

SERVICE DATE – SEPTEMBER 25, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

Digest:¹ The Board removes this proceeding from abeyance, denies the motions to dismiss the proceeding, directs the parties to submit a proposed procedural schedule, and denies a request for attorneys' fees.

Decided: September 25, 2025

This proceeding involves efforts by the Lake Providence Port Commission (LPPC), a noncarrier political subdivision of the State of Louisiana, to acquire the portion of the McGehee-Tallulah rail corridor owned by Delta Southern Railroad, Inc. (DSR), a Class III rail carrier, through a feeder line application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151.² By decision served on August 2, 2024, the Board held this proceeding in abeyance pending resolution of issues raised in state court litigation about LPPC's authority to acquire property outside East Carroll Parish, La. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (Abeyance Ord.), FD 36447, slip op. at 1, 3 (STB served Aug. 2, 2024).

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

² The McGehee-Tallulah rail corridor extends from milepost 408.9 in McGehee, Ark., where it connects with Union Pacific Railroad Company, south to milepost 498.44 in Tallulah, La., where it connects with Canadian Pacific Kansas City Limited (CPKC). DSR owns and operates the southernmost segment of the corridor, from milepost 471.0 at Lake Providence, La., south to the connection with CPKC at milepost 498.44 in Tallulah (hereafter, the Lake Providence Line or the Line).

Ownership and operation of the rest of the corridor is as follows: LPPC owns the segment between milepost 471.0 at Lake Providence and milepost 454.8 at or near the Louisiana/Arkansas border; Southeast Arkansas Economic Development District (SEAEDD), a noncarrier, owns the segment between milepost 454.8 and milepost 433.0 at Lake Village, Ark.; and the northernmost segment, from milepost 433.0 to milepost 408.9, is owned jointly by LPPC and North Louisiana & Arkansas Railroad, Inc. (NLA). NLA holds operating authority over these three segments of the corridor. (See, e.g., Am. Appl. 1, 19-20, 56.)

For the reasons discussed below, the Board removes this proceeding from abeyance, denies DSR's motions to dismiss the proceeding and request for attorneys' fees, and directs the parties to confer and submit a proposed procedural schedule.

BACKGROUND

LPPC's Original and Amended Feeder Line Applications. In early 2021, the Board accepted LPPC's initial feeder line application to acquire from DSR a 20-mile segment of the McGehee-Tallulah rail corridor between milepost 471.0 and milepost 491.0, together with various ancillary tracks, in East Carroll and Madison Parishes, La. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447 (STB served Jan. 15, 2021). The following year, the Board granted LPPC's request to file an amended application to acquire DSR's entire Lake Providence Line, from milepost 471.0 to its point of interchange with CPKC, located at or around milepost 498.4. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447 (STB served Aug. 23, 2022). On January 4, 2023, LPPC filed its amended feeder line application. Following an unsuccessful challenge by DSR to the completeness of the amended application and LPPC's satisfaction of certain technical requirements,³ the Board conditionally accepted LPPC's amended application. Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La., FD 36447 (STB served Dec. 11, 2023). The Board's acceptance was conditional to permit LPPC to seek discovery of DSR and to file and serve revised valuation calculations and supporting evidence if it chose (or to notify the Board if no changes were required). *Id.* at 2. The Board stated that upon completion of this step, notice of LPPC's amended feeder line application would be published in the Federal Register and a procedural schedule would be issued. *Id.* On July 5, 2024, LPPC submitted supplemental evidence regarding valuation of the Lake Providence Line based on data provided by DSR in response to LPPC's discovery requests.

