



GENTRY LOCKE
Attorneys

John M. Scheib
Scheib@gentrylocke.com

P: (757) 916-3511
F: (540) 983-9400

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VIA ELECTRONIC FILING

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

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

Dear Chief of Case Administration:

Attached for filing in the above-captioned proceeding is the Delta Southern Railroad, Inc.'s Motion for Procedural Schedule.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

/s/ John M. Scheib

John M. Scheib
Noah P. Sullivan
William L. Spotswood
Gentry Locke Attorneys
1010 W. Main Street, Suite 750
Norfolk, VA 23510
757-916-3511

Attorneys for:
Delta Southern Railroad, Inc.

cc: Parties of Record

**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 MOTION FOR PROCEDURAL SCHEDULE

John M. Scheib
Noah P. Sullivan
William L. Spotswood
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1010 W. Main Street, Suite 750
Norfolk, VA 23510
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OF DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND MADISON
PARISHES, LOUISIANA.**

DELTA SOUTHERN RAILROAD INC.’S MOTION FOR PROCEDURAL SCHEDULE

DSRR hereby submits its proposal for a procedural schedule that complies with the Surface Transportation Board’s (“STB or Board”) decision served September 25, 2025, that directed Lake Providence Port Commission (“LPPC”) and Delta Southern Railroad (“DSRR”) “to meet and confer and submit to the Board (jointly if possible, otherwise separately) by October 9, 2025, a proposed procedural schedule” to be published in the *Federal Register*. That decision provided that “[t]he proposed schedule(s) should take into account a reasonable period of time for DSRR to complete discovery and the general timeline for record-building contemplated by the Board’s regulations.” *Lake Providence Port. Comm. – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Parishes, LA.*, FD 36447 at 8 (STB Decided Sept. 25, 2025). Despite this clear, unequivocal directive, LPPC would not agree to provide any time in the procedural schedule for DSRR to complete discovery, which necessitates DSRR to file this proposed procedural schedule.

I. MEET AND CONFER WERE UNSUCCESSFUL BECAUSE LPPC IGNORED BOARD DIRECTIVE TO PROVIDE REASONABLE TIME FOR DSRR DISCOVERY.

Consistent with the STB's September 25, 2025, decision, the parties met and conferred in good faith on a procedural schedule on each of October 6, 2025, October 10, 2025, and October 13, 2025. The parties were regrettably unable to agree on a procedural schedule. LPPC adhered to a view that the schedule set forth in the regulations was the appropriate schedule – ignoring the Board's directive that "[t]he proposed schedule(s) should take into account a reasonable period of time for DSR[R] to complete discovery and the general timeline for record-building contemplated by the Board's regulations." *Id.*; see Attachment A, Meet-and-Confer Letter at 1-2 (LPPC did not respond to this letter).

DSRR, on the other hand, proposed to LPPC a procedural schedule, which it submits that the Board should adopt, that implements that Board directive. That period assumes no discovery disputes and timely production of documents by LPPC's witnesses who provided verified statements in the Amended Application and are parties to this proceeding, as well as from the actual customers who ship freight on the line. On the October 10, 2025, call, LPPC reported that it was sticking to its original position that there should be no time in the schedule for DSRR to complete discovery. During the same call, DSRR—in good faith—put forward a very specific proposal for a procedural schedule that included time for "DSRR to complete discovery":

- F – Federal Register date.
- F+30 – Competing applications due.
- F+120 – End of discovery (contemplating need for discovery related to competing applications as well as discovery of other parties and entities related to the Amended Application).
- F+150 – DSRR's responsive filing due.
- F+170 – LPPC's reply due.

That proposal provided 30 days to file competing applications, 30 days from the end of discovery for DSRR to respond to the Amended Application and competing applications, and 20 days for LPPC to reply – all as provided for in the Board’s rules. It further provided 90 days for DSRR to take discovery related to the Amended Application, including of LPPC’s witnesses who provided verified statements, and any competing applications that might be filed. That discovery period assumed no discovery disputes and timely production of documents by LPPC’s witnesses and other parties and entities from whom DSRR might seek discovery. At the conclusion of the October 10, 2025, meet and confer, LPPC agreed to discuss a reasonable discovery period with its client. Regrettably, LPPC counsel reported on October 13, 2025, that LPPC would not agree to a procedural schedule that specifically provided any time for DSRR to complete discovery.

II. DSRR’S PROPOSED PROCEDURAL SCHEDULE COMPLIES WITH ALL ASPECTS OF THE BOARD’S ORDER BY PROVIDING A REASONABLE PERIOD OF TIME FOR DISCOVERY.

