

**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 REPLY TO LAKE PROVIDENCE PORT
COMMISSION’S OPPOSITION TO MOTION TO DISMISS AND FOR ATTORNEYS’
FEES**

Lake Providence Port Commission makes two arguments in opposition to dismissal of this proceeding in the face of an explicitly clear court ruling that LPPC must “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 first is an argument that the Board should ignore the Louisiana court. The second argument is that this proceeding should be preserved because, notwithstanding LPPC’s sworn discovery responses to the contrary, there is some other state agency that is not a party to the proceeding that somehow gave LPPC powers that the Louisiana legislature denied LPPC and that LPPC has never before identified. Both fail. And both ignore the prejudice to DSRR that justify an award of attorney fees to DSRR.

¹ The Board regularly accepts reply filings for completeness of the record and when it assists with administrative efficiency. *Navajo Transitional Energy Co., LLC v. BNSF Ry. Co.*, NOR 42179, 2017 STB LEXIS 218 at *6-7 (Sept. 7, 2023) (Judge McCarthy) (listing numerous instances in which reply-to-reply permitted and permitting it in the case). To the extent necessary, DSRR requests leave to file this pleading.

I. Dismissal of this Proceeding Is Appropriate

Given the Louisiana court order that LPPC must “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,” dismissal of this proceeding is appropriate. *See* Court Order, provided as Attachment A.

While LPPC is seeking a suspensive appeal of that decision and has co-filed a separate lawsuit to try to collaterally attack that decision, there is no reason for the STB to continue active consideration of LPPC’s Amended Application in the face of a judicial decision by the Louisiana state court that LPPC’s Amended Application (and original application) is *ultra vires*. The expensive and long-running proceeding has been detailed in this docket and in the Board’s decisions in this proceeding.

- On November 12, 2020, LPPC filed an application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire from Delta Southern Railroad (“DSRR”) a 20-mile segment of rail line between milepost 471.0 and milepost 491.0, together with various ancillary tracks, in East Carroll and Madison Parishes, La. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta S. R.R. Located in East Carroll and Madison Parishes, LA*, FD 36447 at 2 (STB served Aug. 23, 2022).²
- By decision served January 15, 2021, the application was accepted as complete. *Id.* at 3.
- The parties conducted certain discovery. *Id.* at 3.
- On March 4, 2022, LPPC moved to file a supplemental application to acquire DSRR’s entire line from milepost 471.0 to its point of interchange with KCS, located at or around milepost 498.6. *Id.* at 4. To this point, DSRR had already incurred substantial legal fees and costs to defend against repeated attempts to

² As the Board is aware, footnote 7 of the Reply is irrelevant because all the activity described therein happened before the Amended Application restarted the case from scratch rendering moot all the activity in this proceeding related to a line segment that was no longer the one at issue.

supplement that application and against the baseless allegations made in the application.

- On August 23, 2022, the Board granted LPPC’s motion to supplement its application on the grounds that “nothing would prevent LPPC from filing such an expanded feeder line application in a separate docket” and provided that it do so “in a single submission that consists of a full application with supporting exhibits, without incorporating by reference the initial application or any other filings.” *Id.* at 6 & 10.
- On September 23, 2022, a consortium led by Patriot Rail Company LLC (“Patriot Rail”) filed a verified notice of exemption in Docket No. FD 36642 to acquire control of DSRR. The exemption took effect on January 6, 2023, effectively providing the same relief that can be obtained in a feeder line case. See *Patriot Rail Co.—Control Exemption—Delta S. R.R.*, FD 36642 (STB served Dec. 23, 2022). DSRR spent more than \$400,000 on infrastructure improvements in 2023. See Verified Statement of Rob Thrall at ¶ 4 (STB filed June 27, 2024). DSRR continues to move about 1000 rail cars per year in service to customers. *Id.*
- On January 4, 2023, LPPC filed the Amended Application to seek even more of DSRR’s railroad than the original application sought to seize. *Lake Providence Port Comm.—Feeder Line Application—Line of Delta S. R.R. Located in East Carroll and Madison Parishes, LA*, FD 36447 (STB served Nov. 20, 2023). That application was still not complete because it lacked any estimate of the constitutional minimum value. *Id.*
- On November 20, 2023, the Board ordered valuation discovery of DSRR by LPPC for purposes of completing the application and referred that and all other discovery matters to a Board-appointed administrative law judge (“ALJ”). *Id.*
- During the course of 2024, DSRR sought discovery of applicant LPPC, as well as other parties, which LPPC and the other parties fought vigorously. See Motion to Compel (STB filed Mar. 8, 2024), Reply in Opposition to Emergency Motion (STB filed Apr. 1, 2024), and Letter (STB filed Apr. 3, 2024).
- Meanwhile, LPPC stonewalled DSRR discovery of it and other parties. DSRR was forced to file and litigate motions to compel and against LPPC and other parties, respond to voluminous emails to the ALJ from LPPC, and brief emergency motion filed by LPPC. See Motion to Compel (STB filed Mar. 8, 2024), Reply in Opposition to Emergency Motion (STB filed Apr. 1, 2024), and Letter (STB filed Apr. 3, 2024).
- LPPC filed an emergency motion to seek to avoid responding to DSRR’s discovery of it and other parties. On April 15, 2024, the Board-appointed ALJ, rejected arguments advanced by LPPC to avoid discovery. See Order Resolving

LPPC’s Emergency Motion and Ordering DSRR and LPPC to Meet and Confer (STB served April 15, 2024).

- During the same time, DSRR responded to numerous discovery requests from LPPC and completed discovery of DSRR with respect to valuation of the extended line in the Amended Application. DSRR, a small Class III railroad, incurred more than \$150,000 in costs, including to comply with LPPC’s expansive and largely unnecessary discovery requests. *See* Verified Statement of Rob Thrall at ¶ 3 (STB filed June 27, 2024).

LPPC’s attempt to distract the Board from LPPC’s lack of authority to pursue this proceeding with weak criticism of DSRR for not raising the issue of LPPC’s authority earlier rings hollow. LPPC asserted time and again to the STB, through signed pleadings by its representatives, that it could legally own and operate the line it sought to obtain. The writ of quo warranto issued by the Louisiana Court renders all of those representations false. It is LPPC’s reckless disregard of its own limited authority that caused this issue.

Any attempt to blame DSRR for LPPC’s own misstatements is not credible – especially because jurisdictional issues may be raised at any time. *Kansas City Power & Light Co. v. Union Pac. R.R. Co.*, NOR 42095, 2006 STB LEXIS 518 at *9 (STB served Jul. 26, 2006) (“subject-matter jurisdiction can be raised at any time and cannot be waived by a party”). The fact that DSRR learned well into the proceeding through discovery of LPPC (which LPPC fought hard to avoid)³ that LPPC lacked authority to file the application at the Board is of no avail. Reply at 10.

In short, this proceeding has been running for three and one-half years. It has cost DSRR substantial sums of money to defend against attempts to amend the application, overly-broad discovery, bad-faith arguments rejected by the Board-appointed ALJ to avoid discovery of

³ *See* Motion to Compel (STB filed Mar. 8, 2024), Reply in Opposition to Emergency Motion (STB filed Apr. 1, 2024), and Letter (STB filed Apr. 3, 2024).

LPPC, and baseless claims that are disproved by the nearly 1000 rail cars per year that DSRR transports over the line each year for its customers, including interchanging traffic into the national rail system with a connection to CPKC (formerly Kansas City Southern). *See* Verified Statement of Rob Thrall at ¶ 4 (STB filed June 27, 2024). And now, a court has made clear that LPPC never had the power to file even the original application.

LPPC’s attempts to avoid dismissal of this proceeding from the court’s clear order both fail. The Board should dismiss this proceeding.⁴

First, LPPC contends that the Board should ignore a ruling of a court in Louisiana about the scope of LPPC’s power. But it cites no authority for the STB doing so. The STB cannot decide LPPC’s authority under state law, and so it is not in a position to reject or disagree with the definitive ruling from the Louisiana courts regarding the state-law issue of LPPC’s authority. LPPC points to the actions of other agencies to contend that it actually has the power to seize property in excess of the powers granted to it by the Louisiana legislature. Reply at 3-5. In addition, these arguments are irrelevant because the Board cannot grant LPPC powers that the Louisiana legislature has expressly denied. Reply at 5-7 (arguing the Board should interpret Louisiana statutes and correspondence to grant LPPC powers it does not have). In any event, the Louisiana court considered these arguments and rejected them. *See* LPPC’s Opposition to Petition Quo Warranto, provided as Attachment B.

Although not argued in its motion to dismiss, LPPC has hinted at a related argument – that the court’s order does not require the dismissal of this proceeding because LPPC could amend its application to seek only DSRR’s property located in East Carroll Parish. *See* Reply at

⁴ Although the Louisiana court’s order is clear and unequivocal, at a minimum this proceeding should be stayed pending resolution of the scope of LPPC’s and Northeast Louisiana Multimodal Development District’s (“NELMMD”) powers are resolved.

n. 6; LPPC Letter at 1 (STB filed July 5, 2024). Such an amendment would effectively restart this case for the third time – in each case solely because of LPPC’s actions – to DSRR’s continuing detriment and prejudice. It was LPPC’s desire to extend the line that was the subject of this proceeding even further outside its legal authority resulted in its request to file the Amended Application. *Lake Providence Port Comm.— Feeder Line Application—Line of Delta S. R.R. Located in East Carroll and Madison Parishes, LA, FD 36447* (STB served Aug. 23, 2022). To seek leave to amend again – effectively asking to restart the proceeding for a third time – LPPC would have to shrink the line segment substantially (indeed shorter than sought in the original application) to only that portion of the line in East Carroll Parish. That would require LPPC to take a position contrary to the arguments it made when it last sought leave to amend the application to expand the line segment it sought that a obtaining a shorter segment through a feeder line proceeding would serve no purpose. Motion to File a Supplemental Application to Acquire the Entire Lake Providence Line Between MP 471.0 and MP 498.6, *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern R.R. Inc. Located in East Carroll and Madison Parishes, LA, Finance Docket No. 36447 at 2* (STB filed Mar. 4, 2023). LPPC repeats that assertion here. Reply at n.6. LPPC would just be continuing to waste the Board and DSRR’s time and money.⁵ In sum, DSRR would be prejudiced, again,

⁵ A third application would also require going back to square one. The parties would have to determine anew which customers allegedly want to use the newly defined line segment, if any. They would have to determine which customers actually use the newly defined line segment as well. The verified statements that have been submitted by LPPC would be worthless both in scope of the line and would be (more) stale from the passage of time. That means starting discovery new because redefining the line without starting discovery over would be prejudicial to at least DSRR, who will certainly serve new discovery on LPPC and other parties.

In addition to requiring new discovery, a new amended application would require a new valuation discovery and expert report by LPPC. LPPC’s recently submitted expert report would be inapplicable to the line at issue if LPPC were simply to truncate the line to end at the border of East Carroll Parish. Reply at 6. LPPC sought discovery for valuation purposes related to the Line as defined in the Amended

from this third re-scoping of the line as LPPC continues to fish for a case when customers continue to be served more than adequately by DSRR. Verified Statement of Rob Thrall at ¶ 4 (STB filed June 27, 2024).

LPPC's second argument reinforces the fact that dismissal of this matter is the appropriate remedy. LPPC points to a new lawsuit it has co-filed – without naming DSRR as a party⁶ – to seek some judicial determination collaterally attacking the writ of quo warranto that orders 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.” That lawsuit is procedurally improper and substantively meritless for many reasons, but suffice it to say that it is an issue for the Louisiana state courts to resolve. While that is being sorted out, this case should not proceed. Clearly the Board cannot rule on the question presented by LPPC – whether the NELMMD can confer power upon LPPC. But it is a basic principle that only the legislature can confer power to an agency that the legislature created. And another party could not simply be substituted as the applicant in this proceeding.⁷

Application. DSRR produced information, including financial information for the entire line as defined in the Amended Complaint – not for a portion of the line.

⁶ DSRR is moving to intervene in that proceeding. Indeed, LPPC counsel did not even serve DSRR counsel with the suit instead sending it to DSRR's registered agent – presumably so it could benefit from any delay in deliver to DSRR.