DSR's Motion to Dismiss. On June 27, 2024, DSR moved to dismiss this proceeding with prejudice.⁴ DSR argued that dismissal was warranted because a Louisiana state trial court had ruled that LPPC lacked authority to dispossess DSR of property located outside East Carroll Parish, and attached a judgment and order, filed by the state court on June 24, 2024, directing LPPC to "cease its *ultra vires* actions and discontinue pursuit of its feeder line application [with respect to lines] that exist outside the Parish of East Carroll." (DSR Mot. to Dismiss 1-2, June 27, 2024; *id.*, Attach. A at 1.)⁵ On July 3, 2024, DSR notified the Board of an amended

³ 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 6-13 (STB served Nov. 20, 2023).

⁴ DSR also sought attorneys' fees incurred in responding to and seeking discovery after January 4, 2023. (DSR Mot. to Dismiss 4-5, June 27, 2024.)

⁵ Although the motion to dismiss does not identify the portion of the Lake Providence Line located outside of the East Carroll Parish, a later filing indicates that it extends from

judgment and order, filed by the state court on June 26, 2024. (DSR Letter 1, July 3, 2024; see id., Am. Judgment & Ord. (attached thereto).) The amended judgment required 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 [Board].” (Id., Am. Judgement & Ord. at 2.)

LPPC filed a letter on July 5, 2024, stating that it had appealed the state court’s ruling and opposing DSR’s request for expedited consideration of the motion to dismiss. On July 16, 2024, LPPC responded to the motion to dismiss, stating that it should be denied, or, in the alternative, deferred until LPPC’s statutory authority to acquire rail-related property outside of East Carroll Parish was clarified. (LPPC Reply to Mot. to Dismiss 16, July 16, 2024.) DSR responded to LPPC’s reply on July 22, 2024, reiterating its position that dismissal “is appropriate” given the state court’s order, (DSR Reply to LPPC Reply 2, July 22, 2024), but that, “at a minimum this proceeding should be stayed pending resolution of the scope of LPPC’s . . . powers,” (id. at 5 n.4).

Abeyance Order. As noted above, by decision served August 2, 2024, the Board placed this proceeding in abeyance. Abeyance Ord., FD 36447, slip op. at 1. The Board found that abeyance would promote efficiency because “resolution of the issues raised in the parties’ state court litigation would inform the Board’s assessment of DSR’s motion to dismiss which, in turn, [would] determine whether the pending feeder line application is permitted to proceed.” Id. at 3. The Board also stated that placing the proceeding in abeyance would not be unfair to any party because “obtaining answers to the state law issues presented in the parties’ state court litigation [would] resolve threshold issues related to LPPC’s authority under state law to pursue the feeder line application.” Id. Additionally, the Board noted that both parties supported deferral pending resolution of the state law issues. Id. at 4 n.6. The Board directed the parties to submit any relevant decision from the state courts within five days of its issuance. Id. at 4. The Abeyance Order also waived the requirement in 49 C.F.R. § 1151.2(b) that a notice be published in the Federal Register either accepting or rejecting a feeder line application within 30 days after it was filed. Id.

Post-Abeyance Filings. LPPC filed a status report on March 4, 2025, informing the Board that it had lost its initial appeal of the state trial court’s decision before the Louisiana Court of Appeal for the Second Circuit but intended to seek rehearing. (LPPC Status Rep. 1-2, Mar. 4, 2025.) DSR filed notice on April 9, 2025, stating that LPPC’s request for rehearing to the appeals court had been denied. (DSR Notice 1, Apr. 9, 2025.) On April 14, 2025, LPPC informed the Board that it intended to file an application for a writ to the Louisiana Supreme Court and requested the Board continue to hold this proceeding in abeyance until the court ruled on that application. (LPPC Reply 1, Apr. 14, 2025.)

milepost 488.61 to the termination of the Line at about milepost 498.4. (See LPPC Reply to Mot. to Expedite 3, June 13, 2025.)

