board has recognized LPPC’s authority to acquire segments of the Lake Providence Branch from DSRR on multiple occasions. Such proceedings are set forth in the expanded Feeder Line Application that was filed on January 4, 2023. Also

EXHIBIT B

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: _____

**_____
DEPUTY CLERK**

RULE FOR CONTEMPT AND INCORPORATED MEMORANDUM

NOW INTO COURT, through undersigned counsel, comes Delta Southern Railroad, Inc., (“Delta Southern”), who respectfully represents that a Judgement and Order was issued in this matter on June 26, 2024 (the “Judgement”) ordering Defendants to discontinue its pursuit of ownership or control of property outside of East Carroll Parish in the feeder line application before the United States Surface Transportation Board (“STB”). The Judgement specifically states in relevant part as follows:

[T]hat 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

Defendants have violated this Court’s Judgment by continuing to pursue ownership of property outside of East Carroll Parish and refusing to dismiss the STB action cited in the Judgment. On June 27, 2024 Delta Southern filed a Motion to Dismiss the STB action based upon this Court’s June 26, 2024 Judgment. Defendants responded to the Motion to Dismiss by asking the STB to refrain from ruling upon the Motion to Dismiss while it filed an appeal of the Court’s Judgment. *See* Reply of Lake Providence Port Commission to Delta Southern Railroad, Inc.’s Motion to Dismiss and for Attorneys’ Fees, *Lake Providence Port Comm’m – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Par., La.*, Docket No. FD 36447 (STB filed July 16, 2024). On August 2, 2024, the STB placed the proceeding in abeyance “pending resolution of the state court actions described above and further order of the Board.” *See Lake Providence Port Comm’m – Feeder Line Application – Line of Delta South.*

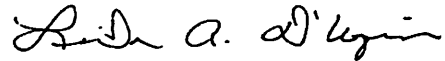
R.R. Located in East Carroll and Madison Par., La., Docket No. FD 36447 (STB decided Aug. 2, 2024).

The Louisiana Court of Appeals for the Second Judicial Circuit affirmed this Court's decision and then denied Defendants' request for rehearing. *Delta South. R.R., Inc. v. Lake Providence Port Comm'n, et al*, 2025 La. App. LEXIS 308 (La. App. 2 Cir. 2025). Defendants then lodged an application for writs with the Louisiana Supreme Court. That writ application was dismissed by the Louisiana Supreme Court on May 27, 2025 thereby terminating all of Defendants' appeal rights and rendering this Court's Judgment final. *Delta South. R.R., Inc. v. Lake Providence Port Comm'n, et al*, 2025-CV-00549, Motion Letter (S. Ct. La. May 27, 2025).

Still Defendants have refused to join Delta Southern's motion to remove the STB proceeding from abeyance and for dismissal. *See* Delta Southern Railroad, Inc.'s Renewed Motion to Dismiss, *Lake Providence Port Comm'm – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Par., La.*, Docket No. FD 36447 (STB filed May 28, 2025). Nor have Defendants it filed their own motion with the STB to remove that proceeding from abeyance and to dismiss it. Accordingly, Defendants remain actively engaged in efforts to obtain ownership or control over property located outside of East Carroll Parish, in clear contravention of the Judgment, and should be found in contempt.

For all the foregoing reasons, Delta Southern respectfully requests that the Court order the Lake Providence Port Commission to appear and show cause why it should not be held in contempt for its failure to comply with the Judgment. Moreover, Delta Southern specifically requests that the Court order Defendants to immediately dismiss the STB proceeding, pay all of Delta Southern's costs and attorney's fees associated with this Rule, and issue such other relief and remedies as may be available in equity and law.

Respectfully submitted,



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and-

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Attorneys for Delta Southern Railroad, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been delivered to all counsel of record on **June 11, 2025**, by ECF filing, by hand delivery, by telephonic facsimile transmission, by email or by depositing a copy of same in the United States Mail, first class postage prepaid, at their last known addresses of record.



LEILA A. D'AQUIN

6TH JUDICIAL DISTRICT COURT FOR THE PARISHES 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: _____

**_____
DEPUTY CLERK**

ORDER

CONSIDERING the foregoing rule, Defendants herein are hereby ordered to appear on the _____ day of _____, _____ at _____ am/pm, to show cause as to why the Rule for Contempt and all relief sought therein should not be granted.

_____, Louisiana, this day _____ of _____, 2025.

**_____
JAMES H. BODDIE, JR., JUDGE AD HOC**

PLEASE SERVE:

Defendants listed herein

Through counsel of record:

Bishop Paxton Crigler & Moberley, APLC

James E. Paxton

124 Hancock Street

P.O. Box 97

St. Joeseeph, Louisiana 71366

EXHIBIT C

COPY

SIXTH JUDICIAL DISTRICT COURT
PARISH OF MADISON
STATE OF LOUISIANA

DELTA SOUTHERN RAILROAD, INC.

VERSUS

CASE NO. 23740

LAKE PROVIDENCE PORT COMMISSION, ET AL

APPEARANCES:

Ms. Leila A. D'Aquin
Mr. Edward T. Hayes
LEAKE & ANDERSON, LLP
1100 Poydras Street #1700
New Orleans, LA 70163

ATTORNEYS FOR PLAINTIFFS

Mr. John Crigler, Jr.
BISHOP PAXTON CRIGLER & MOBERLEY
607 East Askew Street
Tallulah, LA 71282

ATTORNEY FOR DEFENDANT

PROCEEDINGS HAD in the above matter before His
Honor, James Boddie, Judge Ad Hoc, of the Sixth Judicial District
Court, in and for the parish of Madison, state of Louisiana, on May
23, 2024.

1 CASE NO. 23740

2 May 23, 2024

3 P R O C E E D I N G S

4 BAILIFF:

5 All rise! The Six Judicial District Court for
6 the Parish of Madison is now in session with the
7 Honorable Judge James Boddie presiding.

8 THE COURT:

9 You may have a seat. Do we have all of the
10 counselors that we are supposed to have?

11 MR. CRIGLER:

12 Yes sir, I believe so.

13 THE COURT:

14 All right. I'm sure they'll want you up, up
15 there so they will pick you up. Madam Court
16 Reporter, do you have any specific spot you want him
17 to be?

18 COURT REPORTER:

19 In front of a mic.

20 MR. CRIGLER:

21 There we go.

22 THE COURT:

23 Fair enough. All right, since this is an East
24 Carroll Parish case, I will be as clear as I
25 possibly can. Okay. Let the record reflect that the
26 case that is being called for hearing today is Delta
27 Southern Railroad, Inc. versus Lake Providence Port
28 Commission. Wyly Gilfoil, Mark Buntyn, Roger
29 Clement, I don't know.