Given LPPC’s unwillingness to recognize the directive to account for “a reasonable period of time for DSRR to complete discovery,” DSRR hereby requests that the Board adopt its proposed procedural schedule as follows:

- F – Federal Register date.
- F+30 – Competing applications due.
- F+120 – End of discovery (contemplating need for discovery related to competing applications as well as discovery of other parties and entities related to the Amended Application).
- F+150 – DSRR’s responsive filing due.
- F+170 – LPPC’s reply due.

This schedule adheres to the Board established timelines for filings (30 days for competing applications, 30 days after discovery for DSRR to file its response to the Amended Application, and 20 days for LPPC to file its reply) and to the Board’s September 25 order directing the parties to account for “a reasonable period of time for DSRR to complete discovery and the

general timeline for record-building contemplated by the Board’s regulations.” *Id.* The Board has used 90 days as a reasonable period in the past in other contexts. *See Tongue River R.R. Co., Inc. – Rail Construction and Operation -- In Custer, Powder River and Rosebud Counties, Mont.*, STB Finance Docket No. 30186, 2013 STB LEXIS 275 at *7 (STB Decided Aug. 27, 2013).

LPPC’s position that the procedural schedule does not need to include any time specific time for completion of discovery is untenable. If the Board had intended the parties to simply file a procedural schedule based on the timelines established by regulation, the Board would not have needed to state that the procedural schedule “should take into account a reasonable period of time for DSRR to complete discovery and the general timeline for record-building contemplated by the Board’s regulations.”

DSRR’s proposed procedural schedule reasonably complies with that Board directive. In particular, a 90-day period for discovery provides LPPC, North Louisiana and Arkansas Railroad (“NLA”), and Southeast Arkansas Economic Development District (“SEAEDD”) time to comply with their obligations to supplement their discovery responses on an ongoing basis. Indeed, DSRR has not received any discovery responses since the Board placed the case in abeyance more than 18 months ago because of LPPC’s *ultra vires* actions. During the meet-and-confer, counsel for LPPC advised that such updating would not take long. *See Attachment A, Meet-and-Confer Letter at 2.* Yet it has been more than 30 days since the meet-and-confer session where such representation were made, and none of those parties has produced a single page of updated discovery.

The discovery period also provides a reasonable time for DSRR to serve discovery upon and receive responses from LPPC's witnesses that submitted verified statements in the Amended Application. It also provides a reasonable period of time for DSRR to schedule and depose those witnesses, as well as other persons or entities with information likely to lead to admissible evidence – such as the actual rail customers on the line.

Even with a specific period for discovery built into the schedule, DSRR may need to seek extensions to complete discovery if discovery has not concluded by the deadlines established in DSRR's proposed procedural schedule.¹ For instance, DSRR reasonably anticipates that a motion to compel or subpoena may be required to compel discovery responses from LPPC's witnesses because, LPPC's counsel has stated that its witnesses may fight discovery. *See id.*

III. DISCOVERY IS REQUIRED TO PROTECT DSRR'S DUE PROCESS RIGHTS.

LPPC's proposal, which ignores the Board's directive and merely restates the time period noted in the regulations, would jeopardize DSRR's fundamental due process rights. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970); *see also ICC v. Louisville & Nashville R.R.*, 227 U.S. 88, 93–94 (1913). *Cf.* § 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d). Where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination. Thus, the Supreme Court has been zealous to protect these rights from erosion – "It

¹ Of course, either party may seek an extension of the procedural schedule if motions practice arises in the course of the proceeding.

has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.” *Greene v. McElroy*, 360 U.S. 474, 496–97 (1959).

Circuit Courts of Appeals have followed this directive. For example, the Eighth Circuit Court vacated an Order from the Department of Education, which awarded reinstatement and backpay to an employee, because the Department failed to give the employer an opportunity to confront and cross-examine adverse witnesses during the course of the proceeding. *Business Comms., Inc. v. U.S. Dep’t of Educ.*, 739 F.3d 374, 381-82 (8th Cir. 2013). Likewise, the Ninth Circuit Court found that the U.S. Citizenship and Immigration Service violated due process rights where it failed to give plaintiffs an opportunity to confront and cross-examine adverse witnesses in connection with an I-130 petition. *Ching v. Mayorkas*, 725 F.3d 1149, 1159 (9th Cir. 2013). These principles apply with equal force in this proceeding, and DSRR is entitled to confront and cross-examine adverse witnesses in connection with the Amended Application.

Therefore, due process requires that each of LPPC’s witnesses’ verified statements be struck or otherwise subject to fact discovery through discovery requests and depositions. DSRR’s procedural schedule – assuming LPPC’s witnesses statements are not struck and that there is cooperation from those from whom DSRR seeks discovery – provides a reasonable time to protect DSRR’s rights – again provided that they do not waste time fighting the discovery and that they timely respond and timely produce all responsive materials.