On May 29, 2025, DSR filed a renewed motion to dismiss this proceeding with prejudice.⁶ DSR states that on May 27, 2025, LPPC filed, and the Louisiana Supreme Court granted, a motion to dismiss LPPC's application to that court. (DSR Mot. to Dismiss 3, May 29, 2025; see id., Ex. 2 (second document).) DSR maintains that the appellate decision affirming the state trial court's judgment and order is therefore final, and requests that the Board remove this proceeding from abeyance and expeditiously grant DSR's motion to dismiss with prejudice. (DSR Mot. to Dismiss 3, May 29, 2025.)

On June 13, 2025, LPPC filed a reply to DSR's request for an expedited ruling on its motion to dismiss, along with a request to extend the due date for LPPC's substantive reply to DSR's motion. LPPC stated that the Louisiana state legislature recently passed a bill (SB 146) that would explicitly provide LPPC with authority to acquire railroad property outside East Carroll Parish.⁷ (LPPC Reply to Mot. to Expedite 2-3, June 13, 2025; see id., Attach. 2.) According to LPPC, SB 146 was sent to the governor of Louisiana on June 9, 2025, and, under Louisiana law, the governor would have until June 30, 2025, to sign it. (Id. at 3.) LPPC thus sought leave to file its reply after the governor had signed the bill. (Id. at 4.)

The Board granted LPPC's request for an extension on June 17, 2025. On June 18, 2025, LPPC filed its substantive reply to DSR's renewed motion to dismiss. LPPC states that the governor of Louisiana signed SB 146 into law on June 11, 2025, and the law (now denominated Act 334) became effective that day. (LPPC Reply to Mot. to Dismiss 3; id., attached legislative record, June 18, 2025.)⁸ With passage of SB 146, LPPC argues that it now clearly has the necessary authority to acquire the entire Line at issue in this proceeding, including the portion outside East Carroll Parish, in Madison Parish. (Id. at 5-6.) Accordingly, LPPC requests that the Board remove this proceeding from abeyance, establish a deadline for DSR's submission of its evidence (claiming that DSR does not need additional discovery), and set a procedural schedule. (Id. at 6.) LPPC asserts that DSR's claims that LPPC's actions were "ultra vires and egregious" lack merit, as LPPC did in fact have authority to acquire the entire Line under Louisiana law, even prior to passage of SB 146. (Id. at 6-7; id., Supp. V.S. Gilfoil paras. 4-7 (describing past actions by LPPC to acquire rail property located outside East Carroll Parish that were sanctioned by Louisiana governmental authorities who authorized the necessary funding).) LPPC also argues that the Board should deny DSR's request for attorneys' fees. (Id. at 7.)

⁶ DSR originally filed its renewed motion to dismiss on May 27, 2025, but filed a request to substitute a revised version of the pleading on May 28, 2025, including attaching a filing that had been omitted from the original. On May 29, 2025, DSR filed an amended version of the revised motion, which replaced an attachment of the trial court's original judgment and order with the trial court's amended judgment and order.

⁷ LPPC noted that DSR representatives, including its counsel in this proceeding, appeared as witnesses before the Louisiana state legislature's House Ways and Means Committee on May 27, 2025. (LPPC Reply to Mot. to Expedite 2, June 13, 2025.) DSR does not dispute this assertion.

⁸ LPPC explains that it voluntarily dismissed its application for review by the Louisiana Supreme Court to avoid "unwarranted distraction to the legislative consideration of SB 146." (LPPC Reply to Mot. to Dismiss 5, June 18, 2025.)