30 MR. CRIGLER:

31 It is.

1 THE COURT:
2 It is?
3 MR. CRIGLER:
4 Yes, sir.
5 THE COURT:
6 I speak French so I tend
7 MR. CRIGLER:
8 I, that was
9 THE COURT:
10 to put,
11 MR. CRIGLER:
12 good. He would probably appreciate that.
13 THE COURT:
14 Jerry King, Francis Lensing, Karvan Powell, and
15 James Tom IV. And let the record reflect that the
16 hearing is on Delta Southern Railroad Inc's petition
17 for extraordinary Writs, more specifically petition
18 for Writs of quo warranto and Mandamus. Let the
19 record further reflect that this is case number
20 23740, again, Sixth JDC; however it is an East
21 Carroll Parish case. But by agreement of all counsel
22 and the Court, and for the sake of convenience for
23 all, everyone agreed that the matter be heard here
24 in Madison Parish, Louisiana. Let the record further
25 reflect that there was a telephone conference duly
26 scheduled and held whereat the Court advised counsel
27 to please file pre-hearing briefs on the petition
28 for extraordinary Writs. They have done so. They
29 were forwarded to me and I have reviewed them, again
30 recognizing the need for a considered decree, of
31 course, but as expeditious as possible, considering

1 what we are involved with here today. Was that
2 accurately stated?

3 MS. D'AQUIN:

4 Yes, Your Honor, it was.

5 MR. CRIGLER:

6 Yes, sir.

7 THE COURT:

8 Okay. Now make your appearances for the record
9 please and whom you represent.

10 MS. D'AQUIN:

11 Your Honor, Leila D'Aquin and Edward Hayes on
12 behalf of Delta Southern Railroad.

13 MR. CRIGLER:

14 Good afternoon, Judge. Johnny Crigler on behalf
15 of the Port Commission on the other named
16 defendants.

17 THE COURT:

18 It is so noted. Again, this is not to be
19 construed as the curtail your argument at all, which
20 y'all need to read 'em to me, your briefs, your pre-
21 hearing briefs. And let the record reflect that,
22 that all parties still have the opportunity to file
23 pre-hearing briefs per my instructions. They did
24 that. Think I'm ready.

25 MS. D'AQUIN:

26 Thank you, Your Honor. Ah Your Honor, just ah
27 briefly, we did file a pre-hearing briefs. The
28 defendants actually elected not to file a pre-
29 hearing brief and simply filed an answer with what
30 they attaching, what they proposed as some evidence,
31 and I'd like to begin there. Ah, because if I can

1 began at the back, the three letters that are
2 attached, of course, are, are hearsay and
3 inadmissible and beyond that, they're irrelevant.
4 All they do is speak to the current views of three
5 particular legislators about whether a project might
6 be a good thing or a bad thing. They don't speak to
7 what the law is or ever was. Ah and so they're
8 really not of any relevance to the case, but they
9 would be hearsay in any, in any event.

10 THE COURT:

11 You wanna respond to that?

12 MR. CRIGLER:

13 If, if I need to have the ah individual who
14 receives set letters here to testify, I'm prepared
15 to call him and can, can have him here. I don't know
16 that, that would solve her ah.

17 THE COURT:

18 In my view, they are inadmissible not only
19 because of hearsay, but legislative intent is to
20 determine before a statute is enacted.

21 MR. CRIGLER:

22 True.

23 THE COURT:

24 It is determined by the historical facts leading
25 up to the passage of the statute. So, it's
26 obviously, this would be there after it would have
27 no relevance. For those reasons, sustained.

28 MS. D'AQUIN:

29 Thank you, Your Honor. The, the other exhibits
30 that are attached are also really irrelevant in that
31 ah, ah bond commission resolution does not have,

1 have anything to do with the, with whether the
2 project for which the bond is to be issued is
3 something that can legally be undertaken by the, by
4 the body that is issuing the bond. Ah it's no
5 question that the Port Commission has the authority
6 to seek bond funding. No question that at all.

7 THE COURT:

8 I agree.

9 MS. D'AQUIN:

10 But the Bond Commission does not have any
11 ability to authorize the Port Commission to expand
12 its jurisdiction or to undertake projects or acquire
13 property outside of its bounds. So those documents
14 are also irrelevant. The ah the Louisiana ah
15 Department of Highways ah, materials that are
16 attached, likewise are not of, of any relevance. The
17 Department of Transportation and Development doesn't
18 undertake any responsibility for acquiring title to
19 the property or any rights-of-way and agrees with
20 the Department of Transportation Development, the
21 intergovernmental records make clear that, that
22 responsibility lays with the Port Commission, that
23 it, it has to come with clear title or rights-of-
24 way. So, those document are also irrelevant, and we
25 would therefore say are inadmissible in this
26 proceeding.

27 THE COURT:

28 I agree. But, do you have a response to chage my
29 mind?

30 MR. CRIGLER:

31 I'd, I don't know that I'm gonna be able to

1 change your mind based on that, Your Honor. I just
2 feel like they, I mean,
3 THE COURT:
4 I don't think,
5 MR. CRIGLER:
6 to claim that they're irrelevant is,
7 THE COURT:
8 well, they're
9 MR. CRIGLER:
10 broad.
11 THE COURT:
12 totally irrelevant in my view because this is a
13 question of law.
14 MR. CRIGLER:
15 Yes, sir. Understood.
16 MS. D'AQUIN:
17 And with that, Your Honor, it is, it is a
18 question of law. And we believe that it's a very
19 clear,.....case under Article 9 of the Civil Code ah
20 you've got, you've got ah.
21 THE COURT:
22 Just so all of you know. I'm very civilian
23 minded.
24 MS. D'AQUIN:
25 Yes,
26 THE COURT:
27 'Cause I said
28 MS. D'AQUIN:
29 Your Honor.
30 THE COURT:
31 I do speak some French. I been known to

1 translate some French in the old days.

2 MS. D'AQUIN:

3 And, Your Honor. On the drive up, I was re-
4 reading the, the Court of Appeals opinion in the
5 Crook's case which quotes for Your Honor's decision
6 substantially, and reflects your, your, your
7 penchant for looking at the history very carefully
8 and understanding the history of how a law
9 developed, or in that case, the history how a body
10 of water existed over time, going back to the time
11 that Louisiana was admitted to the union.

12 THE COURT:

13 It was, it's significance, wasn't it?

14 MS. D'AQUIN:

15 It was, it was quite significant. And
16 obviously, the expert testimony was very important
17 in that case. In this case, Your Honor, we do
18 believe this is a simple matter of a clear and
19 unambiguous law. On the very face of the statute,
20 it says that the LPPC can only operate within, only
21 has jurisdiction within the bounds of East Carroll
22 Parish. And in fact, when it was adopted, the
23 statute said, as those bounds exist today, which
24 sent me immediately looking back to the history to
25 see have the bounds of East Carroll Parish changed
26 at some point, since then. And I discovered that
27 the last time the boundaries of Carroll Parish
28 changed was when it was divided into East and West.
29 So

30 THE COURT:

31 No

1 MS. D'AQUIN:

2 every,

3 THE COURT:

4 surprise.

