

ENTERED
Office of Chief Counsel
December 16, 2025
Part of
Public Record

The Honorable Jenifer Soulikias
Administrative Law Judge
alj.soulikias.inbox@stb.gov

Re: STB Docket No. FD 36447, Lake Providence Port Commission-
Feeder-Line Application – Line of Delta Southern Railroad Located
in East Carroll and Madison Parishes, LA.

Dear Judge Soulikias:

This letter is from Richard H. Streeter and Michael F. McBride, who are counsel for the Lake Providence Port Commission (“LPPC”), which is the Applicant in the above-referenced proceeding. LPPC hereby responds to the order of the Surface Transportation Board (“Board”), served December 12, 2025. As you are aware, under that order, the Board authorized you to handle discovery matters in this proceeding, including the November 19, 2025 Motion to Strike and in the Alternative Motion to Compel or for a Subpoena Duces Tecum (“Motion to Compel”) filed by Delta Southern Railroad, Inc. (“DSR”). Decision at 3.

We are also filing a Motion to Compel, because DSR has refused to supplement its responses to LPPC’s interrogatories and requests for production of documents since it filed its final responses to those discovery requests in February 2024.¹

Background Information: Several non-party witnesses, who generally testified on behalf of the companies who intend to ship over the Line² at issue

¹ Please note that on page 1, the date of December 16, 2023 should be corrected to December 12, 2023, which was the actual date when discovery was propounded on DSR.

² The McGehee-Tallulah rail corridor extends from milepost (“MP”) 408.9 in McGehee, AR, where it connects with Union Pacific Railroad Company, south to

LPPC's Prior Filings, and Those of Shipper Witnesses in Support of LPPC's Amended Application, Related to the Disputes That Have Arisen Following the Board's Decision Served September 25, 2025:

LPPC's November 19, 2025 "Response to the Decision of the Surface Transportation Board Directing the Parties to Submit a Proposed Procedural Schedule for Completion of the Record in This Proceeding." This pleading was designated as No. 310281.

LPPC's November 24, 2025 Reply to DSR's Motion to Compel. This pleading was designated as No. 310338.

LPPC's request, filed December 5, 2025, that the Board provide expeditious consideration of the issues raised in LPPC's November 24, 2025 Reply. This pleading was designated as No. 310445.

December 8, 2025 Letter filed for Epstein Gin C. and Epstein Transloading, designated as No. 310460.

December 8, 2025 Letter filed for Livingston Pecan and Metal, Inc., designated as No. 310461.

December 9, 2025 Letter filed for Hollybrook Warehouse, Inc. and Mr. Robert N. Amacker, Jr., designated as No. 310471.

December 9, 2025 Letter filed for Complex Chemical Company, Inc., designated as No. 310474.

December 10, 2025 Letter filed for Terral RiverService, Inc., designated as No. 310492.

As further background highly relevant to DSR's Motion to Compel, on January 20, 2023, LPPC replied to DSR's unwarranted attacks (in its January 13, 2023 motion to reject the amended Application) on the non-party witnesses, including those referred to above, who provided Verified Statements in support of the amended Application. That Reply was designated No. 306013. In its Decision served Nov. 20, 2023 herein (slip op. at 6-11), and designated No. 51875, the STB, relying on LPPC's January 20, 2023 Reply, rejected DSR's unwarranted attacks on the non-party witnesses, and accepted their testimony

in support of the amended Application. It is important for Your Honor to understand that the STB has not only rejected, **years ago**, DSR's attacks on the non-party witnesses who provided Verified Statements in support of the amended Application, but has relied affirmatively, in its November 20, 2023 Decision and its December 11, 2023 Decision (denominated No. 51972) on those Verified Statements to conclude that the amended Application meets the requirements of the Feeder Line statute (49 USC § 10907) and the Board's regulations (49 CFR Part 1151). DSR is now, years after those Verified Statements were submitted in January 2023, and years after the STB relied on those Verified Statements to conditionally accept the amended Application (subject only to LPPC's updated valuation testimony³), seeking to strike or otherwise challenge those Verified Statements, instead of seeking to depose those non-party witnesses in 2023, before the STB relied on the Verified Statements in accepting the amended Application as meeting statutory and regulatory requirements.⁴

³ At the same time that the STB removed this proceeding from abeyance, it accepted LPPC's amended Application in its Decision served on September 25, 2025 (slip op. at 8). That Decision is denominated No. 52736.

⁴ DSR itself has argued that it was entitled to seek discovery, under the STB's rules, without that opportunity set forth in the STB's procedural schedule, so there was nothing to prevent it, **in 2023**, from seeking depositions of the non-party witnesses who had submitted Verified Statements in support of the amended Application. See LPPC's Response (denominated No. 310281) to the Board's September 25, 2025 Decision regarding the procedural schedule, at 5 ("... procedural schedules in feeder line cases do not even mention discovery." See DSR Reply in Opposition to Emergency Motion (filed herein on April 1, 2024 at 2 (emphasis added)). DSR also stated in that same Reply that "The Board has explicitly stated that 'the Board's regulations do not prevent parties from starting discovery before a procedural schedule is issued.' Navajo

As explained in the December 8-10 letters referred to above and filed herein as the witnesses' responses to DSR's November 19, 2025 Motion to Compel by the attorneys representing Mr. Robert N. Amacker, Jr. (Hollybrook Warehouse, Inc.); Mr. Sam E. Angel, (Epstein Gin); Mr. Blake Livingston (Livingston Pecan & Metal, Inc.), Mr. Jerry Melton (Complex Chemical Company, Inc.), and Terral RiverService, Inc. (Mr. Neil Martin), their clients simply filed herein Verified Statements in support of the amended Application. Therefore, their clients do not come within the Board's definition of a "Party" in 49 CFR § 1101.2(d). As such, they may not be compelled to respond to interrogatories and requests for production of documents under 49 CFR §§ 1114.26 and 1114.30, because those rules are by their terms only applicable to "parties." Therefore, and as is apparent from the positions that the shippers have taken in the filings listed above regarding DSR's written discovery requests (i.e., interrogatories and requests for production of documents), there is nothing to show that any of the non-party shippers who submitted Verified Statements in support of the amended Application have improperly refused to comply with the Board's regulations regarding discovery requests to parties to a proceeding.

