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December 8, 2025
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December 6, 2025

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423**Re: FD 36447, Lake Providence Port Commission - Feeder Line
Application - Line of Delta Southern Railroad Located in East
Carroll and Madison Parishes, LA**

Dear Sir or Madam:

I represent Mr. Blake Livingston, Vice President of Livingston Pecan and Metal, Inc. ("LP&M") whose business address is 219 Commerce Street, Lake Village, Arkansas 71653. Mr. Livingston provided a Verified Statement herein in support of the Amended Application filed by the Lake Providence Port Commission ("LPPC"). Please accept this letter as a brief reply to Delta Southern Railroad, Inc.'s "Motion to Strike and Compel and in the Alternative Motion to Compel or for a Subpoena Duces Tecum" (docketed by the STB as "Motion to Compel") filed in the above-referenced proceeding by Delta Southern Railroad, Inc. ("DSR") on November 19, 2025. While the Motion to Compel seeks to compel Mr. Livingston to respond to DSR's written discovery requests and appear for a deposition in response to a subpoena duces tecum (the specific terms of which are not provided by DSR), I submit that DSR has failed to comply with the governing regulations of the Surface Transportation Board ("**Board**" or "**STB**").

In mid-October, Mr. Livingston notified the attorney for DSR that neither he nor LP&M are parties to the above-referenced feeder line proceeding brought by the LPPC. Now, as Mr. Livingston's attorney, I agree with his assessment that he is **not a party herein, and therefore is not subject to the requirement to respond to such interrogatories and requests for production of documents**, which is consistent with the Board's definition of "party" at 49 CFR § 1101.2(d). Mr. Livingston is merely a non-party witness, not a party, and under the Board's rules, cannot be compelled to respond to the written interrogatories or other such discovery requests. Only parties may be compelled to respond to interrogatories and requests for production of documents **under the provisions of 49 CFR §§ 1114.26 and 1114.30.**

I respectfully request that the STB please consider this letter as a non-party's reply and objection to DSR's Notices of Deposition dated October 23 and December 4, addressed to Mr. Livingston at his address in Lake Village, Arkansas, that directed him to appear at a location in Pine Bluff, Arkansas, approximately eighty two (82) miles from Lake Village, Arkansas. Under the STB's regulations, depositions can only be compelled in the "city or municipality where the deponent is located." 49 CFR § 1114.23(a). Accordingly, DSR has not provided an appropriate or adequate Notice of Deposition to Mr. Livingston.

In addition, DSR's Motion to Compel, requesting that the Board issue a subpoena duces tecum to Mr. Livingston, is improper because DSR has not provided Mr. Livingston with an individual opportunity to address any concerns he may have with the specific terms of DSR's proposed subpoena duces tecum (which, as noted above, DSR has not provided), including the date, location, duration, documents demanded that Mr. Livingston produce, relevance, and privilege claims (if any). After all, Mr. Livingston has other obligations with his business and personal life this time of year surrounding the holidays. Therefore, Mr. Livingston respectfully urges the Board to compel DSR to comply with its rules and case law, which allow a witness who has been subpoenaed to raise specific objections, as LPPC has cited in its November 24, 2025 Reply.

What's more, as discussed above, as a non-party witness, Mr. Livingston should not be required to respond to DSR's interrogatories and requests for production of documents. Moreover, if DSR continues to seek to depose Mr. Livingston, it should only be after DSR files a **separate** petition for issuance of a subpoena duces tecum to Mr. Livingston, with sufficient opportunity for Mr. Livingston to reply to the petition with any objections he may have to the subpoena, including as to timing, location, burden, applicable privileges (if any), and any other factors that Mr. Livingston may reasonably raise for determination before he is required to appear at such a deposition.

Finally, while Mr. Livingston does not wish to delay this proceeding, he respectfully urges the Board, if a deposition is required, to set a date that is after the holiday season. We do not believe that should cause any delay, because we understand that DSR will have the opportunity to respond to LPPC's Amended Application within sixty (60) days after Federal Register Notice of the procedural schedule.

We thank the Board in advance for its consideration of these arguments and concerns with DSR's Motion to Compel, directed as it is to non-party witnesses such as Mr. Livingston.

Respectfully submitted,

/s/ William L. Mencer

Attorney for Blake Livingston, Vice President of
Livingston Pecan and Metal, Inc.

Cc: All persons on the Service List in FD 36447