5 Ms. D'AQUIN:

6 every since the statute was enacted, the Port
7 Commission has only had the authority to act within
8 East Carroll Parish. What's attempting to do here
9 is to take property that is in Madison Parish.
10 There is a Madison Port Commission that has the
11 authority to acquire property in Madison Parish for
12 the sake of the Madison Port. But that does not
13 mean that the, that the LPPC has the authority to
14 come, to extend over the bounds that were set by the
15 State Legislature when it adopted the statute and
16 give it its authorization to come into this parish.
17 In fact, if, if the Court were to accept the LPPC's
18 position, they could acquire property wherever they
19 want. Tthey can come down to New Orleans and say
20 it's for the good of what's going on in the Lake
21 Providence Port for us to take this property, so
22 we're gonna take this railroad line, going all the
23 down to South Louisiana. Ah, obviously that's not
24 permissible; that will step on the toes of lots of
25 other port commissions along the way and private
26 property owners and landowners all the way down, and
27 that is not what the legislature intended. In fact,
28 there are numerous statutes that have been adopted
29 in Louisiana establishing port commissions. And the
30 legislature had been very good and very clear about
31 defining what the jurisdictional limits are of each

1 of those commissions as they been adopted. The
2 Greater Baton Rouge Port Commission ah allows for
3 the powers ah conferred to that commission to be
4 exercised within East Baton Rouge Parish except for
5 an industrial Parish areas as determined by the ah
6 plan of government for the Parish of East Baton
7 Rouge. Ah you know the ah Lake Charles Harbor and
8 Terminal District ah has very specific rights ah
9 very specific jurisdiction, each of them does. And
10 ah I can certainly go through all of em for the
11 Court but it's probably not necessary at this time.
12 So that, I think that's very clear. Ah this is, as
13 Your Honor points out, a petition for extraordinary
14 writs. The burden of proof on quo warranto is on
15 the corporation who is challenged to demonstrate
16 that it, as a matter of law, has the right to
17 exercise the powers that it is exercising. We don't
18 believe that the answer or any thing else provided
19 by the LPPC has done that. So I would prefer to
20 reserve my time really and respond to what the LPPC
21 says about how it can carry its burden of proof.

22 THE COURT:

23 Okay.

24 MR. CRIGLER:

25 Judge, I think ah, I don't, can't disagree that
26 I ah, this is a, a legal question based on the
27 statute. We obviously have a differing view on how
28 the statute is to be read. I think our answer ah
29 did state that, you know, their narrow reading of
30 the statute which focuses on the initial portion,
31 fails to ah, fails to take into account the latter

1 part of the statute which we believe gives the Port
2 Commission the authority to act outside of East
3 Carroll Parish. Ah from a practical standpoint, any
4 rail usage outside or within the parish is, is
5 impracticable. The, the, having a rail line that
6 runs from the Arkansas Louisiana line to the Madison
7 ah East Carroll line and, and to points in between
8 is completely impractical for the port and its
9 purpose and its efforts to improve the ah,
10 industrial transportation of crops or chemicals or
11 everything else that serves this port, the port in
12 East Carroll, the port in Madison, the port in
13 Tensas Parish, and the port in Vidalia. And,
14 they've work in conjunction in every aspect of,
15 basically everything that they do, in an effort to
16 having more regional approach and be more effective
17 as, you know, the ports rather than just to their
18 specific parish, you know, across this region. Ah
19 and, I, I don't ah I, I just can't, can't fathom
20 where they wouldn't be authorized to, to do that. I
21 understand the ah Delta Southern's arguments
22 completely ah, but however, a, we strongly believe
23 it was the legislature's intent to enable them to ah
24 perform outside of the boundaries of East Carroll
25 Parish. And I, I did not have them to attach, but
26 I have here which I'll provide to counsel and the
27 Court some deeds ah ironically between Delta
28 Southern Railroad and the Lake Providence Port
29 Commission for a ah rail line in Arkansas. So that
30 was done in August of 2011. So I, I don't know
31 that,

1 THE COURT:
2 Well, but indeed would be consensual, would it
3 not?
4 MR. CRIGLER:
5 It would be, it would be. But ah, there was no
6 ah,
7 MR. CRIGLER:
8 no issue with any authority to act ah at that,
9 at that juncture. But because their efforts to
10 rehabilitate some lines, you know, from East Carroll
11 south ah conflicts with Delta Southern's usage of
12 said line apparently ah, what we're here today. I
13 just, I don't, I don't know what else to respond to
14 here. I didn't get a, a brief from Delta Southern
15 ah after, I guess our, our conference. I obviously
16 filed the answer but I,
17 THE COURT:
18 You didn't get their copy?
19 MR. CRIGLER:
20 I didn't.
21 MS. D'AQUIN:
22 It was sent to you by email, but I can provide
23 you with a copy of it
24 MR. CRIGLER:
25 Yeah, that's
26 MS. D'AQUIN:
27 in addition.
28 MR. CRIGLER:
29 fine. I mean not, not that, that's gonna change
30 any of, obviously their position,
31 THE COURT:

1 Well, I'll give you
2 MR. CRIGLER:
3 position,
4 THE COURT:
5 time to look at it if you'd like, I certainly
6 will. It's pretty much what she said of course,
7 MR. CRIGLER:
8 I'd, yeah, and I'm, I'm, I'm not, I'm not
9 arguing that or, or, or going to ah, I didn't, I
10 didn't, when, when did you email that to me?
11 MS. D'AQUIN:
12 When we filed it on
13 THE COURT:
14 Monday, wasn't it?
15 MS. D'AQUIN:
16 Monday afternoon.
17 MR. HAYES:
18 Monday afternoon.
19 MS. D'AQUIN:
20 Monday afternoon.
21 MR. CRIGLER:
22 Okay. Umm, I'll check and see, but I, I did not
23 get that. But, Judge, at, at this time I will ah,
24 THE COURT:
25 I'll pause a few minutes if you'd like to look.
26 MR. CRIGLER:
27 No, I'm, I'm fine. I'd, I've, I don't have ah,
28 anything further to say at this time, Your Honor.
29 MS. D'AQUIN:
30 And, Your Honor, just briefly. Counsel suggests
31 that the ports in several parishes need to work

1 together to have a regional approach. That's not
2 what's happened here. The, the proceeding that's
3 been filed in the surface transportation board has
4 been filed by the LPPC. And it seeks to take
5 property that's in Madison Parish. It's not in East
6 Carroll Parish. That is beyond what's doing. If
7 there's, there's the, the, the Madison Port
8 Commission is not a party to that proceeding ah,
9 hasn't made an appearance here, hasn't done anything
10 else of the kind. That would be a different issue
11 and one which, frankly, I haven't analyzed or looked
12 at today because the question here is pretty narrow
13 is, does the, does the LPPC have the authority to
14 act outside of the bounds of the parish. And it
15 does not, under the terms of the statute. What's
16 more, the legislature has indicated, an ability to
17 establish multi-parish port commissions where it
18 deems that appropriate. So there are some port
19 commissions for example, Saint Charles, Saint James,
20 and Saint John Parish together form a single port
21 and harbor commission. And, the legislature has
22 done that where appropriate and might choose in the
23 future to do that. But as of today, it has not done
24 that. What has been the law for the fifty or sixty
25 odd years since this commission was established ah
26 1958, so I guess it's longer ago even than that,
27 longer than I want to admit. Ah, is that this
28 commission has been authorized to act within the
29 bounds of East Carroll Parish. The language of the
30 statute could not be more clear. Counsel suggests
31 that a, that a subsequent, that Section C somehow

1 trumps Section A. Section A says the Commission
2 shall exercise the powers herein conferred upon it,
3 within the port area, consisting of the entire
4 Parish of East Carroll as the boundaries limits of
5 said parish are presently fixed by law. Period.
6 Ah, part C tells you, you know, what those powers
7 are, but part A tells you what the boundaries are.
8 That's the extent of their jurisdiction and they're
9 simply not authorized by the Statute to go outside
10 of that jurisdiction. If there are any other
11 questions, Your Honor, I'd be happy to answer them.