⁷ When a party cannot bring a legal action, the remedy is dismissal -- not substitution of a new party. “[W]hen a party without standing brings a legal action, the action so instituted is, in effect, a legal nullity. . . . When a plaintiff lacks standing, “the sole remedy is a nonsuit followed by a new action brought in the name of a proper plaintiff.” *Remora Inv., L.L.C. v. Orr*, 74 Va. Cir. 358 (Fairfax Cty Cir. Ct. Nov. 16, 2007) (quoting *Harmon v. Sadjadi*, 639 S.E.2d 294 (Va. 2007)) (emphasis added); *see also Thome v. U.S. FDA*, 2011 U.S. Dist. LEXIS 81985 (N.D. Ca. July 27, 2011) (“A party lacking Article III standing at the outset of the lawsuit has no power to prosecute the action. As such, ‘a plaintiff may not amend the complaint to substitute a new plaintiff in order to cure a lack of jurisdiction, because a plaintiff may not create jurisdiction by amendment when none exists.’”). This policy is well-founded because an actual plaintiff with actual standing can bring a case in its own name (assuming statute of limitations and

Moreover, LPPC’s new theory is contradicted by LPPC’s sworn discovery responses related to its source of power to bring this proceeding. DSRR asked LPPC to “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,” and to include “specific citation to Louisiana statutory or constitutional provisions that proved such claimed authority.” *See* LPPC Discovery Responses to Interrogatories 65 and 66, attached as Attachment C. In response, LPPC cited *only* Louisiana Revised Statute 34:1503, which argument the Louisiana Court rejected. LPPC did not point to its new, erroneous theory rooted in another statute and some other state agency’s, the NELMMD, possible scope of power. Reply at 9.

In addition, LPPC did not produce any responsive documents that *should have been produced* if LPPC's new-found theory had any credibility. DSRR asked specifically for “all Documents related to and communications with Northeast Louisiana Railroad Development District regarding any rail property owned by DSRR, including the Line.” RFP No. 30, Attachment D. The Northeast Louisiana Railroad Development District (“NELRDD”), according to LPPC’s new lawsuit, is the predecessor entity with which LPPC allegedly contracted, and which is now known as the NELMMD. *See* LPPC July 5, 2024 Letter, Attach. B, ¶ 11. LPPC’s first response to this requested discovery was to argue that NELRDD was “not a party to this proceeding” and “is not involved with the Line,” claiming discovery of NELRDD documents and communications is “neither relevant nor likely to lead to discovery of admissible evidence.” *See* Discovery Response to Document Request 30, attached as Attachment D. Even

other bars have not arisen). DSRR can find no instance in which the Board permitted the substitution of an applicant. The Board should not start here. Maybe another party can file a feeder line action against DSRR (although DSRR’s service and response to actual and legitimate potential customers had been exceptional), maybe not. But that other party has to start a proceeding in its own name and submit current, actual evidence.

after providing an expanded response after the Board-appointed ALJ made clear LPPC would lose its objections to this request, LPPC *did not* produce any such agreement or documents or communications regarding that alleged cooperative development agreement. *See* Expanded Response to Document Request 30, attached as Attachment E. Yet now LPPC claims—in a filing in Louisiana state court and before this agency (Reply at 9) and notwithstanding its discovery responses in this proceeding—that some un-produced agreement is actually the entire basis for its legal theory of authority to pursue this case. Enough is enough. LPPC should be held to its sworn discovery responses, and this case dismissed.

II. An Award of Attorneys’ Fees to DSRR Is Appropriate.

An award of attorneys’ fees is appropriate here because of LPPC’s egregious behavior in pursuing this case when it had no authority to do so, fighting DSRR’s legitimate discovery that led to the revelation that LPPC lacked authority to pursue this proceeding, and its obfuscating discovery responses. *See Consolidated Rail Corp. – Abandonment Exemption – in Hudson County, NJ, Docket No. AB 55 (Sub-No. 686X) (STB Served Oct. 24, 2016), aff’d Consolidated Rail Corp. – Abandonment Exemption – in Hudson County, NJ, Docket No. AB 55 (Sub-No. 686X) (STB Served Apr. 27, 2017)*. The court in Louisiana has made clear that LPPC never had the power to pursue the original application or the Amended Application as both sought to seize property outside the limits of LPPC’s authority as granted to it by the Louisiana legislature. This three and one-half year proceeding should have never started in the first place. *See e.g., Pohl v. MH Sub I, LLC*, 407 F. Supp.3d 1253 (N.D. Fla 2019) (awarding attorneys’ fees upon dismissal of case after defendant incurred considerable cost in litigating case for over two years). LPPC knew the limitations placed on it by the express language of its enabling statute: “The commission shall exercise the powers herein conferred upon it, *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. Ann. § 34:1503(A) (emphasis added).

Additionally, LPPC’s litigation tactics have been obstructionist. A glaring first example, is LPPC’s failure to provide fulsome discovery responses. As discussed above, those failings have now been further exposed by LPPC’s search for some authority to keep this proceeding alive despite the clear ruling of the Louisiana court.

As another example, LPPC made arguments to avoid having to provide discovery that contradicted arguments it had made previously in the proceeding. In its joint reply to DSRR’s motion to compel discovery, LPPC contended that DSRR was not yet entitled to discovery. That frivolous argument completely contradicted positions taken by the LPPC parties early in the proceeding that DSRR had been too late to seek discovery when the original application was filed. As DSRR pointed out in its brief: “the LPPC parties cannot have it both ways by claiming, when the original application was pending, that DSRR was too late by serving discovery after the procedural schedule was entered, and now arguing DSRR is too early because there is not a procedural schedule.” *See* Delta Southern Railroad, Inc.’s Reply in Opposition to the Emergency Motion Filed on March 11, 2024 by the Lake Providence Port Commission, Northern Louisiana Railroad, and Southeast Arkansas Economic Development District at 9 (STB filed April 1, 2024). Moreover, an interpretation of the Board decision that prevented DSRR from discovery – as LPPC’s interpretations would have done – would have raised substantial due process problems – which LPPC’s experienced counsel certainly knows. Regardless, all of LPPC arguments – frivolous and otherwise – were rejected by the Board-appointed ALJ. *See* Order Resolving LPPC’s Emergency Motion and Ordering DSRR and LPPC to Meet and Confer (STB served April 15, 2024).

LPPC has attempted to muddy the waters by filing joint responses to individualized and distinct discovery that DSRR separately served on each of LPPC and the other parties. LPPC’s tactic required extra time and effort to disaggregate and interpret which objections each party was attempting to assert. *See* DSRR Letter filed April 3, 2024.

Do not be fooled by LPPC’s now humbled language – like “rather than quarrelling with DSRR”. Reply at 13. The frivolous arguments and gamesmanship of discovery by LPPC (examples of which are discussed above) only stopped when the Board-appointed ALJ (1) issued his April 15, 2024 decision and (2) in an April 24, 2024 telephonic hearing rejected LPPC’s counsel’s “100 years of experience” (Reply at 12) and made clear in no uncertain terms that LPPC would lose its objections to DSRR’s motion to compel if he had to rule.⁸ The ALJ made clear to LPPC that there was nothing to quarrel about any longer or he would rule against LPPC, reject all its objections, and grant DSRR’s motions to compel.

Next, LPPC’s own expenditures of money are irrelevant and deserve no sympathy because they are of its own making – unlike DSRR’s. Reply at 10. LPPC chose to initiate this proceeding and should have expected (1) DSRR to fight in opposition to the attempted taking of its property through a feeder line case especially when the underlying facts show that it is providing adequate service and better service than the carrier with whom LPPC claims it would contract if successful in the feeder line case and (2) to have to respond to discovery that the Board-appointed ALJ has agreed with DSRR has been and continues to be both timely and

⁸ Or, perhaps it was not made so clear because even now LPPC continues to claim that “notwithstanding the fact that the Board’s November 20 and December 11 Decisions limited discovery to valuation” and that it “continues to question” the Board-appointed ALJ. Reply at 13 & 14. Of course, the Board-appointed ALJ published an opinion finding against LPPC, which LPPC did not appeal and the Board did not overrule on its own motion. *See* Order Resolving LPPC’s Emergency Motion and Ordering DSRR and LPPC to Meet and Confer (STB served April 15, 2024).

relevant (*see* Order Resolving LPPC’s Emergency Motion and Ordering DSRR and LPPC to Meet and Confer (STB served April 15, 2024), and (3) to incur normal litigation costs. If it did not want to incur such costs, it could have chosen not to pursue this proceeding. DSRR had no such choice. Its only choice was to defend itself.

LPPC has acted throughout this feeder line proceeding as though anything it says must be taken as gospel and accepted by DSRR, the Board, or the ALJ. DSRR does not agree. LPPC is seeking to take from DSRR and its parent, Patriot Rail, property that Patriot Rail purchased in an open market transaction about one and one-half years ago for an open market price. LPPC claims that rail service is inadequate, yet DSRR is moving every bit of actual rail traffic tendered – including about 1000 rail cars per year – and is seeking new customers. *See Verified Statement of Rob Thrall at ¶ 4* (STB filed June 27, 2024). LPPC’s attitude continues even in the Reply where it asks the Board to rely on LPPC’s own assertions rather than the ruling of a court, the ruling of the Board-appointed ALJ, and facts. *See e.g.* Reply at 7 (arguing that the Louisiana court was wrong because LPPC believes evidence rejected by the court “conclusively demonstrates” LPPC has powers it lacks); Reply at 10 (contending that “LPPC has at all times acted within the scope of authority that it has been granted” despite a court ruling that its actions are *ultra vires*); Reply at 11 & 13 (arguing, contrary to the ruling of the Board-appointed ALJ, that “the Board did not authorize . . . DSRR to file” discovery); Reply at 15 (claiming the “sole instance [LPPC, NLA, and SEAEDD] balked at responding to discovery was in February 2021” despite the fact that LPPC filed an emergency motion to avoid discovery and DSRR was forced to file motions to compel).

DSRR will not take LPPC’s assertions at face value and has no choice but to respond to untrue assertions. It has and will continue to conduct lawful discovery, as the Board-appointed

ALJ has ruled it has done, that ensures due process is followed. And it will fight to protect its property and good name as long as this proceeding is pending.⁹ LPPC should have expected no less when it started the proceeding. LPPC's tactics in filing a case it had no power to file, to try to avoid discovery, and to deny DSRR due process in this proceeding that LPPC chose to initiate have been egregious and extremely costly to a small Class III railroad. Attorneys' fees are appropriate.¹⁰

Attorneys' fees are also appropriate given LPPC's continuing attempts to keep this proceeding alive despite the Louisiana court's clear ruling. Indeed, LPPC claims it might attempt a case against DSRR for a third time – including possibly in someone else's name. Reply at 9-10. Attorneys' fees are appropriate where “defendants may incur duplicative attorney's fees and it is appropriate in this case to condition dismissal on Plaintiffs' payment of any attorney's fees and expenses that will be duplicated . . . subject to Defendants' articulation of their reasonable attorney's fees and approval by this Court.” *Hill v. Pope*, 2009 U.S. Dist. LEIS 14198 (D. Colo. 2009); *see also Reynard v. Washburn Univ. of Topeka*, 2021 U.S. Dist. LEXIS 214233 (D. Kan. 2021).

⁹ DSRR has not completed discovery of LPPC, NLA, or SEAEDD and reserves the right to serve further discovery upon them based on answers to interrogatories and responses and incompleteness of responses to previously-served discovery requests. DSRR also intends to take discovery of third-parties if and after a procedural schedule is issued, but has not wanted to burden non-parties if it is not necessary.

¹⁰ DSRR defers to the Board regarding a preferred process for determining the date from which and the appropriate amount of attorneys' fees to be paid by LPPC to DSRR.

Respectfully submitted,

/s/ John M. Scheib

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Attorneys for: Delta Southern Railroad, Inc.
Dated: July 22, 2024

CERTIFICATE OF SERVICE

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

Mr. Richard H. Streeter
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Mr. Michael McBride
Van Ness Feldman
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Washington, D.C. 20006
mfm@vnf.com

/s/ John M. Scheib

John M. Scheib
Dated: July 22, 2024

ATTACHMENT A – Court Order

WRIT OF QUO WARRANTO

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.	NO. <u>23740</u> DIV. <u>B</u> 6 TH JUDICIAL DISTRICT COURT PARISH OF EAST CARROLL STATE OF LOUISIANA
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TO: LAKE PROVIDENCE PORT COMMISSION, THROUGH ITS AGENT, PORT DIRECTOR - WYLY GILFOIL, 409 PORT ROAD, LAKE PROVIDENCE, LA 71254-9801.

YOU ARE HEREBY NOTIFIED in the name of the State of Louisiana and of the Sixth Judicial District Court in and for the Parish of East Carroll of the JUDGMENT & ORDER AND AMENDED JUDGMENT & ORDER filed on the 24th and 26th day of June, 2024, a certified copy of said JUDGMENT & ORDER AND AMENDED JUDGMENT & ORDER is attached, for the above styled matter as follows:

➤ PLEASE SEE ATTACHED CERTIFIED DOCUMENTS.

WITNESS the Honorable JAMES H BODDIE JR, JUDGE AD HOC, Sixth Judicial District Court, Division B. Granted under the impress of the seal the 19th and 26th day of June, 2024.

*****THE CLERK OF COURT' S STAFF CANNOT PROVIDE LEGAL ADVICE*****

This WRIT was issued by the Clerk for the Court for the 6th Judicial District Court on the 27th day of June, 2024.