DSR filed a rebuttal to LPPC's reply on June 20, 2025. (DSR Rebuttal 1, June 20, 2025.) DSR argues that SB 146 does not apply retroactively and thus "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 East Carroll.'" (*Id.* at 2-3.) DSR contends that SB 146 may allow LPPC to file a case at the Board to acquire property outside East Carroll Parish after August 1, 2025, but that it does not "save this proceeding." (*Id.* at 3.) DSR also notes that on June 11, 2025, it filed a contempt action against LPPC for its alleged failure to comply with the state court's order. (*Id.*) Additionally, DSR disputes LPPC's assertion that its attempt to acquire the entire Line prior to passage of SB 146 was proper. According to DSR, the state court rejected LPPC's arguments that it had proper authority under state law to pursue its feeder line application. (*Id.* at 4-5.) DSR requests that the Board remove the proceeding from abeyance, grant its motion to dismiss expeditiously, and award to it "attorneys' fees and costs." (*Id.* at 2, 9.) However, DSR notes that if the proceeding is reactivated, it intends to seek additional discovery. (*Id.* at 6 n.9 (stating that the case was placed in abeyance before DSR had completed its discovery of other parties to the proceeding).) DSR disputes LPPC's assertion that additional discovery is unwarranted, noting that the Administrative Law Judge (ALJ) previously assigned to the case already found that DSR is permitted to seek discovery. (*Id.* at 6-7.)⁹

LPPC filed a surrebuttal on June 23, 2025, requesting that DSR's June 20, 2025, rebuttal be rejected or that LPPC be granted leave to respond. LPPC argues that there is no issue of retroactive application, because the Board has not yet issued its final decision with regard to the amended feeder line application, and the new state law imposes no liability for past transactions. (LPPC Surrebuttal 2-3, June 23, 2025.)¹⁰ LPPC asserts that the Louisiana state legislature clearly intended SB 146 to provide LPPC with the necessary statutory authority for the Board to renew its consideration of LPPC's feeder line application. (*Id.* at 3.) As for DSR's claims that LPPC has engaged in *ultra vires* actions, LPPC argues that any such claims are a matter for the state courts to decide. (*Id.*)

On August 1, 2025, a letter was filed by U.S. Representatives Julia Letlow, Rick Crawford, and Bruce Westerman, noting that the rail corridor serves a critical function in supporting freight transportation and economic revitalization efforts in the region and requesting that LPPC's feeder line application be given appropriate consideration as expeditiously as possible. (U.S. Rep. Letlow et al. Letter 1, Aug. 1, 2025.) A similar letter was submitted by U.S. Senators John Kennedy, Bill Cassidy, John Boozman, and Tom Cotton on September 8, 2025. (U.S. Sen. Kennedy et al. Letter 1, Sept. 8, 2025.) DSR filed a letter on

⁹ Judge McCarthy's service as ALJ in this proceeding has concluded, and the service list has been modified accordingly.

¹⁰ According to LPPC, Act 334 took effect on June 11, 2025, the day it was signed by the Governor. (LPPC Surrebuttal 2, June 23, 2025.) DSR initially claimed the law did not take effect until August 1, 2025, (DSR Rebuttal 2, June 20, 2025), but states in a later letter that it became effective on June 11, 2025, (DSR Letter 3, Sept. 16, 2025). In all events, any dispute about the effective date of the law is immaterial to this decision, inasmuch as both dates have passed.

September 16, 2025, reprising arguments made in its earlier filings and stating that a hearing on its state court contempt action against LPPC had been held, to which LPPC replied on September 17, 2025.¹¹

PRELIMINARY MATTERS

As a preliminary matter, the Board considers whether to accept four filings into the record: DSR's July 22, 2024 reply to LPPC's response to DSR's initial motion to dismiss; DSR's June 20, 2025 rebuttal to LPPC's response to DSR's renewed motion to dismiss; LPPC's June 23, 2025 response to DSR's June 20, 2025 rebuttal; and DSR's September 16, 2025 letter "updat[ing] the Board on recent court activity in the Louisiana litigation between [DSR] and [LPPC]," (DSR Letter 1, Sept. 16, 2025), but largely reprising facts already in the record and arguments DSR already made, (*id.* at 2-4).

