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Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Chief Counsel
September 16, 2025
Part of
Public Record

Re: Docket No. FD 36447 – *Lake Providence Port Commission - Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana*

Dear Chief of Case Administration:

Delta Southern Railroad, Inc. (“DSRR”) writes to update the Board on recent court activity in the Louisiana litigation between DSRR and the Lake Providence Port Commission (“LPPC”). This Board proceeding results from years of what the Louisiana courts have found to be *ultra vires* actions by LPPC targeted at DSRR. DSRR’s motion to dismiss this Board proceeding and for attorneys’ fees remains pending. Further, LPPC’s failure to comply with the court order is the subject of a motion for contempt on which the Louisiana district court held a hearing on September 9, 2025.

Background

LPPC filed a feeder line application at the Board to acquire rail property owned and operated by DSRR in 2020. With leave of the Board, LPPC amended that application on January 4, 2023, to seek to acquire an entire rail line from McGehee to Tallulah, Louisiana. Later that month, DSRR was sold at fair market value to Patriot Rail, which immediately initiated contact with interline connections, invested about \$400,000 in track improvements, engaged with customers, solicited business, and continued to move all freight presented to the railroad for carriage – as it still does. See e.g., Delta South. R.R. Inc.’s Motion to Dismiss and for Attorneys’ Fees, *Lake Providence Port Commission - Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana*, FD 36447 (STB filed June 29, 2024) (Attachment B, Thrall declaration at 3); Verified Letter, *Providence Port Commission - Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana*, FD 36447 (STB filed July 28, 2023). Nevertheless, LPPC seeks the line for as little as scrap value despite the fact that DSRR is an ongoing business.

During discovery of LPPC in this proceeding which LPPC fought to prevent, it became clear that LPPC lacked the authority under its enabling statute to initiate any action to acquire rail property outside East Carroll Parish. On March 2, 2024, DSRR filed in Louisiana district court an action asserting that LPPC lacked authority to acquire property located outside East Carroll Parish and sought a writ of quo warranto. The Court agreed and, on June 26, 2024, issued the writ 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. 36447,” hereinafter referred to as the “Order.”¹ On June 27, 2024, DSRR filed a Motion to Dismiss and for Attorney’s Fees with the Board based on this Order, and, following LPPC’s notice that it intended to appeal the district court’s decision and Order, the Board placed this matter in abeyance on August 2, 2024. On February 26, 2025, the Louisiana Second Circuit Court of Appeal affirmed the Court’s findings that the limits of LPPC jurisdiction were clear and unambiguous and that LPPC had acted *ultra vires* when it pursued property beyond the bounds of East Carroll Parish. It held that “the writ of quo warranto ordering the Commission to discontinue its pursuit of property situated outside of East Carroll Parish” was properly issued and must be obeyed.

Recent Louisiana Litigation Update

On May 1, 2025, LPPC sought writs from the Louisiana Supreme Court to review the Second Circuit Court of Appeals decision. On May 27, 2025, the same day as a legislative hearing before the Louisiana Ways and Means Committee and literally an hour before DSRR was going to file its opposition at the Louisiana Supreme Court, LPPC withdrew its writ application, ending all appeals and rendering the Order final. The impropriety of LPPC’s action at the Board seeking to acquire Madison Parish property has been *res judicata* since that date.

At the Ways and Means Committee hearing, LPPC testified that “[a]s far as litigation goes, the case that we voluntarily dismissed is the only case regarding jurisdiction between the Lake Providence Port and Patriot Rail. The [other cases as far as the] only other case in which the two are a party is to the feeder line application at the Surface Transportation Board in which we are claiming that they violated their common carrier obligation by parking cars on the main line track.”² In other words, the only proceeding then ongoing was the one at the Board in which LPPC had expressly been ordered by the Louisiana court to “cease its *ultra vires* action and discontinue its pursuit of ownership or control of property outside of East Carroll Parish.”

¹ The final order was filed with the Board on July 3, 2024. DSRR Letter, *Providence Port Commission - Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana*, FD 36447 (STB filed July 3, 2024).

² https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2025/May/0527_25_WM. It was factually inaccurate to claim that the STB proceeding is about a violation of the common carrier obligation. No such claim has been made before the STB, which would require a case filed to allege a violation of 49 U.S.C. 11101.

Having exhausted all its appeal rights, LPPC still did not comply with the Order – even though it had been acting *ultra vires* since at least January 2023. Based on LPPC’s May 27 withdrawal of its writ application and representations at this hearing, on May 29, 2025, DSRR filed a renewed motion to dismiss the feeder line application based on LPPC’s discontinuance of its appeal.