Requested by: LEAKE & ANDERSSON LLP
1100 POYDRAS ST, SUITE 1700
NEW ORLEANS, LA 70163-1701

Rene Thomas Williams
Clerk of Court

By: Jenny Ross
Deputy Clerk of Court
(SEAL)

RETURNED & FILED

DEPUTY CLERK OF COURT

SERVICE INFORMATION

PERSONAL SERVICE DOMICILIARY SERVICE
SERVICE MADE ON: _____
SERVICE DATE: _____
MILEAGE: _____ DEPUTY: _____

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6TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST CARROLL

STATE OF LOUISIANA

CASE NO.: 23740

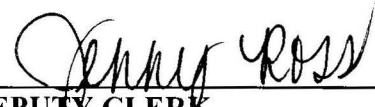
DIVISION "B"
HON. JAMES BODDIE,
AD HOC, PRESIDING

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: JUN 26 2024


DEPUTY CLERK

91139

AMENDED JUDGMENT & ORDER

The above-captioned matter came on for hearing on May 23, 2024, with the trial being conducted in the Madison Parish Courthouse by agreement of and for the convenience of the Court and all parties. Considering the Petition for Writs of Quo Warranto and/or Mandamus filed by Delta Southern Railroad, Inc. as well as the Answer of Defendants Lake Providence Port Commission, Wyly Gilfoil, Mark Buntyn, Roger Clement, Jerry King, Francis Lensing, Karvan Powell, and James Thom, IV; the pre-hearing briefs; the evidence received; the arguments of counsel in the above-entitled matter; and the Constitution and Laws of the State of Louisiana, and for the reasons announced in open court during the trial on May 23, 2024,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff Delta Southern Railroad, Inc.'s, Petition for Mandamus is DENIED;

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff Delta Southern Railroad, Inc.'s, Petition for Writ of Quo Warranto is GRANTED

and that the writ shall issue and be made executory ordering that 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.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that all costs of these proceedings are to be borne by Defendants to the extent allowable by law.

Signed at Tallulah, Louisiana, this 26 day of June 2024.


JAMES BODDIE, JUDGE AD HOC

SUBMITTED BY:

/s/ Leila A. D'Aquin

EDWARD T. HAYES, #25700
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-and-

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Counsel for Delta Southern Railroad, Inc.

ATTACHMENT B -- LPPC's Answer to Writs

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***Thomas W. Bishop**
*1973 - 2016

John D. Crigler, Jr.
johnnie@bpcmlaw.com

FACSIMILE TRANSMITTAL

To:

EAST CARROLL CLERK OF COURT

From:

JOHNNIE CRIGLER / LISA

Date:

MAY 20, 2024

Re:

DELTA SOUTHERN RAILROAD v 23740 LAKE PROVIDENCE PORT, ET AL

Pages:

44

PAGES INCLUDING THIS COVER SHEET

**** ORIGINAL TO FOLLOW IN U.S. MAIL ****



**BISHOP PAXTON
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~~(318) 574-3135 facsimile~~ Tallulah, LA 71282

Thomas W. Bishop (1973-2016)

*Licensed in Texas and Louisiana

WWW.BPCMLAW.COM

May 20, 2024

East Carroll Clerk of Court
3 Courthouse, 400 1st Street
Lake Providence, Louisiana 71254

Via facsimile and U.S. Mail

Re: Delta Southern Railroad, Inc. v#23740 Lake Providence Port Commission, et al

Dear Clerk:

Enclosed for fax filing, please find Defendant's Answer to Petition for Writs of Quo Warranto and Mandamus. Please let me know if any costs are associated with this filing and I will send a check along with these original documents by mail.

If you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,

John D. Crigler, Jr.

JDCjr/lmm
Enclosure
cc: Judge

DELTA SOUTHERN RAILROAD, INC.

STATE OF LOUISIANA

VERSUS

PARISH OF EAST CARROLL

**LAKE PROVIDENCE PORT
COMMISSION, WYLY GILFOIL,
MARK BUNTYN, ROGER CLEMENT,
JERRY KING, FRANCIS LENSING,
KARVAN POWELL, AND
JAMES THOM, IV.**

SIXTH JUDICIAL DISTRICT

CIVIL DOCKET NO. 23740

DIVISION B

FILED: _____

**BY: _____
CLERK**

**DEFENDANTS' ANSWER TO
PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS**

NOW INTO COURT, through undersigned counsel, comes **LAKE PROVIDENCE PORT COMMISSION, WYLY GILFOIL, MARK BUNTYN, ROGER CLEMENT, JERRY KING, FRANCIS LENSING, KARVAN POWELL, AND JAMES THOM, IV.**, (“Defendants”), who, in response to the Petition for Writs of Quo Warranto and Mandamus filed by **DELTA SOUTHERN RAILROAD, INC.** (“Plaintiff”) into the above captioned matter, deny each and every allegation contained therein, except as may be specifically admitted, and respectfully represent as follows:

1.

To the extent that an answer is required, the allegations contained in paragraph one are denied.

2.

The allegations contained in paragraph two are admitted.

3.

The allegations contained in paragraph three are admitted.

4.

The allegations contained in paragraph four are admitted.

5.

The allegations contained in paragraph five are admitted.

6.

The allegations contained in paragraph six are admitted.

7.

The allegations contained in paragraph seven are admitted.

8.

The allegations contained in paragraph eight are admitted.

9.

The allegations contained in paragraph nine are admitted.

10.

The allegations contained in paragraph ten are admitted.

11.

The allegations contained in paragraph eleven require no response.

12.

Objection. The allegations contained in paragraph twelve call for a legal conclusion.

13.

The allegations contained in paragraph thirteen are admitted.

14.

The allegations contained in paragraph fourteen are denied. Plaintiff chooses to focus only on part (A) of the statute while completely ignoring the remaining part of the statute. The Louisiana Legislature's intent was to authorize the Lake Providence Port Commission to operate outside of East Carroll Parish upon the drafting of the statute in question and has continually supported Lake Providence Port Commission's efforts **outside** of East Carroll Parish. Specifically, see Exhibits A and B attached hereto, which provide evidence of over \$25,000,000.00 worth of Legislature approved funding for projects **outside** of East Carroll Parish.

15.

The allegations contained in paragraph fifteen are denied for lack of information to justify the belief therein.

16.

The allegations contained in paragraph sixteen are admitted and thankfully have also been supported by the Louisiana State Bond Commission whereby Lake Providence Port Commission's application for \$10,000,000.00 in revenue bonds to acquire and rehabilitate the rail line **outside** of East Carroll Parish, was approved on April 18, 2024. Notably, the motion to approve was made by the speaker of the house and seconded by the chairman on the Senate Finance Committee. See Exhibit C attached hereto.

17.

The allegations contained in paragraph seventeen are denied for the reasons cited within paragraphs fourteen and sixteen.

18.

The allegations contained in paragraph eighteen are denied for the reasons cited within paragraphs fourteen and sixteen.

19.

The allegations contained in paragraph nineteen are denied.

20.

Objection. The allegations contained in paragraph twenty call for a legal conclusion.

21.

The allegations contained in paragraph twenty-one are denied for all the reasons stated above. Further, Lake Providence Port Commission seeks to enhance the local economy throughout Northeast Louisiana in their efforts to have a fully functional rail operating between multiple ports along the Mississippi River. This endeavor has become even more necessary in recent years due to the drastic swings in the river levels which prohibit barges from accessing the ports to load or offload product.

22.

The allegations contained in paragraph twenty-two are denied.

23.

The allegations contained in paragraph twenty-three require no response.

24.

Objection. The allegations contained in paragraph twenty-four call for a legal conclusion and the Code Article itself serves as the best evidence of its contents.

25.

Objection. The allegations contained in paragraph twenty-five call for a legal conclusion.

26.

The allegations contained in paragraph twenty-six are denied.

27.

The allegations contained in paragraph twenty-seven are denied for lack of information therein.

28.

The allegations contained in paragraph twenty-eight are denied. Not only does the statute provide the authority for Lake Providence Port Commission to act, but for the reasons discussed above, Lake Providence Port Commission's actions have continually been supported by the Louisiana Legislature, both generally and financially.

29.

The allegations contained in paragraph twenty-nine are denied.

30.

Objection. The allegations contained in paragraph thirty call for a legal conclusion.

31.

Objection. The allegations contained in paragraph thirty-one call for a legal conclusion.

32.

The allegations contained in paragraph thirty-two require no response.

33.

The allegations contained in paragraph thirty-three require no response and the Code Article itself serves as the best evidence of its contents.

34.

The allegations contained in paragraph thirty-four require no response and the Code Article itself serves as the best evidence of its contents.

35.

The allegations contained in paragraph thirty-five require no response and the Code Article itself serves as the best evidence of its contents.

36.

The allegations contained in paragraph thirty-six require no response and the Code Article itself serves as the best evidence of its contents.

37.

Objection. The allegations contained in paragraph thirty-seven call for a legal conclusion.

38.

Objection. The allegations contained in paragraph thirty-eight call for a legal conclusion.

39.

Objection. The allegations contained in paragraph thirty-nine call for a legal conclusion.

40.

The allegations contained in paragraph forty are denied.

41.

The allegations contained in paragraph forty-one are denied. This authority has been continually authorized and supported by the Louisiana Legislature.

42.

The allegations contained in paragraph forty-two are denied.

43.

The allegations contained in paragraph forty-three are denied.

44.

The allegations contained in paragraph forty-four are denied.

FURTHER ANSWERING,

As opposed to briefing the need for projects like the one at issue along with all of the positive economical and industrial impacts it will have on the State as a whole, Defendants would simply ask this Court to review a sampling of the letters written by legislators in support of LPPC's actions outside of the boundaries of East Carroll Parish. See attached letters labeled Exhibits D-1 through D-3.

This Court is well aware one of the primary rules of statutory construction is to ascertain and satisfy the intent of the legislation which enacted the statute. For all of the reasons stated above and the substantiating attachments, there is no question Defendants are acting within the authority bestowed upon them, and more importantly, they are acting in the best interest of the State of Louisiana.

WHEREFORE, Defendants herein pray this Court will consider the evidence clearly demonstrating the Louisiana Legislature's intention to empower and authorize LPPC's efforts outside of East Carroll Parish and dismiss Petitioner's writ of quo warranto and writ of mandamus, at Petitioner's cost, along with any other relief this Court deems proper.

Respectfully submitted:



By: **JOHN D. CRIGLER, JR.**

BISHOP PAXTON CRIGLER & MOBERLEY

A Professional Law Corporation

124 Hancock Street

Post Office Box 97

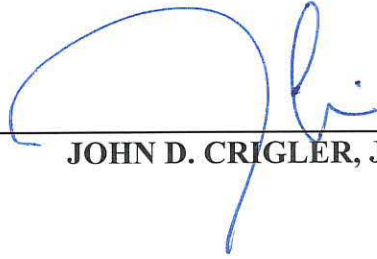
Saint Joseph, Louisiana 71366

Phone: (318) 766-4892

Facsimile: (318) 766-3945

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that I have served a copy of the foregoing pleading on all known counsel of record for all parties to this proceeding via facsimile, electronic mail, and/or United States Mail, properly addressed and first-class postage prepaid on this 20 day of May, 2024.

A handwritten signature in blue ink, appearing to read "J.D. Crigler, Jr.", is written over a horizontal line.

JOHN D. CRIGLER, JR.



Office of the Secretary
PO Box 94245 | Baton Rouge, LA 70804-9245
ph: 225-379-1200 | fx: 225-379-1851



May 9, 2024

STATE PROJECT NO. H.015635
PORT IMPROVEMENTS
RECONSTRUCTION OF RAILROAD – TALLULAH TO NEWELLTON
EAST CARROLL PARISH

Mr. Wyly Gilfoil
Port Director
Port of Lake Providence
409 Port Road
Lake Providence, LA 71254

Dear Mr. Gilfoil:

The Port of Lake Providence submitted an application to the Louisiana Port Construction and Development Priority Program (PPP) in calendar year 2022. The application was evaluated and approved by DOTD staff as well as the state economist. It was then sent to and approved by the Louisiana Legislature’s Joint House and Senate Committees on Transportation. The project was approved for \$15,000,000, and has since been allocated \$5,000,000. It is anticipated that the project will receive full funding over the next 2 years. On August 9, 2023, the Port of Lake Providence entered into an Intergovernmental Agreement with the State of Louisiana, Department of Transportation and Development. This Agreement provides for the full funding of the Reconstruction of Railroad – Tallulah To Newellton project.

Should you desire to discuss any of these items, please contact me at (225) 379-3033.

Sincerely,

Mary “Molly” Bourgoyne
Director of Ports
Office of Multimodal Commerce

Enclosure (Fully Executed Replacement Agreement)



INTERGOVERNMENTAL AGREEMENT

BETWEEN

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

AND

LAKE PROVIDENCE PORT COMMISSION
RECONSTRUCTION OF RAILROAD – TALLULAH TO NEWELLTON
STATE PROJECT NUMBER H.015635
EAST CARROLL PARISH

THIS Agreement, made and executed in multiple original copies on this 9th day of August, 2023, by and between the Louisiana Department of Transportation and Development, hereinafter referred to as "DOTD", and the Lake Providence Port Commission, a political subdivision of the State of Louisiana, hereinafter referred to as "Port Authority".