The regulations at 49 C.F.R. § 1104.13(c) do not permit replies to replies, and the Board has recently stated that it will more strictly enforce the prohibition set forth in 49 C.F.R. § 1104.13(c) to promote the orderly and efficient administration of cases. See Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). Here, however, LPPC's response to DSR's initial motion raises arguments about new issues that likely could not have been anticipated by DSR. Accordingly, DSR's July 22, 2024 reply will be accepted into the record.¹² With respect to the parties' two more recent filings, the Board considers DSR's June 20, 2025 rebuttal and LPPC's June 23, 2025 response as properly filed supplements rather than replies to replies, as the filings were providing the Board with arguments based on new information as it became available. Accordingly, both filings will be accepted into the record. DSR's September 16, 2025 letter will be stricken to the extent it reprises facts presented and arguments made in earlier filings.¹³ However, DSR's update that a hearing has been held in its recently-filed contempt action against LPPC will be accepted into the record.

DISCUSSION AND CONCLUSIONS

Removal from Abeyance. Both parties agree that the Board should remove the proceeding from abeyance, albeit for different reasons. For the reasons discussed below, the

¹¹ LPPC's filing states that DSR's September 16, 2025 filing should be stricken as an impermissible reply to a reply, and seeks leave to submit a limited reply in the event the Board does not strike or otherwise disregard DSR's filing. (LPPC Letter 1, Sept. 17, 2025.)

¹² See generally Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 4 n.8 (STB served Mar. 4, 2025) (accepting filing to the extent it discussed an unsettled issue raised for the first time in Evergy's reply); Commuter Rail Div. of the Reg'l Transp. Auth.—Terminal Trackage Rights—Union Pac. R.R., FD 36844, slip op. at 12 (STB served Sept. 3, 2025) (denying motion to strike rebuttal evidence and argument where party could not have anticipated new arguments presented in opponent's reply).

¹³ Accordingly, LPPC's request for leave to file a surreply will be denied.

Board agrees that this case can now proceed and will therefore remove the proceeding from abeyance.

DSR's Motions to Dismiss. The Board will deny DSR's motions to dismiss. The new state law, Act 334, explicitly authorizes LPPC to acquire rail-related property outside East Carroll Parish. Accordingly, it resolves the question raised in DSR's June 27, 2024 motion that led the Board to hold this proceeding in abeyance. Based on the record before the Board, LPPC has obtained state authority to acquire the portion of the Line outside East Carroll Parish.

The Board also rejects DSR's more recent claim that LPPC can only pursue acquisition of the entire Line through a new proceeding because, according to DSR, the new law does not apply retroactively. (DSR Rebuttal 2, June 20, 2025.) As LPPC points out, there is no issue of retroactive application because a final decision has not been issued authorizing LPPC to acquire the Line. (LPPC Surrebuttal 2-3, June 23, 2025.)¹⁴ Any decision authorizing the forced sale of the Line would occur only after the processes specified in 49 C.F.R. § 1151.2 and § 1151.4 have been completed. Dismissing this action and requiring LPPC to refile the application is unnecessary and would serve no purpose; it would elevate form over substance and further delay consideration of the merits of this case.

DSR also argues that this proceeding should be dismissed because the state trial court's order directing LPPC to "cease its *ultra vires* actions" remains in effect. (DSR Rebuttal 1-2, June 20, 2025.) The Board notes that, with the passage of Act 334, the basis for that order appears to have been eliminated and, in any event, that order did not direct LPPC to withdraw its feeder line application.¹⁵ However, the parties should keep the Board apprised of any further rulings by the state trial court.

For these reasons, DSR's motion to dismiss, as well as its renewed motion to dismiss, will be denied.

¹⁴ LPPC also notes that SB 146 imposes no liability for past transactions. (*Id.* at 3.)