12 THE COURT:

13 The only question I would pose to you, obviously
14 quo warranto is applicable. Explain to me how
15 Mandamus would be applicable?

16 MS. D'AQUIN:

17 Yeah, Your Honor, you know, we struggled with
18 that a little bit, honestly in preparing it. Ah
19 the, the quo warranto provision says that when the
20 Court finds that the writ should, writ should issue,
21 the Court shall require the corporations to seize
22 whatever improper

23 THE COURT:

24 Show by what

25 MS. D'AQUIN:

26 activities

27 THE COURT:

28 authority

29 MS. D'AQUIN:

30 its engaged in.

31 THE COURT:

1 is.

2 MS. D'AQUIN:

3 So the quo warranto would really cover it I

4 imagine.

5 THE COURT:

6 I think so.

7 MS. D'AQUIN:

8 The only thing that the mandamus would do would

9 specifically order them to un-ta, under take the

10 ministerial act of dismissing this proceeding in the

11 service transportation board. But,

12 THE COURT:

13 Well, if they have no authority then it's

14 automatic. In my

15 MS. D'AQUIN:

16 if they have no authority and if, if the order

17 on quo warranto orders them to seize the, seize

18 conducting the activity that they're not authorized

19 to conduct, that should be sufficient. And I

20 imagine then that if they fail to dismiss, then

21 maybe we could come back for the Mandamus for the

22 ministerial act.

23 THE COURT:

24 Yeah, Mandamus is troublesome because as you

25 know, if there's any slither discretionary involved,

26 it don't lie.

27 MS. D'AQUIN:

28 I under, I understand that.

29 THE COURT:

30 The Supreme Court is being quite clear about

31 that. Anyway, I appreciate the pre-hearing

1 submissions that both of you have made. Ah, that
2 certainly enable be to delve further into the matter
3 at hand. I tend to be studious by nature. And I
4 think we can all agree is there a case directly on
5 point, no. But we must delve in this matter and to
6 the law of statutory construction. And here's what
7 I would point out on that because it goes to the
8 heart of it in my view, as the Louisiana Supreme
9 Court indicated in Cent, C-E-N-T. period Properties
10 versus Fairway Garden Homes LLC, 16-1855, ages ten
11 and eleven, Louisiana, 627:17, 225 Southern 3rd 441
12 etq 448. When the application of a statutory
13 provision does not lead to absurd consequences, its
14 language must be given affect and the provision must
15 be construed, so as the give affect to the purpose
16 indicated by a fair interpretation of the language
17 used. And it goes without saying, of course, I'm
18 talking about Louisiana Revised Statute 1503, the A
19 part thereof which says, that the commission shall
20 exercise the powers herein conferred upon it, within
21 the port area, consisting of the entire parish of
22 East Carroll is the boundaries and limits of said
23 parish are presently fixed by law. In my view, this
24 statute is clear and unambiguous. Finding that the
25 statute is clear and unambiguous, then this Court
26 should apply the law as written and make no further
27 interpretation in search of the intent of the
28 legislature. Only when the law is not clear and it
29 is ambiguous, then you look to legislative intent.
30 But, I specifically find that this law and statute
31 is clear and unambiguous. And I would refer you to

1 look at the case of KC v Kacey (151269, page 9),
2 Lyefield's 4th Cir. (62916), 196 So.3rd 748 etq
3 753. Writ denied. 161410 Lye (112916), 210 So.3d
4 803, quoting Louisiana Civil Code Art. 9.
5 Therefore, you do not need to resort to the rules of
6 statutory construction because the statute is clear
7 and unambiguous. Therefore, no resort to
8 legislative intent is appropriate. That being said,
9 that's not the only statute that I think leads
10 credence to my views in this matter. I would also
11 point you, got it all out of order of course,
12 Louisiana Revised Statute 1501, which is the
13 creation of the Lake Providence Port Commission. I'm
14 only going to point out the A-part thereof: A,
15 there's hereby created a commission to be known as
16 the Lake Providence Port Commission, which shall be
17 composed of seven members who shall serve without
18 compensation and who shall be appointed as follows:
19 1) four commissioners appointed by the governing
20 authority of the parish of East Carroll; 2)
21 commissioners shall be appointed by the governing
22 authority of the town of Lake Providence; 3) one
23 commissioner shall be elected by the appointed
24 commissioners at their initial meeting. What's
25 going on here? Everybody's gone be from East Carroll
26 Parish. To me, it's no different than saying that
27 the Mayor of Tallulah has the right to tell the
28 Mayor of Lake Providence what to do. It's outside
29 their territorial jurisdiction. But I will go even
30 further. I don't think either of you mentioned
31 this, if you did I overlooked it. But you must also

1 look at the Constitution, specifically LSA
2 Constitutional Art. 6., Section 43. And it says in
3 part, Section 43, now we all know this is the
4 Constitution of 1974, which came after the enactment
5 of this statute of writ. Am I correct?

6 MS. D'AQUIN:

7 Correct.

8 THE COURT:

9 It says, all deep-water port commissions and all
10 deep-water port, harbor, and terminal districts as
11 organized and constituted on January 1, 1974,
12 including their powers and functions, structure and
13 organization, and territorial jurisdiction, are
14 ratified and confirmed and shall continue to exist,
15 except that. The 2-part thereof says, only by law
16 enacted by the favorable vote of two-thirds of the
17 elected members of each house, may the legislature
18 consolidate or abolish any such commission or
19 district or diminish, reduce, or withdraw from any
20 such commission or district any of its powers and
21 functions and affect the structure and organization,
22 distribution, and redistribution of the powers and
23 functions of any such commission or district,
24 including additions to or reduction of its
25 territorial jurisdiction. So, the constitution
26 itself, in 1974, would ratify the pre-existing
27 territorial jurisdiction of East Carroll Parish Port
28 Commission. You can't do it by cases. This is
29 constitutional. It ratifies and confirms what
30 existed. And no one has shown me nor have I seen
31 anything that has changed the territorial

1 jurisdiction of this port commission in question.
2 I think that's very important in my view and
3 confirms my belief that the Lake Providence Port
4 Commission is restricted territory to the entire
5 parish of East Carroll. And that is, in fact, the
6 boundaries and limit of said parish as fixed by law
7 and as confirmed and ratified by the Constitution
8 itself, in 1974. So, only the legislature by a two-
9 thirds favorable vote can change that territorial
10 jurisdiction. But I would point out something else
11 to let you know I did my homework. You didn't doubt
12 that anyway, did you?