Whereas, under the provisions of Title 34 of the Louisiana Revised Statutes, of 1950, as amended, funding and/or funding obligation authority has been allocated to port improvement projects in the approved Port Construction and Development Priority Program under the administration of the DOTD; and

Whereas, the Port Authority has requested and has received funding and/or funding obligation authority of State funds to partially finance the port improvement project as described herein and hereinafter referred to as the "Project"; and

THEREFORE, in consideration of the premises and mutually dependent covenants herein contained, the parties hereto agree as follows:

ARTICLE 1
PROJECT DESCRIPTION

1.1 The improvement that is to be undertaken under this Agreement shall be port improvements consisting of approximately 25 miles of rail track upgrade. This improvement shall hereinafter be referred to as the "Project".

1.2 The entire scope of the Project shall be as shown in the approved application which constitutes the basis for funding the Project and is hereby made a part of and incorporated into this Agreement by reference.

1.3 For purposes of identification, State Project Number H.015635 has been assigned to this Project. All activities associated with this Project, including but not limited to the following: record keeping, progress payments, bidding, correspondence, invoices, and any other activities associated with this Project shall be identified with this number.

1.4 Project development and construction shall be in accordance with DOTD's *Port Construction and Development Priority Program Procedures Manual*, latest revision.

ARTICLE 2
FUNDING

2.1 The Port Authority has self-generated funds available for its share of participation in the Project and agrees to provide, from non-state funding, not less than ten percent (10%) of the amount of eligible Project costs approved by the Legislature.

2.2 The DOTD agrees to provide ninety percent (90%) of the amount of eligible Project costs approved by the Legislature.

2.3 The maximum state funding share shall be as stated in the letter(s) from DOTD's Secretary, or his designee, announcing Project approval, and/or the amount of program funding for RECONSTRUCTION OF RAILROAD – TALLULAH TO NEWELLTON project. In no case shall the maximum state funding share exceed 90% of eligible Project costs as identified in the Louisiana Port Construction and Development Priority Program "Rules and Regulations." This funding share was established in accordance with the "Rules and Regulations." All cost overruns shall be the responsibility of the Port Authority.

2.4 The letter or letters from the DOTD's Secretary, or his designee, announcing Project approval, and/or the amount of program funding for RECONSTRUCTION OF RAILROAD – TALLULAH TO NEWELLTON project shall become a part of this agreement.

2.5 The Port Authority is aware that the DOTD's legislatively mandated Cash Management Plan may cause a delay in authorization to advertise the Project for construction. This contract is contingent upon the appropriation by the legislature of sufficient monies to the Port Construction and Development Priority Program to fulfill its requirements. If the legislature fails to appropriate sufficient monies to provide for the continuation of this contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the capital outlay act, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies to the Port Construction and Development Priority Program for the continuation of this contract, the contract is subject to termination for lack of sufficient appropriations to fulfill its requirements.

2.6 Except for services hereinafter exclusively listed to be furnished at the DOTD's expense or at the Port Authority's expense, as the case may be, the DOTD will pay a portion of the Port Authority's costs for this Project. However, the Port Authority may incorporate items of work into the construction contract not eligible for the DOTD cost share participation at its own cost if it so desires. Funds will be disbursed in accordance with Article 9.

2.7 The Port Authority agrees to provide a schedule indicating cash flow requirements projected over the anticipated construction period of the Project.

ARTICLE 3
RESPONSIBILITY

3.1 The Port Authority agrees to furnish all lands; easements, rights-of-way, wetland mitigation areas, and spoil disposal areas necessary to construct and maintain the Project without cost to the State unless the lands are an integral part of the Project and have been included in the approved application.

3.2 The Port Authority agrees to accomplish all necessary utility and other facility relocations and alterations without cost to the State.

3.3 The Port Authority agrees to assume all maintenance and operation costs for the Project and all future alterations as may be required without cost to the State.

3.4 The Port Authority shall assume full responsibility for Project development. Project development shall consist of engineering, plan preparation, right-of-way acquisition, utility relocations, permits, bidding, construction inspection and administration, and the operation and maintenance of the completed Project. Furthermore, it is the responsibility of the Port Authority to administer the Project according to all applicable laws, rules, and regulations and to ensure that the quality of work obtained is within the standards of established industry practice. Documentation must be submitted to the DOTD to provide evidence of the progress of the Project, and to verify that the expenditure of state funds occurs in accordance with this agreement and applicable state law. The Port Authority shall be responsible for all costs in excess of the maximum state funding share.

3.5 During any part of project development of plans and bid documents for any phase, at DOTD's request the Sponsor shall provide proof of tenant's status including, but not limited to 1) lease agreement, 2) revenue stream.

3.6 The DOTD, its officers, engineers and employees will not supervise or perform services in connection with the development of this Project except as specifically set forth herein. The DOTD will review the Project for compliance with program guidelines, the approved application, and standard engineering practices. The DOTD will determine items in the construction contract that are eligible for participation based upon the approved application. The DOTD is responsible for payment of its share in a timely manner.

ARTICLE 4
RECORD KEEPING, REPORTING AND AUDITS

4.1 The Port Authority shall maintain all documents, papers, field books, accounting records, appropriate financial records and other evidence pertaining to costs incurred for the Project and shall make such materials available for inspection at all reasonable times during the contract period and for a three year period from the date of final payment for inspection by the DOTD and/or the Legislative Auditor; however, prior to disposal of any Project data, the Port Authority shall obtain prior written approval of the DOTD. The Port Authority shall furnish copies of project records to the DOTD and/or the Legislative Auditor within thirty (30) days of a written request.

4.2 The submission of documentation to the DOTD as required by this Agreement and its Supplements is to verify that such documentation is being produced, to provide evidence of the progress of the Project, and to verify that the expenditure of state funds occurs in accordance with this Agreement and all applicable state laws. Unless a written request is received from the Port Authority, the DOTD will not provide extensive document review for the Project or take the responsibility of determining whether or not this documentation is complete and accurate.

4.3 The Port Authority shall provide to the DOTD any requested reports on the status of the Project. The Port Authority shall, during the term of the Agreement, cause to be conducted annually, by a duly qualified certified public accountant, an audit and examination of its books and accounts pertaining to the Project. The Port Authority shall provide the Legislative Auditor and the DOTD with copies of the annual audit report, and any other financial reports which relate to the Project, no later than thirty (30) days after receipt and acceptance by the Port Authority. The Port Authority shall provide to the DOTD a complete audit of the Project upon its completion, no later than ninety (90) days after completion of the Project. The DOTD reserves the right to audit the Project records at any time.

4.4 The Port Authority agrees to provide to the DOTD a schedule indicating the Project's cash flow requirements projected over the anticipated construction period of the Project. This schedule must be provided to the DOTD prior to issuing the contractor a "Notice to Proceed" with Project construction.

4.5 The Port Authority agrees that it shall reimburse to the DOTD all funds not used in accordance with the terms of this Agreement and in accordance with R.S. 34:3463.

4.6 The Port Authority must have a fully executed and approved Agreement before entering into any contracts which obligate state funding and must follow all laws pertaining to public bidding. Further, written authorization must be obtained from the DOTD prior to advertising the Project or any phase thereof for bids.

ARTICLE 5 **ENGINEERING & PLAN DEVELOPMENT**

5.1 The Port Authority, or Consulting Engineer employed by it, shall make all necessary surveys and prepare plans, specifications, and estimates for the Project in accordance with standard engineering practices. The plans and specifications shall be signed and sealed by a Registered Engineer licensed to practice in Louisiana and shall comply with the latest revision of the *Port Construction and Development Priority Program Procedures Manual*. The appropriate contract forms shall be provided to the Port Authority by the DOTD.

5.2 The general format for the plans and specifications shall be based on the DOTD's guidelines. The DOTD will review the plans and specifications for compliance with the scope of the Project as indicated in the approved application. The DOTD will determine if a plan review conference is necessary to address issues identified in the DOTD's initial review and to resolve omissions in the proposed scope of work. This review does not relieve the Port Authority of responsibility to meet Port Construction and Development Priority program requirements nor does the DOTD's review relieve the Port Authority's Engineer of his responsibility for the accuracy,

adequacy, and completeness of the plans and specifications. The DOTD will perform more extensive reviews upon written request from the Port Authority.

5.3 After acquisition of all required rights-of-way and permits and execution of agreements to relocate and/or adjust all utility conflicts, the Port Authority shall adopt a Resolution certifying completion of the above and submit a certified copy of the Resolution to the DOTD. The Resolution shall also reaffirm availability of the Port Authority's local funding share. The format of this Resolution shall be provided by the DOTD.

ARTICLE 6 PUBLIC BID LAWS

6.1 Written authorization must be obtained from the DOTD prior to advertising the Project or any phase thereof for bids.

6.2 The Port Authority will solicit bids for the services, labor and materials needed to construct the Project in accordance with the public bid laws of the State, including, but not limited to R.S. 38:2212, et seq., applicable to political subdivisions of the State. The Port Authority will also keep a procurement file relative to the necessary acquisition of services, labor and materials needed to complete the Project that will be subject to review by the DOTD at any time.

6.3 After receipt of bids and before award of the contract, the Port Authority shall submit to the DOTD copies of the three (3) lowest bidders' proposals and proof of advertising. The Port Authority's submittal shall include: proof of publication of advertisement for bids; bid tabulation form certified by the engineer and the contracting agency; bid proposals and bid bonds of the three (3) lowest bidders and proposed notice of Award of Contract (AoC). After receiving comments from the DOTD, the Port Authority may then award and execute the construction contract and will submit to the DOTD the AoC, executed construction contract, and performance and payment bond(s). The contract and bonds shall be recorded in the Clerk of Court's office for the parish or parishes where the Project is to be constructed. Proof of recordation shall be submitted to the DOTD along with the Notice to Proceed. Once the above items have been submitted to the DOTD, the Port Authority shall adopt a Resolution Certifying Compliance With The Public Bid Law as conforming to the requirements of R.S. 38:2211, et seq. The format of this resolution shall be provided by the DOTD.

6.4 The DOTD'S review does not relieve the Port Authority of its responsibility to comply with public bid and contracting laws.

ARTICLE 7 CONSTRUCTION

7.1 The Port Authority or its Consultant will provide technical administration and inspection during Project construction; however, in the event a Consultant provides this service for the Port Authority, such services by the Consultant shall be coordinated by a full time employee of the Port Authority who will be designated as the Port Authority's Project Representative. Except where a deviation has been mutually agreed to in writing by both the DOTD and the Port Authority, Project construction shall be administered in accordance with the latest revision of the *Port Construction and Development Priority Program Procedures Manual*. Inspection of the constructed work shall

be directed by a Registered Professional Engineer, licensed to practice in Louisiana, chosen by the Port Authority. The Port Authority shall insure appointment of a Resident Project Representative/Inspector to inspect the constructed work who will be under the direct supervision of the Port Authority's engineer. The engineer shall certify that the contractor is constructing the Project with specified materials in accordance with the plans and specifications and accepted construction practices.

7.2 Material testing shall be done by an independent Testing Laboratory. All testing shall be done in accordance with the Standards of the American Concrete Institute (ACI), the American Society of Testing Materials (ASTM E329-93b et seq.) and/or the DOTD Standard Testing Procedures. These services are not eligible for cost participation by the DOTD and cannot be a part of the construction contract.

7.3 Upon completion of the Project, the Port Authority's engineer shall schedule a final inspection at a time that the DOTD representatives can be available. The DOTD shall inspect the Project with the Port Authority's engineer. Upon written certification of the Port Authority's engineer that the Project is complete and upon written final acceptance of the Project by the Port Authority, the final acceptance shall be recorded in the Clerk of Court's office for the Parish or Parishes where the work was performed.

ARTICLE 8 **CHANGE ORDERS**

8.1 All change orders necessitated by plan errors and/or omissions shall be the responsibility of the Port Authority. Change orders resulting from changed or unforeseen or unanticipated conditions or circumstances beyond the control of the Port Authority, shall be reviewed and evaluated on a case-by-case basis to determine eligibility for DOTD funding participation, subject to availability of funds.

ARTICLE 9 **DISBURSEMENT OF FUNDS**

9.1 A certified payment request shall be submitted by the Port Authority to the DOTD in accordance with the Louisiana Port Construction and Development Priority Program Procedures Manual for Funded Projects. Except where a deviation has been mutually agreed to in writing by both the DOTD and the Port Authority, during construction, partial payments will be made monthly as follows: (1) Both the engineer and Port Authority shall certify that the completed work shown on each payment request is an accurate representation of the work accomplished during the estimate period and that the work substantially complies with the plans and specifications; (2) The DOTD shall promptly process payment of its share for completed work to date; (3) The DOTD shall withhold retainage on its share in accordance with state law; (4) Changes in the work which alter the Contract Price or Contract Time shall be submitted to the DOTD prior to authorizing the contractor to perform such work.

