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**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  
August 18, 2023  
Part of  
Public Record

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

Dear Ms. Brown:

We again write in response to more filings made by Lake Providence Port Commission, Southeast Arkansas Economic Development District, Madison Parish Port Commission, and North Louisiana & Arkansas Railroad ("NLA") (collectively ("LPPC")) on August 7 and August 9, 2023. LPPC's latest filings seek to drag the Surface Transportation Board ("STB") into day-to-day operating issues where there is more than enough blame to go around, including on LPPC and NLA, and where there has been no inadequate service to customers on the part of Delta Southern Railroad ("DSRR"). Moreover, LPPC's filing spree does nothing to remedy the fact that its feeder line case remains fatally flawed and that this proceeding should promptly be dismissed before the record gets further muddled by LPPC. LPPC's serial filings are, however, returning this proceeding into the quagmire from which the STB sought to remove it in its Decision of August 23, 2022. STB FD 36447 *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern R.R. Located in East Carroll and Madison Parishes, LA.* (served Aug. 23, 2022) ("August Decision").

LPPC admits in one of its newest verified statements that it was NLA's derailment on LPPC's track that occurred in mid-July. Verified Statement of Noah B. Robbins, dated August 7, 2023, at ¶ 2 ("Robbins VS"). Moreover, LPPC does not dispute that:

- DSRR has been working with customers starting on the day Patriot Rail LLC et al. ("Patriot Rail") closed on ownership of DSRR.
- DSRR quickly opened lines of communication with NLA – mere weeks after Patriot Rail closed on ownership of DSRR.
- NLA did not contact DSRR about any potential interchange traffic with DSRR in the intervening time, and no traffic was tendered for interchange by NLA to

DSRR during that intervening time. To date, NLA has tendered zero cars to DSRR in 2023.

- DSRR has also made substantial investments in segments of the railroad and that that investment in the railroad is ongoing.

The Robbins VS also undermines LPPC's case for feeder line relief. A feeder line case requires a showing that the public convenience and necessity require or permit the sale of a rail line, and LPPC must prove each of the five criteria set forth in 49 U.S.C. 10907(c)(1). LPPC's filing undermines its case with regard to two of those criteria:

- (1) the rail carrier operating the line has refused to make the necessary efforts within a reasonable time to provide adequate service to shippers who transport traffic over the line; and
- (2) the transportation is inadequate for the majority of shippers who use the line.

49 U.S.C. 10907(c)(1-2). Mr. Robbins admits with regard to the cars involved in the June incident that "[a]fter rerailling was finished on Tuesday, June 27, 2023, the cars were moved to McGehee and interchanged to UP later that day." Robbins VS at ¶ 7. LPPC does not dispute that NLA has not tendered any carloads to DSRR in 2023 or that Patriot Rail has made substantial investments in the line. In short, the day-to-day events about which LPPC complains have not resulted in inadequate service to customers. LPPC should not be consuming the STB's limited resources with multiplying filings that are about day-to-day operational matters and that demonstrate that there is no inadequate service to customers.

LPPC is again muddying this proceeding with its serial, yet largely irrelevant, filings. LPPC began its long-running attempt to seize DSRR's property by filing a feeder line application on November 12, 2020. That record became muddled by repeated submissions by LPPC and by LPPC's submission of repeated and multiple verified statements. Accordingly, in the decision issued on August 23, 2022, the STB attempted to bring order and coherence to this proceeding. The STB specifically cited LPPC's continual filings of additional evidence and argument as the reason that it directed LPPC to file "all of the arguments and evidence on which it will rely" in its amended application. August Decision at 7. Moreover, the STB was clear that "to facilitate the development of a clear and coherent record, LPPC must present each witness's sworn testimony in support of the application in a single verified statement from each witness." *Id.* 6-7.

LPPC continued its long-running attempt to seize DSRR's line by filing such amended application on January 4, 2023 -- just days before Patriot Rail closed on its acquisition of DSRR on January 9, 2023. Disregarding the STB's directive for a single, unified filing as mandated in the August Decision, LPPC again started down the path of producing rolling evidence and argument with its filing on July 10, 2023. It has now accelerated down that path with new filings

on August 7 and August 9, 2023, including two new verified statements. With each LPPC filing, the STB's goal of developing a "clear and coherent record" slips away.<sup>1</sup>

As argued in DSRR's Motion to Reject the Amended Application as incomplete, LPPC has not and cannot state a prima facie case in its feeder line application. STB FD 36447 *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern R.R. Located in East Carroll and Madison Parishes, LA.* at 2 (served Feb. 2, 2023) ("DSR's motion to reject and LPPC's response raise substantive questions about what is necessary to show that a feeder line application is complete under 49 C.F.R. § 1151.2(b)(1)"). Accordingly, DSRR renews its request that this proceeding be terminated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Scheib". The signature is fluid and cursive, with the first name "John" and last name "Scheib" being more prominent than the middle initial "M".

John M. Scheib

Attorney for Delta Southern Railroad

cc: Richard Streeter, Counsel LPPC

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<sup>1</sup> DSRR has read with care the August Decision and, like the STB, similarly seeks a clear and concise record. Nevertheless, if the STB deems it necessary for DSRR to respond to all of LPPC's serial filings with verified witnesses statements, DSRR stands ready to do so.