13 MS. D'AQUIN:

14 I didn't. I was gonna go over it, you know, in
15 the old Constitution, this stuff was in the
16 Constitution, it wasn't just both statutes, so,

17 THE COURT:

18 I understand.

19 MS. D'AQUIN:

20 yeah.

21 THE COURT:

22 It, the, again there are no cases on point and
23 there is a case out of the Second Circuit. You all
24 will go to the Second Circuit, too, don't you, here?

25 MR. CRIGLER:

26 Yes, sir.

27 THE COURT:

28 And I'm not telling you it's on all fours, would
29 never do that, but I think it's worth noting. It is
30 called Caddo, Bossier Parishes Port Commission
31 versus Ark Chemicals Inc, 830 So.2d 498, Louisiana

1 Appeal Second Circuit. It is a 2002 case. It is
2 837 So.2^d 498., 2002. I will merely point out, 'cause
3 I'm certainly not suggesting that this, we're
4 dealing with municipalities here, at all. But some
5 of the language is interesting, I think, and worthy
6 of consideration here as well. Let me see, I don't
7 wanna read all of this. Ah here we go. In addition
8 under the explicit terms of Louisiana R.S. 3431:60,
9 obviously a different statute, the ports authority
10 to establish fees, rates, tariffs, and other charges
11 extends only within the port area and not extra
12 territorially. Ark's Chemicals, this private
13 property located outside of the port's property
14 area, conducting business separately from the port.
15 Moreover, under the terms of the port's written
16 agreement, the City of Shreveport agrees to provide
17 fire protection and emergency medical services only
18 to the port and its tenants and uses at the ports
19 complex. Clearly, Ark's Chemicals does not fall
20 under this categories. The important thing about
21 this case, again we're not dealing with
22 municipalities here, but this case does note not,
23 you can't do it extra territorially. And, I, it's
24 a Second Circuit case, I might add. So that leads
25 empathy if you will, to my belief that the statute
26 is clear and unambiguous as ratified by the
27 Constitution. The port in question, jurisdiction or
28 territorial limits is strictly limited to the parish
29 of East Carroll Parish. Now, this is dicta whether
30 the Madison and East Carroll can join together, I
31 don't know. That's not before me and I'm not

1 deciding it. That may be for another day, but as
2 far as East Carroll Parish Port Commission trying to
3 do what it's doing outside its territory limits, no
4 go. Writ granted. I will say, though, 'cause I
5 questioned earlier, quo warranto clearly applies in
6 this case because it is stated by Article 3901., quo
7 warranto is a writ directing an individual to show
8 by what authority he claims or holds public office,
9 or office in a corporation or limited liability
10 company, or directing a corporation or limited
11 liability company to show by what authority it
12 exercises certain powers. That's what we have
13 here, show by what authority you exercise these
14 powers. Its purpose is to prevent usurpation of
15 office of office or of powers. So I clearly find
16 that quo warranto is applicable and I grants it
17 petition for quo warranto. Inasmuch as I have
18 doubts about mandamus, I will deny the mandamus
19 aspect thereof. Of course, the cost will be borne,
20 as far as legally possible, because I recognize the
21 Port Commission is a political subdivision. So
22 whether they're exempt from cost, I don't know.

23 MR. CRIGLER:

24 Yes, sir.

25 THE COURT:

26 But, as far as legally extendable, they should
27 bare the cost to this day, court cost that is. I
28 hope I've been clear.

29 MS. D'AQUIN:

30 Yes, Your Honor, you have. We did submit, I
31 believe with our original petition, we submitted

1 separate orders of quo warranto and mandamus. And,
2 then, with our brief we submitted a single order.
3 Ah, so I suspect that the ones with the original
4 petition,

5 THE COURT:

6 And that record is in East Carroll. Would you
7 have a copy with you?

8 MS. D'AQUIN:

9 I have a copy right here with the order.

10 THE COURT:

11 Good.

12 MS. D'AQUIN:

13 Let's see. And here, I'll hand it to Your
14 Honor. It reads, it is hereby ordered and adjudged
15 the Plaintiffs, Delta Southern Railroad in its
16 petition for writ of quo warranto be granted in the
17 above entitled matter, and the writ shall issue
18 directing that the Lake Providence Port Commission
19 cease its ultra vires actions and discontinue
20 pursuit of its feeder line application before the
21 Surface Transportation Board.

22 THE COURT:

23 Do you have any objection to the form?

24 MR. CRIGLER:

25 Be, being completely unfamiliar with the feeder
26 line application and the dismissal thereof, I,

27 THE COURT:

28 Well, they do have

29 MR. CRIGLER:

30 I,

31 THE COURT:

1 authority, obviously, to act within the parish
2 of East Carroll. So I'm not sure where the feeder
3 line is either. I mean, is some of it in East
4 Carroll?

5 MR. CRIGLER:

6 It is.

7 MS. D'AQUIN:

8 Some of it is, your, Your Honor. But the appli-
9 the amended application before the Surface
10 Transportation Board seeks to, seeks to force the
11 sale of the entire line, all the way down,

12 THE COURT:

13 Wait a minute, hold on.

14 COURT REPORTER:

15 Train.

16 THE COURT:

17 She can't hear you over there.

18 MS. D'AQUIN:

19 Right. I understand. That's probably our train
20 going by. I think that's a Delta Southern Railroad
21 train going by on our tracks. I'll have to tell our
22 client they should've shut the trains down while
23 we're having a hearing.

24 COURT REPORTER:

25 Good, Judge.

26 THE COURT:

27 Okay.

28 MS. D'AQUIN:

29 The, Your Honor, we did attach as an exhibit to
30 our ah, to our ah brief that we filed

31 THE COURT:

1 I know you did.

2 MS. D'AQUIN:

3 on Monday. The excerpts from the amended
4 application show that it is, that the port
5 commission is seeking property that comes down into
6 Madison Parish. Ah it's a, so it's a single
7 application as to pending.

8 THE COURT:

9 Let me look at the order you have. I'll actually
10 have a copy of that myself, too. That one had
11 mandamus in it too, as well.

12 MS. D'AQUIN:

13 Right. The one that I submitted with that
14 had the mandamus in the same order, but, when we
15 filed the petition, we filed two separate orders.

16 THE COURT:

17 Well, I tell you what, let me see something real
18 quick. Perhaps, let me see, I may can add to this
19 order to clarify just a tad, 'cause I don't want to
20 be construed they can't outbreak within the Parish
21 of East Carroll. Obviously.