9.2 Forty-five (45) days after the Recordation of the Final Acceptance of the Project, the contractor shall submit to the Port Authority a Clear Lien Certificate from the Recorder's office of the Parish or Parishes in which the work was performed. Final payments of all amounts due from the DOTD shall be made to the Port Authority upon receipt of the above certificate and/or, in the

event of unresolved liens, notification of the Port Authority's intent to deposit retainage with the Court of appropriate jurisdiction and the following:

1. Certification by the Port Authority's Engineer that the work is complete and a recommendation of acceptance (Substantial Completion)
2. A Resolution by the Port Authority accepting the work
3. A certified copy of The Recordation of Acceptance
4. A certified copy of the Clear Lien Certificate or as excepted
5. Final cost Estimate and As-Built Drawings or Plans of Record

9.3 If the Port Authority intends to phase the Project under separate construction contracts, the Port Authority shall notify DOTD of the scope of each phase and provide a marked up copy of the cost estimate in the approved application for funding showing each phase so that appropriate state project numbers may be assigned for each part of the work.

ARTICLE 10 NONDISCRIMINATION

10.1 The Port Authority agrees to abide by the requirements of the following as applicable: Titles VI of the Civil Rights Act of 1964, and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968, as amended, and the Americans with Disabilities Act of 1990, as amended.

10.2 The Port Authority agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

10.3 Any act of discrimination committed by the Port Authority, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Agreement.

ARTICLE 11 HOLD HARMLESS AND INDEMNITY

11.1 The Port Authority agrees and obligates itself, its successors and assigns, to defend, indemnify, save, protect and hold forever harmless and provide a defense for the DOTD, its officials, officers and employees against any and all claims that may be asserted by any persons or parties resulting from violation by the Port Authority, its employees, agents and/or representatives of the requirements of all State laws applicable to the Project. Further, the Port Authority agrees that it shall indemnify and save harmless and provide a defense for the DOTD, its officials, officers and employees, against any and all claims, demands, suits, actions (ex contractu, ex delictu, quasi-contractual, statutory or otherwise), judgments of sums of money, attorney's fees and court costs, to any party or third person including, but not limited to, amounts for loss of life or injury or damage to persons, property or damages to contractors, subcontractors, suppliers, laborers or other agents or contractors of Port Authority or any of the above, growing out of, resulting from, or by reason of, any negligent act or omission, operation or work of the Port Authority, its employees, servants, contractors, or any person engaged upon or in connection with the engineering services,

construction and construction engineering required or performed by the Port Authority hereunder including, but not limited to, any omissions, defects or deficiencies in the plans, specifications or estimates or by virtue of any extra work, delays, disruptions, inefficiencies or nonpayment of any engineering, construction, or construction engineering costs incurred or any other claim of whatever kind or nature arising from, out of, or in any way connected with the Project, to the extent permitted by law.

11.2 Nothing herein is intended, nor shall be deemed, to create a third party beneficiary to any obligation by the DOTD herein or to authorize any third person to have any action against the DOTD arising out of this Agreement.

ARTICLE 12 PHASE I ENVIRONMENTAL SITE ASSESSMENT FOR REAL ESTATE

12.1 If any funds covered by this Agreement are to be used for the purchase of immovable property, the Port Authority shall have prepared, at the expense of the Port Authority, a Phase I Environmental Site Assessment (Assessment) of the immovable property. This Assessment shall be prepared, according to the latest edition of ASTM E 1527, by an experienced environmental consultant qualified to perform Assessments. Any purchase agreement for the immovable property shall contain an agreement by the seller of the immovable property that it will warrant and guarantee to the Port Authority that the immovable property is free of all hazards identified by the Assessment as existing or suspected and this guarantee shall be part of any act of sale for the purchase of the immovable property. A copy of the Assessment and a certified copy of the purchase agreement, containing the warranty and/or guarantee, shall be provided to the DOTD.

ARTICLE 13 OWNERSHIP OF PROPERTY

13.1 Port improvements funded through the Port Construction and Development Priority Program shall be built, installed and/or implemented only on port owned lands or public lands. Public lands are lands under the control of public organizations which are authorized by law to perform governmental functions.

13.2 Should the Port Authority sell or dispose of any lands, facilities, etc., that have been funded in part by the Port Construction and Development Priority Program, the Port Authority shall reimburse the DOTD for the percentage of Project life remaining at the time of the act of sale. The Project life shall be twenty years for structures and ten years for equipment unless a different period of time is specified in the evaluation of the Project. If land obtained through the program funds is sold at any time DOTD shall be reimbursed at one hundred percent of the original funds dispersed for purchase of the land including change orders.

ARTICLE 14 PROJECT COMPLETION

14.1 Upon completion and final acceptance of the Project, the Port Authority shall record the final acceptance with the Clerk of Court for the parish or parishes in which the improvement is located and furnish a certified copy of the final acceptance to the DOTD.

14.2 The Port Authority shall develop an Operation and Maintenance Manual and shall provide the DOTD with as-built plans or plans of record. The Port Authority shall maintain the Project, as completed, at its expense and in accordance with the Port Authority's maintenance policies and the Operation and Maintenance Manual. The Port Authority shall develop and submit to the DOTD a Monitoring Report for each of the five years following completion of the Project. These reports shall be developed in accordance with the "Project Monitoring Report Guidelines".

14.3 The Port Authority agrees to assume all maintenance and operation costs for the Project and all future alterations as may be required without cost to the State.

ARTICLE 15 PROGRESS SCHEDULE

15.1 Within thirty (30) days after the agreement is executed, the Port Authority shall submit to the DOTD a Progress Schedule that indicates, using a bar graph, the various activities that must be accomplished to develop construction plans and specifications and let a construction contract within the time limitations specified in Article 18.

ARTICLE 16 TAXES

16.1 The Port Authority agrees that the responsibility for payment of taxes, if any, from the funds received under this Agreement, its Supplements and/or legislative appropriation shall be the Port Authority's obligation and will be identified by the Federal Tax Identification Number shown on the signature sheet.

ARTICLE 17 AMENDMENT

17.1 The parties hereto agree that any change in the scope of the Project shall require a written amendment, signed by both parties.

ARTICLE 18 CANCELLATION

18.1 The terms of this agreement shall be binding upon the parties hereto until the work has been completed and accepted and all payments required to be made to the Port Authority have been made; but this agreement may be terminated under any or all of the following conditions:

1. By mutual agreement and consent of the parties hereto.
2. By the Port Authority should it desire to cancel the project prior to award of a contract.
3. By the DOTD due to the withdrawal of State funding for the project.
4. By the DOTD due to the Port Authority not submitting to the DOTD preliminary construction plans (which are more advanced than that submitted with the applications) within one year of the execution of this agreement.

5. By the DOTD, for projects that were identified as Conditional Projects on the Recommended Construction Program approved by the Legislature, due to the Port Authority not submitting the necessary documents to the DOTD within eighteen months of the initial funding letter indicating that the project has satisfied all non-program funding.
6. By the DOTD due to the Port Authority advertising a project for bids prior to obtaining written notice from the DOTD.
7. By the DOTD due to the Port Authority not starting construction of the project in a timely manner as follows:

For projects that are completely funded in one fiscal year:

Within eighteen months of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding to be completed.

For projects that are completely funded over two fiscal years:

Within twelve months of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding to be completed.

For projects that are completely funded over three or more fiscal years:

Within six months of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding to be completed.

For projects that are funded under provisions of the Port Construction and Development Priority Program/Cash Management Plan:

Within three weeks of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding to advertise for bids.

Within one hundred days of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding and is under contract.

For Projects that have approval from the Department to be divided into more than one construction contract, the above time frames apply to each independent contract that has sufficient funding to be completed. An independent contract shall be a contract that does not require the completion of another contract in order to be constructed. Each additional dependent contract shall begin construction within six months from completion of the contract that it is dependent on.

18.2 The Port Authority understands and agrees that if the Project is not under construction within the above mentioned time limits, the DOTD may terminate this Agreement and any unexpended proceeds may be reallocated to another port project. The award of a construction contract shall satisfy the requirement to be under construction.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

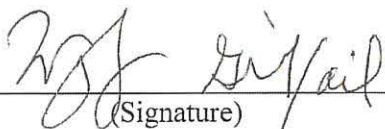
**STATE OF LOUISIANA
LAKE PROVIDENCE PORT
COMMISSION**




(Witness for First Party)




(Witness for First Party)

BY: 


(Signature)



Typed or Printed Name



Title

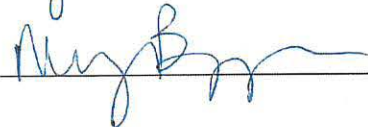


Port Authority's Federal Identification Number

WITNESSES:

**STATE OF LOUISIANA,
THROUGH THE DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT**





BY: 

Secretary

RECOMMENDED FOR APPROVAL

BY: 

Deputy Commissioner

**RESOLUTION AUTHORIZING AN AGREEMENT
AND DESIGNATION OF PERSON AUTHORIZED TO SIGN**

STATE PROJECT NO H.015635
PARISH OF EAST CARROL

RESOLUTION

Lake Providence Port Commission

A Resolution authorizing the Lake Providence Port Commission to enter into an agreement with the State of Louisiana, Department of Transportation and Development under the Louisiana Port Construction and Development Priority Program for assistance in the implementation of a port improvement project; providing for the necessary documentation of the need for the port improvement; and providing for other matters in connection therewith.

WHEREAS, the Lake Providence Port Commission has a need for port improvements; and

WHEREAS, the Lake Providence Port Commission has reviewed the application for Reconstruction of Railroad – Tallulah to Newellton and agrees with said agreement; and

WHEREAS, the Lake Providence Port Commission has applied for State matching funds pursuant to Chapter 47 of Title 34 of the Louisiana Revised Statutes of 1950, as amended, to implement a project to improve its port operation and Lake Providence Port Commission is fully aware of its obligations under said Statute; and

WHEREAS, the Lake Providence Port Commission is a political body duly organized and existing under the laws of the State of Louisiana and is eligible to apply for funds under said Statute; and

NOW, THEREFORE, BE IT RESOLVED by the Lake Providence Port Commission as follows:

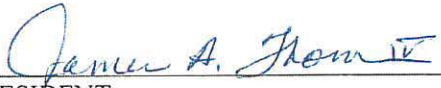
Section 1. That Lake Providence Port Commission acknowledges that an application was submitted to the Louisiana Port Construction and Development Priority Program.

Section 2. That at the appropriate time and prior to commencement of work on the project Lake Providence Port Commission agrees to execute a Project Agreement and a Statement of Sponsorship pursuant to the Statute and hereby authorizes and empowers Wyly Gilfoil, Executive Director to enter into and execute said agreement with the Louisiana Department of Transportation and Development.

Section 3. That Wyly Gilfoil, Executive Director is hereby Authorized Representative for Lake Providence Port Commission to represent the port with regards to the receipt of funds from the Louisiana Port Construction and Development Priority Program for a port improvement project.

Section 4. That said Authorized Representative shall have the authority to sign and approve all documents that are necessary under the circumstances to accomplish the above project.



SECRETARY


PRESIDENT

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of a resolution adopted at a Regular meeting of the Lake Providence Port Commission held on the 19th Day of July, 2023, in which a quorum was present and voting and that the resolution adopted is still in effect and has not been rescinded or revoked.

Signed at Lake Providence on the 19th Day of July, 2023.


SECRETARY



Office of the Secretary
PO Box 94245 | Baton Rouge, LA 70804-9245
ph: 225-379-1200 | fx: 225-379-1851



May 10, 2024

STATE PROJECT NO. H.014377
PORT IMPROVEMENTS
MULTIMODAL FREIGHT CORRIDOR IMPROVEMENTS
EAST CARROLL PARISH

Mr. Wyly Gilfoil
Port Director
Port of Lake Providence
409 Port Road
Lake Providence, LA 71254

Dear Mr. Gilfoil:

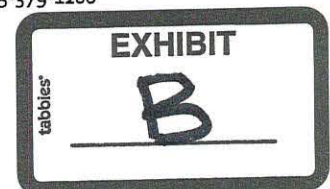
The Port of Lake Providence submitted an application to the Louisiana Port Construction and Development Priority Program (PPP) in calendar year 2017 for H.014377 – Multimodal Freight Corridor Improvements. The application was evaluated and approved by DOTD staff as well as the state economist. It was then sent to and approved by the Louisiana Legislature’s Joint House and Senate Committees on Transportation. The project was approved for \$11,484,000, and has since been fully funded. On September 3, 2020, the Port of Lake Providence entered into an Intergovernmental Agreement with the State of Louisiana, Department of Transportation and Development. This Agreement provides for the full funding of the Multimodal Freight Corridor Improvements project.