¹⁵ In initial briefing on its motion to dismiss, DSR similarly argued that dismissal of the feeder line proceeding "is appropriate" given the state trial court's order, saying there was no reason for the Board "to continue active consideration" of LPPC's application in the face of a decision by a Louisiana state court that the application is "*ultra vires*." (DSR Reply 2, July 22, 2024.) However, even the state court did not direct LPPC to withdraw the pending feeder line application. (See DSR Notice, Attach. 1 (DSR Pet. for Writs of Quo Warranto & Mandamus) at 7-8, Mar. 12, 2024 (requesting state trial court to issue writ of mandamus directing LPPC to withdraw feeder line application); DSR Letter, Attach. (Am. Judgment & Ord.) at 1, July 3, 2024 (denying DSR petition for mandamus).) Rather, the state court granted only the other writ sought by DSR, and directed 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 [Board]." (DSR Letter, Attach. (Am. Judgment & Ord. at 2), July 3, 2024.) LPPC does appear to have "discontinued its pursuit" of the application as the proceeding was placed in abeyance.

Procedural Schedule. With the proceeding removed from abeyance, notice either accepting or rejecting LPPC's amended application (which was completed with LPPC's submission of revised valuation evidence just prior to the case being placed in abeyance) must be published in the Federal Register. 49 C.F.R. §1151.2(b). A notice accepting an application must also establish the schedule for competing applications and responses. Id. Under the Board's regulations, unless otherwise scheduled in the notice, competing applications must be filed within 30 days after the initial application is accepted, 49 C.F.R. § 1151.2(c)(1), verified statements and comments addressing the initial and competing applications must be filed within 60 days after the initial application is accepted, 49 C.F.R. §1151.2(e), and verified replies by applicants and other interested parties must be filed within 80 days after the initial application is accepted, 49 C.F.R. § 1151.2(f).

LPPC and DSR will be directed to meet and confer and submit to the Board (jointly if possible, otherwise separately) by October 9, 2025, a proposed procedural schedule. The proposed schedule(s) should take into account a reasonable period of time for DSR to complete discovery and the general timeline for record-building contemplated by the Board's regulations. See 49 C.F.R. § 1151.2(c), (e), (f). After the Board has received the proposal(s), the Board will set the procedural schedule in the notice published in the Federal Register.

DSR's Request for Attorneys' Fees. DSR has requested that the Board award DSR attorneys' fees for costs it has incurred having to defend against LPPC's "ultra vires" action. (DSR Mot. to Dismiss 3, June 27, 2024; see DSR Rebuttal 2, 9, June 20, 2025 (requesting award of "attorneys' fees and costs").)¹⁶ DSR claims, in particular, that it incurred substantial expense in complying with LPPC's valuation discovery requests and in seeking discovery from LPPC and its co-parties, NLA and SEAEDD. (DSR Mot. to Dismiss 4, June 27, 2024.)¹⁷ According to DSR, LPPC knew or should have known that it lacked authority to seek property outside East Carroll Parish when it initiated this proceeding. (DSR Rebuttal 4, June 20, 2025.) DSR asserts that although the Board does not often grant attorneys' fees, it has done so when the impact of a party's actions has been egregious. (DSR Mot. to Dismiss 5, June 27, 2024 (citing Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty., N.J. (Conrail), AB 55 (Sub-No. 686X) et al. (STB served Oct. 26, 2016), aff'd (STB served Apr. 28, 2017)).)

LPPC argues that the Board should deny DSR's request for attorneys' fees because DSR "waited for over three years and seven months to question LPPC's statutory authority," (LPPC Reply to DSR Mot. 3, 10-11, July 16, 2024), when it could have done so without incurring the cost of discovery, (id. at 15-16). LPPC also asserts that, in its view, DSR had no right to engage in discovery before the Board accepted LPPC's amended feeder line application and issued a new procedural schedule, but that DSR nevertheless "chose to conduct an extensive campaign to compel LPPC, SEAEDD and NLA to respond to numerous discovery requests." (Id. at 12-13;

¹⁶ DSR does not state what "costs" it seeks.