22 MS. D'AQUIN:

23 Obviously. Yes, Your Honor.

24 THE COURT:

25 And that's what I need to avoid if possible. Let
26 me see. Well, what we, what I can do is write in
27 the, the meat of it. Considering the foregoing
28 petition for writ of quo warranto, it is hereby
29 ordered and adjudged that plaintiff, Delta Southern
30 Railroad Inc.'s, petition for writ of quo warranto
31 be granted in the above entitled matter and the, and

1 that the writ shall issue direct and at the Lake
2 Providence Port Commission seek its ultra vires
3 actions, and discontinue pursuit of its feeder line
4 application that exist outside the parish of East
5 Carroll. That satisfy you?

6 MR. CRIGLER:

7 Well, I, I mean obviously they would, I'm
8 assuming need to amend it again, it, it, if it, I
9 mean it's, I imagine they'll appeal this, but that,
10 I mean, I'm thinking of the amendment to, and I
11 don't, again, I don't know how the application
12 process there works, but for them to cease the
13 application if they have pending when, I guess at
14 least partially in, in this Court's opinion it is
15 authorized to do. I,

16 THE COURT:

17 Well, that's why I said. You didn't, you
18 didn't, did you catch where I just

19 MR. CRIGLER:

20 I didn't,

21 THE COURT:

22 said?

23 MR. CRIGLER:

24 no, sir, apparently not.

25 THE COURT:

26 Okay.

27 MS. D'AQUIN:

28 I think it's, if I understand correctly, the
29 Court's talking about adding to the extent that the
30 application extends beyond East Carroll Parish.

31 MR. CRIGLER:

1 Okay.

2 MS. D'AQUIN:

3 And I, and I know that, the procedural posture

4 of it in front of the Service Transportation Board,

5 I don't know whether there's an opp, continuing

6 opportunity that amend or whether procedurally it's

7 passed that point and it needs to be dismissed and

8 re-filed, I don't know. Your Honor, so I can't

9 really speak to that today. But I understand the

10 Court's concern about not issuing something that

11 says they can't ever pursue a feeder line, line

12 application it's just this one as it exists right

13 now that extends beyond

14 THE COURT:

15 No, because

16 MS. D'AQUIN:

17 East Carroll

18 THE COURT:

19 you

20 MS. D'AQUIN:

21 Parish.

22 THE COURT:

23 agree that they can operate within

24 MS. D'AQUIN:

25 They,

26 THE COURT:

27 the confines

28 MS. D'AQUIN:

29 they can

30 THE COURT:

31 of East Carroll

1 MS. D'AQUIN:
2 attempt to do it
3 THE COURT:
4 Parish.
5 MS. D'AQUIN:
6 within East Carroll Parish.
7 THE COURT:
8 This order may need to be redrafted and
9 submitted. Let him look at it. I don't wanna hand-
10 string him today.
11 MS. D'AQUIN:
12 Your, Your Honor, are, we're happy to submit
13 something. We'll just, we'll email it tomorrow if
14 that's okay with Your Honor. We do have a three
15 THE COURT:
16 Sure.
17 MS. D'AQUIN:
18 and a half hour drive home, so probably won't
19 get a email today.
20 THE COURT:
21 Oh, that's perfectly fine. Do that and let him,
22 MR. CRIGLER:
23 I'd appreciate that.
24 THE COURT:
25 oh, absolutely. I mean, the fact that I was
26 able to render a judgment today is a good thing.
27 MR. CRIGLER:
28 Yes, sir.
29 THE COURT:
30 You know, now with days of email, this, this
31 kind of thing can be taken care of pretty fast.

1 MR. CRIGLER:
2 Yes, sir.
3 MS. D'AQUIN:
4 Yeah.
5 THE COURT:
6 I actually have learned to E-sign, but I don't
7 like it. But I don't know that they do that in East
8 Carroll, I'm not sure.
9 MR. CRIGLER:
10 I doubt it.
11 MS. D'AQUIN:
12 I doubt
13 THE COURT:
14 But do,
15 MS. D'AQUIN:
16 that.
17 THE COURT:
18 but do that,
19 MS. D'AQUIN:
20 I don't think there's any facts, well there's
21 facts on. I don't think there's any e-filing or any
22 of those things up here quite yet. I'm sure they're
23 coming soon though.
24 MR. CRIGLER:
25 Hope not.
26 THE COURT:
27 Yeah, would you pass that?
28 MS. D'AQUIN:
29 Oh, once you, once you learn how to do it, life
30 is much easier.
31 MR. CRIGLER:

1 Yeah, I did

2 MS. D'AQUIN:

3 Believe me.

4 MS. CRIGLER:

5 plenty in Federal Court. I'm still,

6 THE COURT:

7 And as long as I know it's approved as to form,

8 I don't actually have to see the signature on there,

9 as long as officers of the court, you tell me

10 MR. CRIGLER:

11 Yes, sir.

12 THE COURT:

13 it's reviewed and, and has no objection, typed

14 stuff, I'm good.

15 MR. CRIGLER:

16 Yes, sir.

17 THE COURT:

18 But, y'all do it anyway you want to. I just

19 want him to have time to look it over.

20 MS. D'AQUIN:

21 All right.

22 THE COURT:

23 Out of all fairness.

24 MR. CRIGLER:

25 Yeah, I, I just need the folks that are handling

26 the, the application process that know the deadlines

27 that, that she spoke of to, I just have no clue.

28 THE COURT:

29 This is why I made every effort to get y'all in

30 fast and to make a

31 MR. CRIGLER:

1 Yes,

2 THE COURT:

3 ruling,

4 MR. CRIGLER:

5 sir.

6 THE COURT:

7 so you will know what to do.

8 MR. CRIGLER:

9 Yes, sir.

10 THE COURT:

11 I really did. I'll, I, I'm sorry for the delay

12 that, because of recusal process stuff, but, you

13 know, that's beyond my control.

14 MS. D'AQUIN:

15 Oh, I, our, we understand, Judge. We understand

16 completely. We, when we got the first recusal, we

17 sort of took bets around the office and said every

18 judge up there is gonna recuse because it's just

19 such a small area, everybody's gonna have somebody

20 who's related to somebody on that commission. We

21 understand.

22 THE COURT:

23 Well, I live 90.7 miles from here, so.

24 MS. D'AQUIN:

25 Okay.

26 MR CRIGLER:

27 Your Honor, if I may, I just wanted to say thank

28 you for, for taking the task on to sit Ad Hoc for

29 us. And thank the staff, for this is probably not

30 a normal rule day for them, so we appreciate them

31 coming in.

1 THE COURT:
2 As well as I do. And I know it was more
3 convenient for all of us to do it here.
4 MR. CRIGLER:
5 Yes, sir.
6 THE COURT:
7 So is there anything else?
8 MS. D'AQUIN:
9 No, Your Honor. Thank you. I hope that you
10 appreciated the intellectual challenge of plowing
11 through the Constitution.
12 THE COURT:
13 God-lee.
14 MS. D'AQUIN:
15 I bet you did.
16 THE COURT:
17 I mean,
18 MS. D'AQUIN:
19 I kind of think you did.
20 THE COURT:
21 By the way, Mr. Crigler, you're from Tensas,
22 right?
23 MR. CRIGLER:
24 I am, yes sir.
25 THE COURT:
26 You, Judge Crigler's your dad?
27 MR. CRIGLER:
28 He is.
29 THE COURT:
30 Okay.
31 MR. CRIGLER:

1 Yes, sir.

2 THE COURT:

3 My wife actually is from Madison Parish, many

4 decades ago.