Should you desire to discuss any of these items, please contact me at (225) 379-3033.

Sincerely,

Mary “Molly” Bourgoyne
Director of Ports
Office of Multimodal Commerce

Enclosure (Fully Executed Replacement Agreement)



INTERGOVERNMENTAL AGREEMENT

BETWEEN

**STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

AND

**LAKE PROVIDENCE PORT COMMISSION
MULTIMODAL FREIGHT CORRIDOR IMPROVEMENTS
STATE PROJECT NUMBER H.014377
EAST CARROLL PARISH**

THIS Agreement, made and executed in multiple original copies on this 3 day of September, 2020, by and between the Louisiana Department of Transportation and Development, hereinafter referred to as "DOTD", and the LAKE PROVIDENCE PORT COMMISSION, a political subdivision of the State of Louisiana, hereinafter referred to as "Port Authority".

Whereas, under the provisions of Title 34 of the Louisiana Revised Statutes, of 1950, as amended, funding and/or funding obligation authority has been allocated to port improvement projects in the approved Port Construction and Development Priority Program under the administration of the DOTD; and

Whereas, the Port Authority has requested and has received funding and/or funding obligation authority of State funds to partially finance the port improvement project as described herein and hereinafter referred to as the "Project"; and

THEREFORE, in consideration of the premises and mutually dependent covenants herein contained, the parties hereto agree as follows:

ARTICLE 1
PROJECT DESCRIPTION

1.1 The improvement that is to be undertaken under this Agreement shall be port improvements consisting of rail improvements and dredging. This improvement shall hereinafter be referred to as the "Project".

1.2 The entire scope of the Project shall be as shown in the approved application which constitutes the basis for funding the Project and is hereby made a part of and incorporated into this Agreement by reference.

1.3 For purposes of identification, State Project Number H.014377 has been assigned to this Project. All activities associated with this Project, including but not limited to the following: record keeping, progress payments, bidding, correspondence, invoices, and any other activities associated with this Project shall be identified with this number.

1.4 Project development and construction shall be in accordance with DOTD's *Port Construction and Development Priority Program Procedures Manual*, latest revision.

ARTICLE 2
FUNDING

2.1 The Port Authority has self-generated funds available for its share of participation in the Project and agrees to provide, from non-state funding, not less than ten percent (10%) of the amount of eligible Project costs approved by the Legislature.

2.2 The DOTD agrees to provide an amount not to exceed ninety percent (90%) of the amount of eligible Project costs approved by the Legislature.

2.3 The maximum state funding share shall be as stated in the letter(s) from DOTD's Secretary, or his designee, announcing Project approval, and/or the amount of program funding for MULTIMODAL FREIGHT CORRIDOR IMPROVEMENTS project. In no case shall the maximum state funding share exceed 90% of eligible Project costs as identified in the Louisiana Port Construction and Development Priority Program "Rules and Regulations." This funding share was established in accordance with the "Rules and Regulations." All cost overruns shall be the responsibility of the Port Authority.

2.4 The letter or letters from the DOTD's Secretary, or his designee, announcing Project approval, and/or the amount of program funding for MULTIMODAL FREIGHT CORRIDOR IMPROVEMENTS project shall become a part of this agreement.

2.5 The Port Authority is aware that the DOTD's legislatively mandated Cash Management Plan may cause a delay in authorization to advertise the Project for construction. This contract is contingent upon the appropriation by the legislature of sufficient monies to the Port Construction and Development Priority Program to fulfill its requirements. If the legislature fails to appropriate sufficient monies to provide for the continuation of this contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the capital outlay act, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies to the Port Construction and Development Priority Program for the continuation of this contract, the contract is subject to termination for lack of sufficient appropriations to fulfill its requirements.

2.6 Except for services hereinafter exclusively listed to be furnished at the DOTD's expense or at the Port Authority's expense, as the case may be, the DOTD will pay a portion of the Port Authority's costs for this Project. However, the Port Authority may incorporate items of work into the construction contract not eligible for the DOTD cost share participation at its own cost if it so desires. Funds will be disbursed in accordance with Article 9.

2.7 The Port Authority agrees to provide a schedule indicating cash flow requirements projected over the anticipated construction period of the Project.

ARTICLE 3
RESPONSIBILITY

3.1 The Port Authority agrees to furnish all lands, easements, rights-of-way, wetland mitigation areas, and spoil disposal areas necessary to construct and maintain the Project without cost to the State unless the lands are an integral part of the Project and have been included in the approved application.

3.2 The Port Authority agrees to accomplish all necessary utility and other facility relocations and alterations without cost to the State.

3.3 The Port Authority agrees to assume all maintenance and operation costs for the Project and all future alterations as may be required without cost to the State.

3.4 The Port Authority shall assume full responsibility for Project development. Project development shall consist of engineering, plan preparation, right-of-way acquisition, utility relocations, permits, bidding, construction inspection and administration, and the operation and maintenance of the completed Project. Furthermore, it is the responsibility of the Port Authority to administer the Project according to all applicable laws, rules, and regulations and to ensure that the quality of work obtained is within the standards of established industry practice. Documentation must be submitted to the DOTD to provide evidence of the progress of the Project, and to verify that the expenditure of state funds occurs in accordance with this agreement and applicable state law. The Port Authority shall be responsible for all costs in excess of the maximum state funding share.

3.5 During any part of project development of plans and bid documents for any phase, at DOTD's request the Sponsor shall provide proof of tenant's status including, but not limited to 1) lease agreement, 2) revenue stream.

3.6 The DOTD, its officers, engineers and employees will not supervise or perform services in connection with the development of this Project except as specifically set forth herein. The DOTD will review the Project for compliance with program guidelines, the approved application, and standard engineering practices. The DOTD will determine items in the construction contract that are eligible for participation based upon the approved application. The DOTD is responsible for payment of its share in a timely manner.

ARTICLE 4
RECORD KEEPING, REPORTING AND AUDITS

4.1 The Port Authority shall maintain all documents, papers, field books, accounting records, appropriate financial records and other evidence pertaining to costs incurred for the Project and shall make such materials available for inspection at all reasonable times during the contract period and for a three year period from the date of final payment for inspection by the DOTD and/or the Legislative Auditor; however, prior to disposal of any Project data, the Port Authority shall obtain prior written approval of the DOTD. The Port Authority shall furnish copies of project records to the DOTD and/or the Legislative Auditor within thirty (30) days of a written request.

4.2 The submission of documentation to the DOTD as required by this Agreement and its Supplements is to verify that such documentation is being produced, to provide evidence of the progress of the Project, and to verify that the expenditure of state funds occurs in accordance with this Agreement and all applicable state laws. Unless a written request is received from the Port Authority, the DOTD will not provide extensive document review for the Project or take the responsibility of determining whether or not this documentation is complete and accurate.

4.3 The Port Authority shall provide to the DOTD any requested reports on the status of the Project. The Port Authority shall, during the term of the Agreement, cause to be conducted annually, by a duly qualified certified public accountant, an audit and examination of its books and accounts pertaining to the Project. The Port Authority shall provide the Legislative Auditor and the DOTD with copies of the annual audit report, and any other financial reports which relate to the Project, no later than thirty (30) days after receipt and acceptance by the Port Authority. The Port Authority shall provide to the DOTD a complete audit of the Project upon its completion, no later than ninety (90) days after completion of the Project. The DOTD reserves the right to audit the Project records at any time.

4.4 The Port Authority agrees to provide to the DOTD a schedule indicating the Project's cash flow requirements projected over the anticipated construction period of the Project. This schedule must be provided to the DOTD prior to issuing the contractor a "Notice to Proceed" with Project construction.

4.5 The Port Authority agrees that it shall reimburse to the DOTD all funds not used in accordance with the terms of this Agreement and in accordance with R.S. 34:3463.

4.6 The Port Authority must have a fully executed and approved Agreement before entering into any contracts which obligate state funding and must follow all laws pertaining to public bidding. Further, written authorization must be obtained from the DOTD prior to advertising the Project or any phase thereof for bids.

ARTICLE 5 **ENGINEERING & PLAN DEVELOPMENT**

5.1 The Port Authority, or Consulting Engineer employed by it, shall make all necessary surveys and prepare plans, specifications, and estimates for the Project in accordance with standard engineering practices. The plans and specifications shall be signed and sealed by a Registered Engineer licensed to practice in Louisiana and shall comply with the latest revision of the *Port Construction and Development Priority Program Procedures Manual*. The appropriate contract forms shall be provided to the Port Authority by the DOTD.

5.2 The general format for the plans and specifications shall be based on the DOTD's guidelines. The DOTD will review the plans and specifications for compliance with the scope of the Project as indicated in the approved application. The DOTD will determine if a plan review conference is necessary to address issues identified in the DOTD's initial review and to resolve omissions in the proposed scope of work. This review does not relieve the Port Authority of responsibility to meet Port Construction and Development Priority program requirements nor does the DOTD's review relieve the Port Authority's Engineer of his responsibility for the accuracy,

adequacy, and completeness of the plans and specifications. The DOTD will perform more extensive reviews upon written request from the Port Authority.

5.3 After acquisition of all required rights-of-way and permits and execution of agreements to relocate and/or adjust all utility conflicts, the Port Authority shall adopt a Resolution certifying completion of the above and submit a certified copy of the Resolution to the DOTD. The Resolution shall also reaffirm availability of the Port Authority's local funding share. The format of this Resolution shall be provided by the DOTD.

ARTICLE 6 **PUBLIC BID LAWS**

6.1 Written authorization must be obtained from the DOTD prior to advertising the Project or any phase thereof for bids.

6.2 The Port Authority will solicit bids for the services, labor and materials needed to construct the Project in accordance with the public bid laws of the State, including, but not limited to R.S. 38:2212, et seq., applicable to political subdivisions of the State. The Port Authority will also keep a procurement file relative to the necessary acquisition of services, labor and materials needed to complete the Project that will be subject to review by the DOTD at any time.

6.3 After receipt of bids and before award of the contract, the Port Authority shall submit to the DOTD copies of the three (3) lowest bidders' proposals and proof of advertising. The Port Authority's submittal shall include: proof of publication of advertisement for bids; bid tabulation form certified by the engineer and the contracting agency; bid proposals and bid bonds of the three (3) lowest bidders and proposed notice of Award of Contract (AoC). After receiving comments from the DOTD, the Port Authority may then award and execute the construction contract and will submit to the DOTD the AoC, executed construction contract, and performance and payment bond(s). The contract and bonds shall be recorded in the Clerk of Court's office for the parish or parishes where the Project is to be constructed. Proof of recordation shall be submitted to the DOTD along with the Notice to Proceed. Once the above items have been submitted to the DOTD, the Port Authority shall adopt a Resolution Certifying Compliance With The Public Bid Law as conforming to the requirements of R.S. 38:2211, et seq. The format of this resolution shall be provided by the DOTD.

6.4 The DOTD'S review does not relieve the Port Authority of its responsibility to comply with public bid and contracting laws.

ARTICLE 7 **CONSTRUCTION**

7.1 The Port Authority or its Consultant will provide technical administration and inspection during Project construction; however, in the event a Consultant provides this service for the Port Authority, such services by the Consultant shall be coordinated by a full time employee of the Port Authority who will be designated as the Port Authority's Project Representative. Except where a deviation has been mutually agreed to in writing by both the DOTD and the Port Authority, Project construction shall be administered in accordance with the latest revision of the *Port Construction and Development Priority Program Procedures Manual*. Inspection of the constructed work shall

be directed by a Registered Professional Engineer, licensed to practice in Louisiana, chosen by the Port Authority. The Port Authority shall insure appointment of a Resident Project Representative/Inspector to inspect the constructed work who will be under the direct supervision of the Port Authority's engineer. The engineer shall certify that the contractor is constructing the Project with specified materials in accordance with the plans and specifications and accepted construction practices.

7.2 Material testing shall be done by an independent Testing Laboratory. All testing shall be done in accordance with the Standards of the American Concrete Institute (ACI), the American Society of Testing Materials (ASTM E329-93b et seq.) and/or the DOTD Standard Testing Procedures. These services are not eligible for cost participation by the DOTD and cannot be a part of the construction contract.

7.3 Upon completion of the Project, the Port Authority's engineer shall schedule a final inspection at a time that the DOTD representatives can be available. The DOTD shall inspect the Project with the Port Authority's engineer. Upon written certification of the Port Authority's engineer that the Project is complete and upon written final acceptance of the Project by the Port Authority, the final acceptance shall be recorded in the Clerk of Court's office for the Parish or Parishes where the work was performed.

ARTICLE 8 **CHANGE ORDERS**

8.1 All change orders necessitated by plan errors and/or omissions shall be the responsibility of the Port Authority. Change orders resulting from changed or unforeseen or unanticipated conditions or circumstances beyond the control of the Port Authority, shall be reviewed and evaluated on a case-by-case basis to determine eligibility for DOTD funding participation, subject to availability of funds.

