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May 20, 2026

VIA E-FILING

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

ENTERED
Office of Chief Counsel
May 20, 2026
Part of
Public Record

*Re: FD 36447, Lake Providence Port Commission – Feeder Line Application – Line of
Delta Southern Railroad, Inc. Located in East Carroll and Madison Parishes, Louisiana;
Status Report*

Dear Chief of Case Administration:

If anything, Lake Providence Port Commission’s reply filed on May 13, 2026 (Document No. 311340, hereinafter “Reply”), proves the need for the discovery sought by Delta Southern Railroad, Inc. (“DSRR”) to depose Mr. Killen and Ms. Hargrove. The Board’s rules are clear that DSRR, as the party seeking discovery, can use all the tools available in whatever order it chooses. There is no procedural schedule in this matter; LPPC argued that there was no need for a special discovery period in the procedural schedule to meet the Board’s requirement that the parties provide for an adequate time for discovery, which means LPPC’s position was that discovery would be an ongoing process even after issuance of a procedural schedule; and LPPC’s arguments about delay are nothing more than obstructionist, which has been its chosen tactic regarding discovery throughout this matter.

LPPC’s reply has little to do with whether the discovery sought is likely to lead to admissible evidence in this proceeding. Instead, LPPC attempts to argue the merits of the topics that are in the deposition notices that are likely to lead to admissible evidence.¹ DSRR recognizes

¹ For example, LPPC’s reply misstates the legal standard when it claims that DSRR must “attempt to demonstrate that it has provided adequate rail service to all shippers . . .” Reply at n.1. DSRR has no burden of proof. The burden of proof is on LPPC to have shown in the Amended Application that a majority of shippers receive inadequate service. 49 U.S.C. 10907; 49 C.F.R. 1151.3(a)(11)(i)(B). LPPC attempts to reframe the legal standard and the burden of proof because discovery has revealed that LPPC has failed to meet that burden in the Amended Application because DSRR has provided and is providing adequate service to a majority – if not all – actual shippers, which DSRR will show at the appropriate time after the Board issues a procedural schedule.

that the proceeding has not reached the stage at which DSRR must file its response on the merits to (what is becoming clearer and clearer through discovery) a fundamentally flawed Amended Application. DSRR merely points out here that LPPC's Reply further makes the case for the depositions sought.

The financial responsibility presumption for governmental entities is a rebuttable presumption.² LPPC's reply therefore raises more issues than it resolves and demonstrates that a deposition of Mr. Killen is likely to lead to admissible evidence regarding the issues listed in the deposition notice, including but not limited to, the bond application.

As discovery has revealed LPPC's and North Louisiana and Arkansas Railroad's ("NLA") financial unfitness and year-after-year operating losses, LPPC is now trying to shift financial responsibility to an entity that is not an applicant or party to this proceeding – the State of Louisiana. Reply at 5-6. LPPC claims that the Board should "disregard the presumption that the State of Louisiana and LPPC are financially responsible."³ Reply at 5. But the bond application is no proof that Louisiana will become an applicant in this proceeding or financially the Line. LPPC applied for "Revenue Bonds" (bond application attachment to Reply), not general obligation bonds. Revenue bonds are not backed by the full faith and credit of the State of Louisiana.

Notwithstanding any other law to the contrary, *no port commission and no port, harbor, or terminal district shall issue bonds or other evidences of indebtedness, hereinafter referred to as "bonds", which are secured by the full faith and credit of the state;* provided, however, that any port commission or port, harbor, or terminal district may, if authorized by other law, issue bonds secured by the full faith and credit of the state to refund bonds previously issued which are secured by the full faith and credit of the state.

Louisiana Revised Statutes 39:1364.1. DSRR can find no other law that provides LPPC authority to issue bonds that obligate the State of Louisiana. And LPPC's attachment of Louisiana Revised Statute 34:1505(C) confirms that the bonds will not be issued in the name of the State of Louisiana: "[LPPC], with the approval of the State Bond Commission, is authorized to incur debts for its lawful purposes, and to issue *in its name*, negotiable bonds or notes . . ." LPPC's Reply is internally inconsistent because after claiming that title to the Line at issue "would be taken in the name of the State of Louisiana" (Reply at 5), LPPC then says "[a]ssuming that LPPC will be authorized to acquire the [Line] for the State of Louisiana." Reply at 5. These new revelations about the potential involvement of the non-applicant, non-party State of Louisiana demonstrate why a deposition of Mr. Killen, who filed the bond application, is important and likely to lead to admissible evidence.

² See e.g., *See Ind. Sw. Ry.--Aban. Exemption--in Posey & Vanderburgh Ctys., Ind.* (Ind. Sw. Ry. Apr. 2011), STB AB 1065X, 2011 STB LEXIS 159 at *11 (STB Decided Apr. 7, 2011).

³ Given that the presumption is rebuttable, it is improper for the Board to make any finding about LPPC's financial responsibility before DSRR decides whether to attempt to rebut that presumption or before DSRR presents evidence about LPPC's financial weakness. This is another example of LPPC seeking to argue merits in response to a simple request for discovery.

LPPC misses the point with respect to the INFRA grant, which requires exploration with Ms. Hargrove. LPPC concedes in the Reply that it took the entire grant just to repair SEAEDD, LPPC, and NLA's track (20 miles of which is presently still only at exempted status after substantial expenditures of taxpayer money⁴), even with no grant funds spent on the Line at issue in this proceeding. DSRR warned of this result when the Federal Railroad Administration awarded the grant at a reduced level compared to what was sought. Given the prominence in the Amended Application of DSRR raising concerns about the allocation of funds from a reduced grant, exploration of the administration of the INFRA grant through the deposition of Ms. Hargrove is likely to lead to admissible evidence.

Finally, LPPC and SEAEDD refused to provide proposed dates or locations for the depositions of Mr. Killen and Ms. Hargrove. The proposed dates for depositions, which may bridge more than one calendar day, are because locations for the depositions in these small towns are only available for a limited time each day. DSRR is open to locations identified by LPPC and SEAEDD that will permit us to complete a full deposition in a single day. In addition, it is unclear whether the dates proposed can hold because LPPC has not produced its 2025 financial documents nor any communications related to the bond application. DSRR assumed that LPPC would provide these documents timely when it filed this motion. A short conference with the Administrative Law Judge may be helpful to force the parties to agree to dates and locations that are more workable for everyone.

Sincerely,

/s/ John M. Scheib

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

cc: Parties of Record
Administrative Law Judge Soulikias

⁴ Reply at n. 8 (conceding NLA's track remains in Federal Railroad Administration excepted status even today).