On June 11, 2025, DSRR filed its motion for contempt in the Louisiana district court. On that same day, Act No. 334 was signed into law and became effective despite the objection of the Madison Parish Port in a letter on June 5, 2025, that noted that “Madison Parish Port receives adequate rail service from its tenant Delta Southern Rail (Patriot Rail) that assists the tenants of Madison with such services.” See Madison Parish Port letter, June 5, 2025, which is attached hereto and which counsel verifies is a true and correct copy. The new statute provided LPPC powers prospectively that no other port authority in Louisiana possesses – the power to acquire property anywhere outside its jurisdiction – from New Orleans to Alexandria and from Baton Rouge to Arkansas or Mississippi or New Hampshire. Neither party knew that the Governor had signed Act No. 334 until at least June 17, 2025.³ More important, Act No. 335 did not include any provision to make it apply retroactively. Pursuant to Article 6 of the Louisiana Civil Code, newly adopted laws have prospective application only, unless they expressly include retroactivity provisions.

LPPC filed its opposition to the motion for contempt on August 11, 2025 in the Louisiana district court. In its own filing, LPPC admitted that it continued to violate the court Order for at least a two-week time period from May 27, 2025, to June 11, 2025, during which time no litigation was pending that might serve as an excuse for not complying with the Order. LPPC Opposition at [5]. During that same timeframe, Act No. 334’s future was unresolved. LPPC also admitted that it refused to support DSRR’s motion to dismiss this Board proceeding.⁴ In fact, LPPC took no action to comply with the Order.

In its reply memorandum filed in the Louisiana district court on August 29, 2025, DSRR argued that after engaging in *ultra vires* acts since January 2023, LPPC had violated the Order with no justifiable excuse. DSRR contended that LPPC should not benefit from its past acts that were *ultra vires* and that Act No. 334 did not empower LPPC to benefit from its *ultra vires* actions. See *Ketterer v. Independent School Dist.*, 248 Minn. 212 (Minn. S.Ct. 1956) (“Acts *ultra vires* in the primary sense are those acts that lie outside the scope of the authority of the governing body. *These acts cannot be effectively ratified since there is no authority to perform the acts in the first instance.*”). Indeed, Act No. 334 does not save LPPC’s application in this proceeding; it only

³ See LPPC Filing, Lake Providence Port Commission- Feeder Line Application- Line of Delta Southern R.R. Located in East Carroll and Madison Parishes, LA., FD 36447 (STB filed June 18, 2025) (“That Act became effective on June 11, 2025. Because the signing was not made public until late in the afternoon of June 17, 2025, LPPC officials, who were not aware of the signing until yesterday afternoon . . .”).

⁴ LPPC Opposition at [2] (“DSRR counsel asked LPPC counsel to join in a joint motion for dismissal of the entire Feeder Line Application . . . LPPC declined the request.”). LPPC’s opposition did not include page numbers, so the page numbers are to the page count.

gives it a prospective power to file a new application for property beyond the bounds of East Carroll Parish.⁵

On September 9, 2025, the Louisiana district court held a hearing on DSRR's contempt motion. At the conclusion of the hearing, the court took the matter under advisement with a stated expectation to issue a written decision soon.

If you have any questions about the ongoing Louisiana district court proceedings, please feel free to contact me.

Sincerely,

GENTRY LOCKE

/s/ John M. Scheib

John M. Scheib
Counsel for Delta Southern
Railroad, Inc.

Attachment – Madison Parish Port letter, June 5, 2025.

⁵ DSRR argued that Act No. 334 created a new substantive right for LPPC and does not include a retroactivity provision. “In the absence of contrary legislative expression, substantive laws apply prospectively only.” La. Civ. Code. art. 6.; *see also Green v. Liberty Mutual Insurance Co.*, 352 So.2d 366 (La. App. 4 Cir. 1977), *writ denied*, 354 So. 2d 210 (1978). Similarly, the legislation does not expressly state that it was “remedial legislation regulating actions pending on the effective date of its enactment,” although the legislature knows how to and has made other legislation remedial. *Midwestern Fire & Marine Ins. Co. v. Miller*, 143 So. 2d 757 (La. App. 3 Cir. 1962) (considering legislation that was expressly made remedial by the legislature); *Interdiction of Mayeux*, 130 So. 2d 708 (La. App. 3 Cir. 1961) (same). Act No. 334 creates new authority for LPPC that the prior legislation expressly declared LPPC did not have. *See Green*, 354 So. 2d at 210.

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,

A handwritten signature in blue ink that reads "Donald Frazier". The signature is written in a cursive, flowing style.

Donald Frazier, President
Madison Parish Port Commission

CERTIFICATE OF SERVICE

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

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/s/ John M. Scheib

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Dated: September 15, 2025