ARTICLE 9 **DISBURSEMENT OF FUNDS**

9.1 A certified payment request shall be submitted by the Port Authority to the DOTD in accordance with the Louisiana Port Construction and Development Priority Program Procedures Manual for Funded Projects. Except where a deviation has been mutually agreed to in writing by both the DOTD and the Port Authority, during construction, partial payments will be made monthly as follows: (1) Both the engineer and Port Authority shall certify that the completed work shown on each payment request is an accurate representation of the work accomplished during the estimate period and that the work substantially complies with the plans and specifications; (2) The DOTD shall promptly process payment of its share for completed work to date; (3) The DOTD shall withhold retainage on its share in accordance with state law; (4) Changes in the work which alter the Contract Price or Contract Time shall be submitted to the DOTD prior to authorizing the contractor to perform such work.

9.2 Forty-five (45) days after the Recordation of the Final Acceptance of the Project, the contractor shall submit to the Port Authority a Clear Lien Certificate from the Recorder's office of the Parish or Parishes in which the work was performed. Final payments of all amounts due from the DOTD shall be made to the Port Authority upon receipt of the above certificate and/or, in the

event of unresolved liens, notification of the Port Authority's intent to deposit retainage with the Court of appropriate jurisdiction and the following:

1. Certification by the Port Authority's Engineer that the work is complete and a recommendation of acceptance (Substantial Completion)
2. A Resolution by the Port Authority accepting the work
3. A certified copy of The Recordation of Acceptance
4. A certified copy of the Clear Lien Certificate or as excepted
5. Final cost Estimate and As-Built Drawings or Plans of Record

9.3 If the Port Authority intends to phase the Project under separate construction contracts, the Port Authority shall notify DOTD of the scope of each phase and provide a marked up copy of the cost estimate in the approved application for funding showing each phase so that appropriate state project numbers may be assigned for each part of the work.

ARTICLE 10 **NONDISCRIMINATION**

10.1 The Port Authority agrees to abide by the requirements of the following as applicable: Titles VI of the Civil Rights Act of 1964, and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968, as amended, and the Americans with Disabilities Act of 1990, as amended.

10.2 The Port Authority agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

10.3 Any act of discrimination committed by the Port Authority, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Agreement.

ARTICLE 11 **HOLD HARMLESS AND INDEMNITY**

11.1 The Port Authority agrees and obligates itself, its successors and assigns, to defend, indemnify, save, protect and hold forever harmless and provide a defense for the DOTD, its officials, officers and employees against any and all claims that may be asserted by any persons or parties resulting from violation by the Port Authority, its employees, agents and/or representatives of the requirements of all State laws applicable to the Project. Further, the Port Authority agrees that it shall indemnify and save harmless and provide a defense for the DOTD, its officials, officers and employees, against any and all claims, demands, suits, actions (ex contractu, ex delictu, quasi-contractual, statutory or otherwise), judgments of sums of money, attorney's fees and court costs, to any party or third person including, but not limited to, amounts for loss of life or injury or damage to persons, property or damages to contractors, subcontractors, suppliers, laborers or other agents or contractors of Port Authority or any of the above, growing out of, resulting from, or by reason of, any negligent act or omission, operation or work of the Port Authority, its employees, servants, contractors, or any person engaged upon or in connection with the engineering services,

construction and construction engineering required or performed by the Port Authority hereunder including, but not limited to, any omissions, defects or deficiencies in the plans, specifications or estimates or by virtue of any extra work, delays, disruptions, inefficiencies or nonpayment of any engineering, construction, or construction engineering costs incurred or any other claim of whatever kind or nature arising from, out of, or in any way connected with the Project, to the extent permitted by law.

11.2 Nothing herein is intended, nor shall be deemed, to create a third party beneficiary to any obligation by the DOTD herein or to authorize any third person to have any action against the DOTD arising out of this Agreement.

ARTICLE 12
PHASE I ENVIRONMENTAL SITE ASSESSMENT FOR REAL ESTATE

12.1 If any funds covered by this Agreement are to be used for the purchase of immovable property, the Port Authority shall have prepared, at the expense of the Port Authority, a Phase I Environmental Site Assessment (Assessment) of the immovable property. This Assessment shall be prepared, according to the latest edition of ASTM E 1527, by an experienced environmental consultant qualified to perform Assessments. Any purchase agreement for the immovable property shall contain an agreement by the seller of the immovable property that it will warrant and guarantee to the Port Authority that the immovable property is free of all hazards identified by the Assessment as existing or suspected and this guarantee shall be part of any act of sale for the purchase of the immovable property. A copy of the Assessment and a certified copy of the purchase agreement, containing the warranty and/or guarantee, shall be provided to the DOTD.

ARTICLE 13
OWNERSHIP OF PROPERTY

13.1 Port improvements funded through the Port Construction and Development Priority Program shall be built, installed and/or implemented only on port owned lands or public lands. Public lands are lands under the control of public organizations which are authorized by law to perform governmental functions.

13.2 Should the Port Authority sell or dispose of any facilities, etc., that have been funded in part by the Port Construction and Development Priority Program, the Port Authority shall reimburse the DOTD for the percentage of Project life remaining at the time of the act of sale. The Project life shall be twenty years for structures and ten years for equipment unless a different period of time is specified in the evaluation of the Project. If the land obtained through the program funds is sold at any time DOTD shall be reimbursed at one hundred percent of the original funds dispersed for purchase of the land including change orders.

ARTICLE 14
PROJECT COMPLETION

14.1 Upon completion and final acceptance of the Project, the Port Authority shall record the final acceptance with the Clerk of Court for the parish or parishes in which the improvement is located and furnish a certified copy of the final acceptance to the DOTD.

14.2 The Port Authority shall develop an Operation and Maintenance Manual and shall provide the DOTD with as-built plans or plans of record. The Port Authority shall maintain the Project, as completed, at its expense and in accordance with the Port Authority's maintenance policies and the Operation and Maintenance Manual. The Port Authority shall develop and submit to the DOTD a Monitoring Report for each of the five years following completion of the Project. These reports shall be developed in accordance with the "Project Monitoring Report Guidelines".

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15.1 Within thirty (30) days after the agreement is executed, the Port Authority shall submit to the DOTD a Progress Schedule that indicates, using a bar graph, the various activities that must be accomplished to develop construction plans and specifications and let a construction contract within the time limitations specified in Article 18.

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4. By the DOTD due to the Port Authority not submitting to the DOTD preliminary construction plans (which are more advanced than that submitted with the applications) within one year of the execution of this agreement.

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Within six months of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding to be completed.

For projects that are funded under provisions of the Port Construction and Development Priority Program/Cash Management Plan:

Within three weeks of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding to advertise for bids.

Within one hundred days of the date of notification from the Secretary of the Department, or his designated representative that the project has sufficient funding and is under contract.

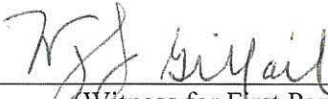
For Projects that have approval from the Department to be divided into more than one construction contract, the above time frames apply to each independent contract that has sufficient funding to be completed. An independent contract shall be a contract that does not require the completion of another contract in order to be constructed. Each additional dependent contract shall begin construction within six months from completion of the contract that it is dependent on.

18.2 The Port Authority understands and agrees that if the Project is not under construction within the above mentioned time limits, the DOTD may terminate this Agreement and any unexpended proceeds may be reallocated to another port project. The award of a construction contract shall satisfy the requirement to be under construction.

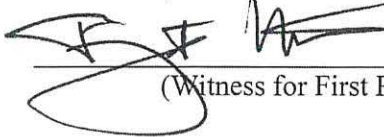
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

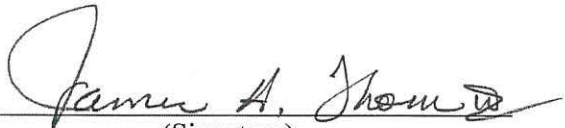
**STATE OF LOUISIANA
LAKE PROVIDENCE PORT
COMMISSION**



(Witness for First Party)



(Witness for First Party)

BY: 

(Signature)

JAMES A. THOM, IV

Typed or Printed Name

President

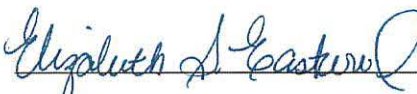
Title


72-0571915

Port Authority's Federal Identification Number

WITNESSES:

**STATE OF LOUISIANA,
THROUGH THE DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT**





BY: 

Secretary

RECOMMENDED FOR APPROVAL

BY: 

Deputy Commissioner

**RESOLUTION AUTHORIZING AN AGREEMENT
AND DESIGNATION OF PERSON AUTHORIZED TO SIGN**

STATE PROJECT NO H.014377
PARISH OF EAST CARROL

RESOLUTION

Lake Providence Port Commission

A Resolution authorizing the Lake Providence Port Commission to enter into an agreement with the State of Louisiana, Department of Transportation and Development under the Louisiana Port Construction and Development Priority Program for assistance in the implementation of a port improvement project; providing for the necessary documentation of the need for the port improvement; and providing for other matters in connection therewith.

WHEREAS, the Lake Providence Port Commission has a need for port improvements; and

WHEREAS, the Lake Providence Port Commission has reviewed the application for Multimodal Freight Corridor Improvements and agrees with said agreement; and

WHEREAS, the Lake Providence Port Commission has applied for State matching funds pursuant to Chapter 47 of Title 34 of the Louisiana Revised Statutes of 1950, as amended, to implement a project to improve its port operation and Lake Providence Port Commission is fully aware of its obligations under said Statute; and

WHEREAS, the Lake Providence Port Commission is a political body duly organized and existing under the laws of the State of Louisiana and is eligible to apply for funds under said Statute; and

NOW, THEREFORE, BE IT RESOLVED by the Lake Providence Port Commission as follows:

Section 1. That Lake Providence Port Commission acknowledges that an application was submitted to the Louisiana Port Construction and Development Priority Program.

Section 2. That at the appropriate time and prior to commencement of work on the project Lake Providence Port Commission agrees to execute a Project Agreement and a Statement of Sponsorship pursuant to the Statute and hereby authorizes and empowers Wyly Gilfoil, Executive Director to enter into and execute said agreement with the Louisiana Department of Transportation and Development.

Section 3. That Wyly Gilfoil, Executive Director is hereby Authorized Representative for Lake Providence Port Commission to represent the port with regards to the receipt of funds from the Louisiana Port Construction and Development Priority Program for a port improvement project.

Section 4. That said Authorized Representative shall have the authority to sign and approve all documents that are necessary under the circumstances to accomplish the above project.

(SECRETARY OR CLERK)

(MAYOR), (CHAIRMAN) OR (PRESIDENT)

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of a resolution adopted at a (Regular) or (Special) meeting of the Lake Providence Port Commission held on the 19th Day of August, 2020, in which a quorum was present and voting and that the resolution adopted is still in effect and has not been rescinded or revoked.

Signed at Lake Providence on the 19th Day of August, 2020.

(SECRETARY) OR (CLERK)

CERTIFICATE

I, Lela M. Folse, Director, State Bond Commission, State of Louisiana, do hereby certify that the attached Application No. L24-115

East Carroll Parish, Lake Providence Port Commission

was approved by the State Bond Commission at a meeting held in the State Capitol on April 18, 2024 after due notice given to each member.

I FURTHER CERTIFY that the following members were present, recused and/or absent at said meeting when said application was presented for consideration:

PRESENT

- Honorable John Fleming, MD, State Treasurer
- Mr. Brandon Burris, representing Lt. Governor Billy Nungesser
- Mr. Brett Robinson, representing Attorney General Liz Murrill
- Mr. Craig Cassagne, representing Commissioner of Administration Taylor Barras
- Ms. Angelique Freel, representing Governor Jeff Landry
- Ms. Catherine Newsome, representing Secretary of State Nancy Landry
- Representative Jack McFarland, Chair, House Appropriations Committee
- Representative Julie Emerson, Chair, House Ways and Means Committee
- Representative Phillip R. DeVillier, Speaker of the House
- Representative Tony Bacala, Representative at Large
- Senator Franklin Foil, Chair, Senate Revenue and Fiscal Affairs Committee
- Senator Glen Womack, Chair, Senate Finance Committee
- Senator Greg Miller, representing the Senator-at-Large

RECUSED

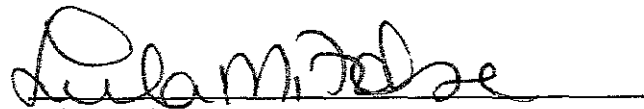
ABSENT

Senator Heather Cloud, representing the President of the Senate

AND THAT the motion to approve Application No. L24-115 was made by Representative Phillip R. DeVillier, Speaker of the House, seconded by Senator Glen Womack, Chair, Senate Finance Committee, and approved.

SAID official approval of such application being evidenced by the stamp and seal of the State Bond Commission which has been applied hereon.