5 MR. CRIGLER:

6 Okay. Well, that's good.

7 THE COURT:

8 She was a Webb.

9 MR. CRIGLER:

10 Okay.

11 THE COURT:

12 Plantation.

13 MR. CRIGLER:

14 Yes, sir. Absolutely.

15 THE COURT:

16 You ever heard of that one?

17 MR. CRIGLER:

18 Yeah. Ah, ah yeah, it's small world.

19 THE COURT:

20 It is a small world.

21 MR. HAYES:

22 Thank you, Your Honor.

23 THE COURT:

24 It's nice to meet all of you.

25 MR. CRIGLER:

26 Yes, sir.

27 THE COURT:

28 And don't take this today if, if something comes

29 up in the future that I won't allow you to submit on

30 briefs and that sort of thing. I felt like if we

31 were together like this, I could do it faster.

1 Again, 'cause I was an English major and when I
2 write I'm, it, it can be painful sometimes.

3 MR. CRIGLER:
4 Yes, sir.

5 THE COURT:
6 You got a quicker decision

7 MR. HAYES:
8 Judge,

9 MR. CRIGLER:
10 Yes.

11 THE COURT:
12 this way.

13 MR. HAYES:
14 Judge, if have it, Judge, if you're looking for
15 work, we may need to hire you as a, as a, as an
16 associate. We have, the writing skills in this
17 generation are not what they used to be.

18 THE COURT:
19 And till go back practicing law. I been on the
20 bench since 1985.

21 MS. D'AQUIN:
22 Wow.

23 MR. CRIGLER:
24 Oh, wow.

25 THE COURT:
26 That's a lot.

27 MS. D'AQUIN:
28 That's a lot.

29 THE COURT:
30 Some people have trouble believing that I'm 74
31 years-old.

1 MADAM CLERK:
2 All rise.
3 THE COURT:
4 Y'all have a good day.
5 MR. CRIGLER:
6 You too,
7 MR. HAYES:
8 Thanks again,
9 MR. CRIGLER:
10 thank you.
11 MR. HAYES:
12 Judge.
13 MS. D'AQUIN:
14 Thank you, Your Honor.

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(End of Proceedings)

C E R T I F I C A T E

STATE OF LOUISIANA

PARISH OF MADISON

I, Mary Alice Lee, Certified Digital Reporter in and for the Sixth Judicial District Court, State of Louisiana, do hereby certify that the foregoing pages comprise a true and correct transcription of the testimony given and proceedings had in the above-numbered cause to the best of my ability and understanding.

That this proceeding was an East Carroll Parish case heard in the parish of Madison courthouse in Tallulah, Louisiana, on the 23rd day of May, 2024.

That I am not an attorney or counsel of the parties; nor am I related to them or financially interested in this action or its outcome.

Dated this 27th day of June, 2024, in the city of Tallulah, Louisiana.

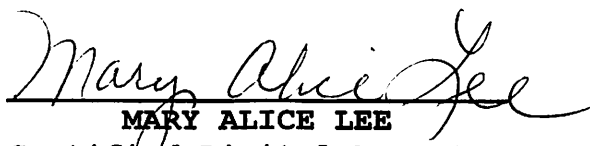

MARY ALICE LEE
Certified Digital Reporter
#3952010

EXHIBIT D

52109

SERVICE DATE –APRIL 15, 2024

ALJ

SURFACE TRANSPORTATION BOARD

Docket No. FD 36447

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

**ORDER RESOLVING LPPC’S EMERGENCY MOTION AND ORDERING DSRR AND
LPPC TO MEET AND CONFER**

Before: ALJ Thomas P. McCarthy

I have before me Lake Providence Port Commission’s (“LPPC”) March 11, 2024 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 (“Emergency Motion”).

In this matter, LPPC filed an initial feeder line application on November 12, 2020, which was accepted by the Board on December 11, 2020. LPPC filed an amended feeder line application on January 4, 2023. By decision dated November 20, 2023, the undersigned was tasked with overseeing discovery disputes in FD 36447 pursuant to an interagency agreement between the Federal Mine Safety and Health Review Commission and the Surface Transportation Board (“Board”).

In its November 20, 2023 Decision, the Board directed 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 assigned below on any remaining disputes within 30 days after the service date of a decision conditionally accepting the amended application.” *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 14 (STB served November 20, 2023). In a subsequent decision dated December 11, 2023, the Board further ordered that (1) LPPC’s amended feeder line application was conditionally accepted, and (2) LPPC’s request for valuation discovery could proceed as specified in the November 20 Decision. *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 2 (STB served December 11, 2023). The Board later extended the deadline for the parties to meet and confer and report back on any disputes concerning valuation discovery to March 25 and then to April 24, 2024.

On January 3, 2024, Delta Southern Railroad, Inc. (“DSRR”) served discovery requests on LPPC. On March 8, 2024, DSRR filed three separate motions to compel seeking that discovery from LPPC, the North Louisiana and Arkansas Railroad (“NLA”), and Southeast Arkansas

Economic Development District (“SEAEDD”). DSRR, NLA, and SEAEDD are jointly represented in this proceeding by Van Ness Feldman, LLP, and the Law Offices of Richard Streeter. In its motion to compel discovery from LPPC, DSRR contends that

LPPC has failed and now refused to respond to DSRR’s discovery requests, all of which address highly relevant and central issues in this case. DSRR accordingly seeks an order compelling LPPC to respond fully and completely to DSRR’s discovery requests, pursuant to 49 C.F.R. §§ 1114.21, et seq., and 49 C.F.R. § 1117.1.

DSRR Mot. to Compel Discovery from LPPC at 1.

DSRR further states:

LPPC’s sole basis for refusing to conduct discovery is a strained reading of the Board’s orders as somehow limiting *DSRR’s* discovery. That contention is meritless. The Board’s regulations permit discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding,” 49 C.F.R. § 1114.21(a)(1); which discovery “may be used by parties *without* filing a petition and obtaining prior Board approval, 49 C.F.R. § 1114.21(b) (emphasis added). Moreover, the Board’s regulations require the opposite of what LPPC now contends is the law of the case: “methods 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,” unless otherwise ordered by the Board. 49 C.F.R. § 1114.21(d).

Id.

On March 11, 2024, LPPC, NLA, and SEAEDD filed their “Emergency Motion”, wherein they

respectfully request[ed] Administrative Law Judge (“ALJ”) McCarthy to decide, or in the alternative for the Board to expeditiously clarify whether the Board’s Decisions, dated November 20, 2023, and December 11, 2023, which specifically ordered that “LPPC’s request for discovery relating to valuation may proceed under the process specified in the November 20, Decision,” also authorized Delta Southern Railroad, Inc. (“DSRR”), at this point in the proceeding, to pursue discovery against LPPC, et al.