IV. ALTHOUGH DSRR MADE GOOD FAITH EFFORTS TO KEEP DISCOVERY MOVING DURING THE GOVERNMENT SHUTDOWN, LPPC’S WITNESS HAS STONEWALLED.

Finally, a reasonable period for discovery (and possibly extension, depending on the behavior of LPPC’s witnesses) is required for reasons beyond DSRR’s control. DSRR attempted not to let the government shutdown delay its start on completing discovery. On October 13,

2025, DSRR served discovery on three of LPPC's witnesses that submitted verified statements in the Amended Application – Complex Chemical Company, Inc., Livingston Pecan & Metal, Inc. ("Livingston"), Hollybrook Warehouse, Inc., ("Hollybrook"), and Epstein Gin Company ("Epstein"). On October 22, 2025, DSRR served notices of deposition on four individuals. Three of the individuals are representatives of Livingston, Hollybrook, and Epstein, and their notices were contingent upon those witness parties completing its discovery responses before the deposition dates, which are set for the week of December 15.

Regrettably, all four of LPPC's witnesses objected to discovery and refused to respond. Accordingly, despite DSRR's reasonable efforts to keep the case moving during the shutdown, these objections will require time for the Board to resolve and then for the permissible discovery to occur. DSRR is defending its due process rights to confront LPPC's witnesses and adverse parties with reasonable discovery in the appropriate motions filed vis-à-vis these parties.

Relatedly, other parties that actually ship on the line did not provide any verified statement. Further discovery and subpoenas duces tecum may be needed of those – although that would be regrettable. Such discovery could be avoided by the Board confirming in the scheduling order that each will be presumed to be receiving adequate service since they are not part of the evidence filed with the Amended Application, in which the Board required LPPC to include all its evidence. Absent such a statement, further time may be needed to address any issues that arise related to discovery from these customers. Accordingly, DSRR requests the Board include that clarification in the procedural schedule.

Respectfully submitted,

/s/ John M. Scheib

John M. Scheib
Noah P. Sullivan
William L. Spotswood
Gentry Locke Attorneys
1010 W. Main Street, Suite 750
Norfolk, VA 23510
757-916-3511

Attorneys for:
Delta Southern Railroad, Inc.

November 19, 2025

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
5255 Partridge Lane, NW
Washington, DC 20016
rhstreeter@gmail.com

Mr. Michael F. McBride
Van Ness Feldman
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
mfm@vnf.com

Noah P. Sullivan
919 East Main Street, Suite 1130
Richmond, VA 23219
United States
Tel: 8049562069
nsullivan@gentrylocke.com

Thomas D. Crowley
1501 Duke Street, Ste 200
Alexandria, VA 22314
United States
Tel: 7038360100
TC@LEPEABODY.COM

/s/ William L. Spotswood

William L. Spotswood
Dated: November 19, 2025

ATTACHMENT A – Meet-and-Confer Letter

Meet and Confer Update Letter



Scheib, John M.

To rhstreeter@gmail.com; mfm@vnf.com

Cc [Sullivan, Noah P.](#); [Spotswood, William L.](#)

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10.23.2025 Meet and Confer Letter.pdf
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Reply



Reply All



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Thu 10/23/2025 4:14 PM

Expires 1/21/2026

Gentlemen:

Please see the attached. We are available to meet should you reconsider your position on the procedural schedule.

John



GENTRY LOCKE
Attorneys

John M. Scheib

Direct: 757.916.3511 | Cell: 757.910.7072

VIRGINIA: Norfolk | Roanoke | Lynchburg | Richmond

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GENTRY LOCKE
Attorneys

Noah P. Sullivan

NSullivan@gentrylocke.com

P: (804) 956-2069

F: (540) 983-9400

October 23, 2025

VIA ELECTRONIC MAIL

Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
rhstreeter@gmail.com

Michael F. McBride
Vann Ness Feldman LLP
2000 Pennsylvania Ave., N.W., Suite 6000
Washington, D.C. 20006
mfm@vnf.com

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

Messrs. Streeter and McBride:

This letter summarizes our meet-and-confer call of October 6, 2025, October 10, 2025, and October 13, 2025, and updates you on the commitment DSRR made during those sessions to move forward with discovery despite the government shutdown.

Meet and Confer Sessions

That meet and confer call was mandated by the Board's decision served on September 25, 2025, for the parties to consider a procedural schedule. That decision provided that "[t]he proposed schedule(s) should take into account a reasonable period of time for DSR to complete discovery and the general timeline for record-building contemplated by the Board's regulations. See 49 C.F.R. § 1151.2(c), (e), (f). After the Board has received the proposal(s), the Board will set the procedural schedule in the notice published in the Federal Register." STB Finance Docket No. 26447 at 6 (STB Decided Sept. 25, 2025).

The parties were able to agree on the due date for competing applications to be 30 days after publication in the Federal Register of the Board's acceptance of LPPC's amended feeder line application and the Procedural Schedule. We also agreed to work around any holiday scheduling issues.