WITNESS by my hand and seal in Baton Rouge, Louisiana on **April 18, 2024**.


Lela M. Folse

(SEAL)





LOUISIANA STATE BOND COMMISSION
APPROVAL PARAMETERS - BONDS / LOANS

SBC Tracking # L24-115
Agenda Item # 15

Applicant: *

Lake Providence Port Commission

Parameters / Purposes: *

Not exceeding \$10,000,000 of Revenue Bonds (the "Bonds"), in one or more series, for the purpose of (i) acquiring, constructing, repairing, rehabilitating or extending rail lines owned or to be owned by the Issuer, and (ii) paying the costs of issuance of the Bonds. The Bonds shall mature no later than twenty-five (25) years from date of issuance and shall bear interest at a rate or rates not exceeding 6.75% per annum. The Bonds shall be issued in fully registered form and shall have such additional terms and provisions as may be determined by the Governing Authority.

Citation: Section 1430 of Title 39 of the Louisiana Revised Statutes of 1950, as amended

Citation(s): *

See above.

Security: *

The Bonds will be payable in principal and interest solely from the Issuer's excess annual revenues above statutory, necessary and usual charges.

As Set Forth By: *

Resolution adopted by the Governing Authority on March 20, 2024.

Subject To:

to the applicant's compliance with the provisions of La. R.S. 33:4712.10 prior to actual disbursement of proceeds for purchase of immovable property and that no disbursement for purchase of immovable property will be in excess of the appraisal valuation.

It is the policy of the State Bond Commission that all attorneys' fees involved in this matter must be approved by the Office of the State Attorney General prior to payment. Although this is not a conditional approval of this application, failure to obtain such approval may result in conditional approval of such application by the State Bond Commission in the future.

The approval does not constitute a recommendation, approval, or sanction by the Louisiana State Bond Commission or the State of Louisiana of the investment quality of the credit represented by the application. Further, the approval does not constitute any guaranty of repayment of the debt by the State Bond Commission or the State of Louisiana. The approval of the application by the Louisiana State Bond Commission should not be relied upon as advice by any current or potential holders or purchasers of any debt instruments subject to the application, including, but not limited to bonds, notes, and certificates of indebtedness. Nor shall the State Bond Commission or the State of Louisiana have any liability or legal responsibility to third party purchasers or investors arising out of, related to, or connected with the approval.

LOUISIANA HOUSE OF REPRESENTATIVES

P.O. Box 68
Delhi, LA 71232
Email: thompsonf@legis.la.gov
Office: 318.878.9408
Fax: 318.878.5650



COMMITTEES:
Agriculture, Forestry, Aquaculture and
Rural Development - Vice Chairman
Appropriations
Joint Legislative Committee on the Budget

FRANCIS C. THOMPSON
State Representative - District 19

November 17, 2022

Randall D. Withers
Louisiana Department of Transportation and Development
LA Port Construction & Development Priority Program
1201 Capitol Access Road
Baton Rouge, LA 70802

Re: *Lake Providence Port Commission - Application*

Mr. Withers,

As State Representative for Louisiana's District 19 of the House of Representatives and as a long time legislator in both the House and Senate for Northeast Louisiana, it is my privilege to write in support of the application for the Lake Providence Port Commission for the Louisiana Port Construction and Development Priority Program. The approval of their application would begin the process of reinstating the Missouri Pacific Vidalia Branch, starting south of Tallulah, Louisiana, in Madison Parish.

The funding for this project would be used to bring basic infrastructure into an impoverished area to increase opportunity for industry which has a direct impact on job creation and tax revenue. The Louisiana Delta region has long been characterized as a distressed region of our state, high poverty rates and low job opportunities. Population growth has been declining for decades as families have chosen to or have been forced to choose urban life to find employment with higher compensation. Lack of basic infrastructure from ports, railroads, etc. knock the region out of site selection for any industrial projects. This scenario creates a larger problem for the region as parish tax revenues slowly decline, leaving each local parish government struggle to simply maintain infrastructure assets that are outdated and rapidly aging. Many of these assets have been neglected not from lack of concern, but simply due to a lack of funds needed for standard maintenance.

Because of the information given here and my personal knowledge of the importance of our ports for the entire Northeast Louisiana region, I fully support the Lake Providence Port Commission's application and respectfully request your favorable consideration for approval. Thank you for your time and consideration of the very important project for Northeast Louisiana and for our state.

Sincerely,

A handwritten signature in blue ink that reads "Francis C. Thompson".

Francis C. Thompson

State Representative, District 19



LOUISIANA HOUSE OF REPRESENTATIVES

P.O. Box 117
Columbia, LA 71418
Email: risern@legis.la.gov
Office: 318.649.0977
Fax: 318.649.0979



COMMITTEES:
Labor and Industrial Relations,
Vice-Chairman
Ways and Means
Natural Resources and Environment

NEIL RISER
State Representative ~ District 20

November 18, 2022

La. Department of Transportation & Development
Ports and Waterways Division
ATTN: Mr. Randall D. Withers
Director, Ports and Waterways
P.O. Box 94245
Baton Rouge, LA 70804-9245

RE: Lake Providence Port Commission
La. Port Construction & Development Priority Program application
reinstating Missouri Pacific Vidalia Branch Railroad

Dear Mr. Withers:

I am writing on behalf of the Lake Providence Port Commission and their application for funding thru the Louisiana Port Construction and Development Priority Program. I understand that this funding will be used to reinstate the Missouri Pacific Vidalia Branch Railroad service, starting south of Tallulah. I understand this project will be of much benefit to the Lake Provide Port as well as Tensas Port, and Vidalia Port.

I certainly feel that this a worthwhile project for the area. Please note that I am in support of this application for funding.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Riser".

Neil Riser
State Representative
District 20

nr:acm
cc: Bryant Killen, Deputy Director
Lake Providence Port Commission



LOUISIANA HOUSE OF REPRESENTATIVES

200 Advocate Row, Suite D
Vidalia, LA 71373
Email: rep021@louisiana.gov
Phone: 225.308.4269
Fax: 225.380.0983



Agriculture, Forestry, Aquaculture, and
Rural Development, Health and Welfare,
Transportation, Highways, and Public
Works, House Select Committee on
Homeland Security

C. Travis Johnson
State Representative ~ District 21

November 23, 2022

LADOTD

Mr. Randall Withers, Ports and Waterways Director
P. O. Box 94245
Baton Rouge, LA 70804-9245

Reference: Louisiana Port Construction & Development Priority Program

Dear Mr. Withers:

As representative of Louisiana District 21, I enthusiastically write in support of the Lake Providence Port Commission's application to the Louisiana Port Construction & Development Priority Program to begin the process of reinstating the Missouri Pacific Vidalia Branch, starting south of Tallulah. Reinstatement of rail service can greatly improve economic development in District 21. Bringing basic infrastructure into an impoverished area such as District 21 has been proven to increase opportunity for industry, which has a direct impact on job creation and tax revenue.

Additionally, the Louisiana Delta has long been characterized as a distressed region with a high poverty rate with low job opportunities. As families have chosen or have been forced to relocate to areas that offer greater job opportunities and/or higher wages, the region has suffered negative growth since WWII. Because of a lack of basic infrastructure such as ports and rail service, the region is overlooked and/or fail to attract industrial projects. This further hampers the region, as parish tax revenues slowly decline, which leaves each local parish government struggling to simply maintain assets that are outdated and rapidly aging. Many assets are neglected, not from lack of care but because of a dearth of funds needed for standard upkeep. Reinstating the Missouri Pacific Vidalia Branch will certainly enhance economic viability within the region.

Again, as representative of District 21, I earnestly support the Lake Providence Commission's application to the Louisiana Port Construction & Development Priority Program. I appreciate favorable consideration of the Commission's application.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Travis Johnson".

C. Travis Johnson



ATTACHMENT C -- Discovery Response to Interrogatories 65 and 66

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,

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*

see Response to Interrogatory No. 65, which is incorporated herein by reference.

INTERROGATORY NO. 67

Please state what You estimate the costs of operating the Line will be on an annual basis.

Response: LPPC objects to this Interrogatory on the grounds that because it is not a rail carrier, it has no ability to estimate the future costs of operating the Line on any annual basis.

INTERROGATORY NO. 68

Please state whether Your operating lease with NLA is exclusive.

Response: LPPC states that the operating lease with NLA is exclusive.

REQUESTS FOR PRODUCTION OF DOCUMENTS (“RFPs”)

RFP NO. 27

Please produce all Documents and communications related to any and all INFRA grants (including but not limited to Exhibit A submitted by LPPC on January 4, 2023, in STB Finance Docket No. 36447, including Documents regarding grant or denial of the grant, receipt of funds, projected or actual expenditure of funds, or work schedules.

Response: LPPC objects to RFP No. 27 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

ATTACHMENT D -- Discovery Response to Document Request 30

- r. Slipknot (f/k/a Lake Village Seed)
- s. Gavilon (f/k/a CHS)
- t. APEX
- u. Scott Petroleum
- v. Bayou Energy, LLC
- w. John Deere

Response: LPPC objects to RFP No. 11 on the grounds that LPPC, with the exception of APEX, has had no communications with any of the foregoing entities that relate to rail service provided by either DSRR or NLA from 2017 to the present date. Because DSRR was involved in the incidents that led to the Zoom meeting with APEX officials regarding rail service provided by both NLA and DSRR, DSRR is in possession of the information it seeks. In addition, LPPC does not have any documents from any of the other foregoing entities that relate to rail service provided by either DSRR or NLA from 2017 to the present date.

RFP NO. 30

Please produce all Documents related to and communications with Northeast Louisiana Railroad Development District regarding any rail property owned by DSRR, including the Line.

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. Because the Northeast Louisiana Railroad Development District (“NLRDD”) is not a party to this proceeding and because it is not involved with the Line, which is the only rail property involved in this proceeding, information regarding NLRDD is outside the scope of the

issues presented, and is neither relevant nor likely to lead to discovery of admissible evidence.

RFP NO. 31

Please produce all public notices of LPPC meetings.

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, all public notices of LPPC meetings that have not already been provided to DSRR, can be found at the Louisiana Division of Administration.

RFP NO. 32

Please produce all agreements entered into between LPPC and any rail carrier, including NLA.

Response: A copy of the Second Amended Railway Lease Agreement By and Between LPPC and NLA was filed herein with the Board on November 30, 2023.

RFP NO. 33

Please produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or the Governor of Louisiana concerning LPPC's feeder line application.

Response: LPPC objects to RFP No. 33 on the grounds that the request for such communications and Documents is not relevant to the issue of

ATTACHMENT E – Supplemental Response to Document Request 30

v. Bayou Energy, LLC
w. John Deere

Response: After performing a reasonable search of its records to locate Documents and communications with the above-listed rail customers or potential rail customers that discuss or relate to rail service provided by either DSR or NLA from 2017 to present, LPPC states that on October 13, 2022, Wyly Gilfoil emailed a questionnaire that requested information regarding the shippers potential use of rail service over the Lake Providence Branch Line to Complex Chemical Co., Helena/South Delta Fertilizer, Anderson Trade Group, Terral River Services, Nutrien and Gavilon. *See* LPPC Discovery Document Log.

On October 31, 2022, the same questionnaire was forwarded to Stepan Company. Thereafter, counsel for LPPC communicated with several of these shippers to prepare Verified Statements supporting LPPC's Expanded Feeder Line Application. *See* Privilege Log of Richard H. Streeter, Esq.

For copies of communications with APEX that relate to rail service provided by NLA, *see* LPPC Discovery Document Log. After a reasonable search, LPPC has no other documents regarding communications with shippers that relate to rail service by DSRR or NLA from 2017 to the present date for the companies identified in RFP No. 29.

RFP No. 30: Please produce all Documents related to and communications with Northeast Louisiana Railroad Development District regarding any rail property owned by DSRR, including the Line.

Response: Documents, other than confidential privileged attorney client communications and attorney work product prepared in anticipation of litigation related to the Northeast Louisiana Railroad Development District regarding rail property owned by DSRR, are being submitted herewith. See LPPC Discovery Document Log and Privilege Log of Richard H. Streeter, Esq.

RFP No. 31: Please produce all public notices of LPPC meetings.

Response: Copies of all public notices of LPPC meetings from August 2019 to the present date, as well as Meeting Minutes are being submitted herewith in response to RFP 15. See LPPC Discovery Document Log.

RFP No. 33: Please produce all communications and all Documents with elected officials (including member or committee-staff) of the United States House of Representatives, United States Senate, Louisiana House of Representatives, Louisiana Senate, or the Governor of Louisiana concerning LPPC's feeder line application.

Response: After a reasonable search of its records, LPPC has no Documents or records of any communications with any elected officials other than the attached drafts of letters that requested members of Congress to request the Board in the case of the original Feeder Line Application to reinstate a new procedural schedule or in the case of the Amended Feeder Line Application to decide whether the Amended Application was complete. See LPPC Discovery Document Log