Emergency Mot. at 1.

The Emergency Motion further requests that

[b]efore responding to the merits of DSRR’s pending motions to compel, LPPC, et al., submit that simple fairness to all parties requires that ALJ McCarthy or the Board decide the issue that is posed above. Indeed, resolution will require a simple

“No” or “Yes” whether DSRR is entitled to take discovery from LPPC, et al., at this time.

Emergency Mot. at 2.

I find that DSRR is entitled to take discovery from LPPC et al. I am persuaded by the initial arguments presented by DSRR in its Reply in Opposition to the Emergency Motion. In its Reply, DSRR argues as follows:

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).

DSRR Reply to Emergency Mot. at 2.

As DSRR identifies, 49 C.F.R. § 1114.21(a)(1) affords a party the opportunity to conduct discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” LPPC’s position, at least in its emergency motion, is not that the discovery sought by DSRR is irrelevant or subject to privilege, but rather that the Board has “waved the discovery starting flag” only for LPPC, and to the exclusion of DSRR. LPPC therefore requests that I draw an inference from the Board’s relative silence on DSRR’s capacity to conduct discovery and conclude that this silence reflects the Board’s reticence to allow DSRR to conduct discovery at all. I decline to draw this inference.

In any event, despite the fact that the Board had before it only the narrow issue of the completeness of the Amended Feeder Line Application when issuing its November 20, 2023 Decision, the Board clearly contemplated that DSRR would be afforded that opportunity of obtaining at least some discovery by explicitly holding that

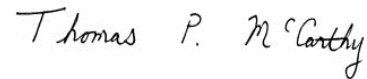
The parties are further directed to notify the Board upon **DSR’s** completion of discovery to which the parties mutually agree or that is ordered by the

administrative law judge. LPPC will have 45 days from the date of that notice to file and serve revised valuation calculations and supporting evidence in its amended application, if desired (and shall file and serve notification if no changes are required).

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 15 (STB served November 20, 2023)(emphasis added). Given this plain language, and in light of the arguments presented by DSRR, DSRR is permitted to take discovery in this matter.

As DSRR indicated in its Reply to the Emergency Motion, LPPC has already partially responded to DSRR's initial attempts at discovery. *See* DSRR Reply to Emergency Mot. at 7. As evinced by (1) DSRR's filing of motions to compel, (2) LPPC's filing of an Emergency Motion, and (3) the parties' extensive e-mail correspondence on the issue of discovery, it is apparent that the parties have not yet been able to agree on the nature and scope of discovery in this matter. The undersigned encourages the parties to "work this out," and orders that the parties meet and confer immediately as to any remaining discovery disputes – including any disputes concerning the discovery sought through DSRR's motions to compel. A conference call will be scheduled for 11 a.m. EST on April 24, 2024 to discuss and resolve any remaining discovery issues. LPPC will have 45 days from April 24, 2024 to file and serve any revised valuation calculations and supporting evidence in its amended application,

So Ordered.



Thomas P. McCarthy
Administrative Law Judge

Distribution:

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EXHIBIT E

Madison Parish Port Commission

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June 05, 2025

The Honorable Jeff Landry
Governor, State of Louisiana
P.O. Box 94004
Baton Rouge, Louisiana 70804

Governor Landry,

We write to express our strong concern about SB146, which would give to the Lake Providence Port Commission (LPPC) powers that no other Port Commission in Louisiana has. While we take no position on the portion of SB 146 that would expand LPPC's bonding authority, SB146 should not become law and the needs of LPPC relative to other port commissions and railroads should be evaluated further.

SB146 would override the current statutory geographic limitation on LPPC, which currently limits LPPC to act "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. 34:1503(A). Other port commissions in Louisiana are similarly limited to act within their geographic limits. SB146 would allow LPPC to acquire, own, and operate "rail facilities that are ***physically located beyond the boundaries and limits***" of LPPC's statutory jurisdiction (emphasis added), including facilities located in Madison Port Parish, any other Parishes in Louisiana, and out-of-state, such as in Arkansas.

Madison Parish Port receives adequate rail service from its tenant Delta Southern Rail(Patriot Rail) that assists the tenants of Madison with such services. Allowing LPPC to purchase land outside of its jurisdiction will compromise the efforts of the Madison Parish Port. Madison Parish Port can export goods from the Mississippi River to its Port owned rail and trucks. In addition, to storing products for farmers should they require such services.

During the process of SB146, the Executive Director of LPPC asked the Assistant Executive Director to remain neutral in the decision, if the Madison Parish Port didn't support the bill. Madison Port was contacted by an outside source relating to the bill that the Port had no knowledge of until further research. The Madison Parish Port would not support such a bill to discontinue the efforts of its Port.

With the Meta project in site, Madison Parish Port has received a vast amount of business. We are receiving products by barge and loading both trucks and rail. In addition, stock piling goods for continuing service to the Meta site. The employment rate has increased for the area and business for the tenants of the Port. The Meta site has created vast amounts of economic development for our Parish and Port.

The language currently in LPPC's statute with respect to railroads is the same as for other similar port commissions in Louisiana, which will remain unchanged. A threshold issue is presented because SB146 would grant LPPC new and expansive authority specifically with respect to rail facilities. The power granted to LPPC by SB146 is targeted at rail property, which makes every railroad in Louisiana vulnerable to the authority conveyed only to LPPC in SB146. Such power would be beyond that granted to any other Louisiana port commission.

Finally, SB146 would enable LPPC to pursue legal actions at the United States Surface Transportation Board with taxpayer dollars aimed at taking private property owned and operated by any private common carrier railroad beyond LPPC's current statutory jurisdiction. LPPC has already wasted substantial sums of taxpayers' money pursuing unsuccessful litigation to take railroad property.

From the pending litigation summary, here is an overview of LPPC's unsuccessful litigation attempts to take any portion of DSR's rail line outside of LPPC's jurisdictional boundary:

#56,112-CA, *Delta Southern Railroad, Inc. v. Lake Providence Port Commission et al.*, On February 26, 2025, the Louisiana appeals court affirmed a ruling in favor of DSR granting a writ quo warranto and held that LPPC lacked authority under its enabling statute and the Louisiana Constitution to own and operate property in East Carroll Parish only to take, own and operate through the STB proceeding any portion of DSR's rail line located outside East Carroll Parish. LPPC's reconsideration request was denied, and it filed a petition for certiorari with the Louisiana Supreme Court.

On May 27, 2025, the Louisiana Supreme Court granted LPPC's motion to dismiss its appeal in this matter.

Thus, the Louisiana lower court rulings stand that LPPC does not have authority to take through the STB any portion of any railroad outside LPPC's statutory

boundary. ***SB146 would explicitly reverse this settled finding by legislatively granting authority uniquely to LPPC to take property outside its jurisdiction.***

Below is a summary of the current status of the proceeding at the U.S. Surface Transportation Board, following the Louisiana Supreme Court's dismissal of LPPC's case.

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.

Thank you for considering our concerns.

Sincerely,



Donald Frazier, President
Madison Parish Port Commission