¹⁷ DSR's motion requests attorneys' fees incurred after January 4, 2023, in complying with LPPC's discovery requests and in seeking discovery from LPPC and its co-parties, which included motions to compel filed against all three entities. (Id. at 4-5.)

accord LPPC Reply to Mot. to Dismiss 7, June 18, 2025 (request for attorneys’ fees should be denied given that DSR “had no right to engage in such discovery” and because DSR could have raised the issue of LPPC’s statutory authority in a motion to dismiss prior to pursuing discovery).) LPPC argues that, in any event, the request for attorneys’ fees is now moot in light of the enactment of legislation to clearly provide LPPC with statutory authority to acquire rail-related property outside East Carroll Parish, La. (Id.)

DSR’s request for attorneys’ fees will be denied. As DSR notes, the Board rarely grants attorneys’ fees. See Utah Cent. Ry.—Pet. for Declaratory Ord.—Kenco Logistic Svcs., LLC, FD 36131, slip op. at 2 n.4 (STB served Mar. 20, 2019) (“The Board does not typically award attorney’s fees and finds that doing so is not justified here.”) (citing Springfield Terminal Ry.—Pet. for Declaratory Ord.—Reasonableness of Demurrage Charges, NOR 42108, slip op. at 2 & n.2 (STB served June 22, 2009)); Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081 (Sub-No. 2), slip op. at 8 (STB served Sept. 25, 2015) (denying request for attorneys’ fees despite the suggestion that the opposing party had failed to correct a misrepresentation). DSR cites Conrail to support its claim that an award of attorneys’ fees is warranted. There, however, “the ALJ found—with ample record support—that [a party] repeatedly failed to meet his discovery obligations, violated an ALJ order when doing so, made misrepresentations as to whether he had responsive documents, and was not truthful in his statements to the ALJ.” Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty., N.J., AB 55 (Sub-No. 686X) et al., slip op. at 11 n.14 (STB served Apr. 28, 2017). LPPC’s pursuit of its amended feeder line application, and its efforts to resist discovery from DSR, do not, on this record, warrant an award of attorneys’ fees.¹⁸ The Board finds that attorneys’ fees are not justified here.¹⁹

It is ordered:

1. This proceeding is removed from abeyance.
2. DSR’s July 22, 2024 reply to LPPC’s response to DSR’s initial motion to dismiss; DSR’s June 20, 2025 rebuttal to LPPC’s response to DSR’s renewed motion to dismiss; and LPPC’s June 23, 2025 response to DSR’s June 20, 2025 rebuttal are accepted into the record.

¹⁸ In support of its request for attorneys’ fees, DSR argues that “it has incurred substantial sums of money on an action that was ultra vires all along.” (Mot. to Dismiss 3, June 27, 2024; see id. at 4 (describing types of costs incurred).) But, as LPPC points out, nothing prevented DSR from questioning LPPC’s statutory authority at an earlier point in time, when those costs could have been avoided. (LPPC Reply to DSR Mot. 10, July 16, 2024.) The Board also finds that LPPC’s initial efforts to oppose discovery from DSR before the ALJ, (see id. at 13-14), were not unreasonable.

¹⁹ In response to LPPC’s assertion that DSR was not permitted to engage in discovery, the Board notes that the ALJ previously assigned to this case found that DSR was permitted to engage in discovery. 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 3-4 (STB served Apr. 15, 2024). That order was not appealed. (LPPC Reply to Mot. to Dismiss 4, June 18, 2025.)

DSR's September 16, 2025 letter is accepted to the extent discussed above and otherwise stricken. LPPC's September 17, 2025 request for leave to file a surreply is denied.

3. DSR's motion to dismiss and renewed motion to dismiss are denied.

4. The parties shall meet and confer and submit to the Board (jointly, if possible, otherwise separately) by October 9, 2025, a proposed procedural schedule for completing the record in this proceeding, including the filing of competing applications, verified statements and comments addressing the initial and competing applications, and verified replies, as discussed above.

5. DSR's request for attorneys' fees is denied.

6. The parties should discontinue service of filings and documents relating to this proceeding on Judge McCarthy.

7. This decision is effective on its service date.

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