Regrettably in each call, LPPC simply sought the standard procedural schedule – ignoring the Board’s directive to “account for a reasonable period of time for DSRR to complete discovery” – and contending that discovery could move forward even in the government shutdown. On October 10, 2025, DSRR put forward a very specific proposal that included:

- F – Federal Register date;
- F+30 – Competing applications;
- F+120 – End of discovery (contemplating need for discovery related to competing applications as well as discovery of other parties and entities related to the Amended Application);
- F+150 – DSRR’s responsive filing; and
- F+170 – LPPC’s reply.

LPPC agreed to take DSRR’s proposal under consideration. During the October 13 call, LPPC reported that it could not support anything but the standard schedule despite the discussion in the Board’s September 15, 2025 decision. Thus, the parties unfortunately were not able to reach agreement on a reasonable time for discovery and will submit separate procedural schedule proposals after the government reopens and the Board provides a new due date for such filings.

You confirmed in both calls that despite local counsel representations in Louisiana court recently LPPC is not contemplating any amendment to the Amended Application. Of course, if there were such an amendment, it would damage any procedural schedule.

We requested your input on how long it would take each of LPPC, SEADD, and NLA to update its discovery pursuant to its continuing obligation to produce responsive material. During the October 6, 2025, call Mr. Streeter represented that each of those entities would immediately begin to search for responsive documents that have not been produced and would update their discovery for the substantial passage of time. Mr. McBride asked about DSRR updating its discovery for data from 2024. Of course, the Board decision of September 25 only provided for discovery by DSRR. Moreover, even if LPPC was entitled to more discovery following the acceptance of its Amended Application as complete, refreshing it could lead to delays, and it is unclear how that would change the Amended Application.

In addition to expecting LPPC, SEADD, and NLA to update its discovery, we noted that DSRR intended to seek discovery from each party that provided a verified statement and may seek discovery from other entities mentioned in the Application or LPPC, SEADD, and NLA’s discovery. Mr. McBride requested that we start discovery as soon as possible, which DSRR agree to do. During the October 13 call, you noted that you may be engaged by one or more of those parties and that they may fight discovery, which would of course take more time. DSRR has a due process right to test the veracity of the claims made in the proceeding, including in the verified statements that are part of the Amended Application.

Additionally, LPPC agreed to that one location in each of Louisiana and Arkansas for depositions would be more convenient than moving from town to town.

Thank you for your efforts during our meet and confer sessions.

Discovery Efforts During the Government Shutdown

As noted above, DSRR believed that LPPC's request that the government shutdown not slow down DSRR's discovery efforts that the Board specifically noted in its September 25 Decision was reasonable. DSRR has not allowed it to slow down DSRR's efforts. On October 13, 2025, DSRR served such discovery on three parties that filed verified statements with the Amended Application which purport to be evidence against DSRR:

- Livingston Pecan & Metals, Inc. ("Livingston");
- Hollybrook Warehouse, Inc.; and
- Epstein Gin Co. d/b/a Epstein Transloading ("Epstein").

On October 22, 2025, DSRR served its first four deposition notices also to advance discovery. DSRR served them on Sam Angel of Epstein, Blake Livingston of Livingston, Robert Amacker of Hollybrook, and Missy Courtwright of North Louisiana and Arkansas Railroad. Those depositions were noticed for the week of December 15, 2025; however, each of Messrs. Angel, Amacker, and Livingston's deposition dates are contingent on the completion of the relevant October 13 discovery responses before the deposition date to make the depositions meaningful.

We have now received by U.S. mail an undated letter from Livingston objecting to DSRR's discovery and refusing to comply. We do not know whether you were aware of this objection or had consulted with Livingston or advised it on the response, but this is the type of delay that must be accounted for in the procedural schedule. Because DSRR's due process rights demand that it be able to confront and test evidence submitted, DSRR intends to challenge Livingston's objection – or any other party that objects – when the government reopens. Accordingly, DSRR's discovery cannot move forward at least as to Livingston – or any other party that objects – during the government shutdown. DSRR also intends to seek a subpoena duces tecum for discovery of other entities that LPPC has alleged to be shippers. That too cannot occur before the government shutdown.

As of this date, DSRR has not received any supplemental discovery from LPPC, NLA, or SEAEDD in more than one year -- despite the fact that each entity undoubtedly has new material that is responsive to DSRR's discovery requests, including NLA derailments and communications with rail customers, just to name two examples.

If LPPC would like to reconsider its position on the procedural schedule in light of these new facts, we are available to discuss.

Sincerely,

/s/ John M. Scheib

John M. Scheib

Attorney for: Delta Southern Railroad, Inc.

cc: Noah P. Sullivan, Esq.
William L. Spotswood, Esq.