The same is true with regard to the non-party shipper witnesses' responses to DSR's Notices of Depositions. Again, their objections are based on the Board's governing regulations, such as improperly seeking to hold the

Transitional Energy Co., LLC v. BNSF Ry. Co., NOR 42179, 2023 STB LEXIS 145 at *7 (STB decided Aug. 4, 2023).").

depositions at locations other than where the witnesses are located (49 CFR § 1114.23(a)), or because the depositions are completely unnecessary or would constitute harassment, given the limited nature of the Verified Statements, the fact that the witnesses are unlikely to change their sworn testimony in support of the amended Application, and the fact that DSR propounded its unauthorized written discovery requests with an offer to withdraw those improper requests if the witnesses would change their testimony.⁵ Simply stated, if their Verified Statements were to be stricken, it would deprive the non-party shippers of their First Amendment right to file verified statements before the Board as a result of DSR's improper and unauthorized tactics.

For example, on October 13, 2025, DSR's attorney, John M. Scheib, Esq. electronically served Mr. Jerry Melton, the owner of Complex Chemical Company, Inc., with a letter enclosing interrogatories and requests for production of documents. The letter also claimed that this "discovery is served on you as a party that filed a verified statement in this proceeding." The letter

⁵ STB Docket No. FD 32760 (Sub-No. 52), *BNSF Railway – Petition for Enforcement – Interchange with Savage Tooele Railroad Company* (served Dec. 10, 2025), slip op. at 3 ("Under 49 C.F.R. § 1114.21(c), however, discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought."); STB Docket No. EP 527, *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, 1 S.T.B 754, 766-67(1996)("We recognize that any type of discovery can be abused and, for that reason, we stand ready to intervene when necessary. The comments, however, generally indicate that depositions are seldom used in preparation for litigation before the Board. We see no reason to believe that depositions will be used more frequently in the future, or that such discovery will be used for harassment.").

also included the statement that “[i]f the answers to interrogatory numbers 2 and 4 are ‘no’, we can work with you to simplify the document requests.”

On October 27, Glover Russell, Esq., Complex’s Chemical’s attorney, replied that “Complex Chemical is not a ‘party’ to the above referenced matter. Not being a ‘party’, Complex Chemical is not subject to the discovery that Delta Southern Railroad, Inc. has propounded upon it.” In its electronic response, dated November 4, DSR replied that “DSR will file the appropriate motions when the government re-opens.”

On October 13, 2025, Mr. Scheib sent a letter via FedEx to Mr. Sam E. Angel, II, Epstein Gin’s and Epstein Transloader’s owner (and who is not an attorney) in which Mr. Scheib claimed, contrary to the provisions of 49 D.F.R. § 1101.2(d), “[t]hat this discovery is served on you as a party that filed a verified statement in this proceeding. If the answers to interrogatory numbers 2 and 5 are ‘no’ we can work with you to simplify the document request.”⁶ In response, Mr. Angel requested his local attorney, William Menser, Esq., to respond to Mr. Scheib. By letter dated October 23, Mr. Menser advised Mr. Scheib of certain defects in DSR’s documents. In addition, he noted that because neither Mr. Angel nor Epstein were parties to this proceeding, that they were not obligated to respond to discovery requests such as interrogatories and requests for production of documents.

⁶ An identical letter was sent to Mr. Blake Livingston, the owner of Livingston Pecan & Metals, Inc. Mr. Livingston responded that, because he was not a party of record, he did not have to provide responses to the interrogatories or the requests for production of documents. It is noted that Mr. Menser also represents Livingston Pecan & Metals, Inc.

At that point in time, Mr. Mencer was unaware that DSR was in the process of sending a Notice of Deposition via Federal Express confirming the deposition of Mr. Sam E. Angel II on December 16, 2025 in Pine Bluff, Arkansas.⁷ As the letter to Mr. Angel reflects, DSR's attorney, William L. Mr. Spotswood, Esq. was aware that Mr. Angel's office is located in Lake Village, Arkansas, some 82 miles from Pine Bluff, Arkansas. Therefore, the Notice did not comply with the provisions of 49 C.F.R. § 1114.23(a), which require that depositions, if permitted, be taken in the place where the witness is located.

Moreover, Mr. Spotswood notified Mr. Angel as follows:

Should Epstein wish to avoid discovery, it may withdraw its verified statement. If, however, Epstein refuses to withdraw its statement and stands on its objection to discovery, then DSRR will pursue the appropriate relief at the Board when the government shutdown ends. DSRR will also need to postpone Mr. Angel's deposition until this matter is resolved.

Had DSR's attorneys properly complied with the Board's regulations, there would be no need whatsoever for this discovery hearing. Given DSR's failure to comply with so many of the Board's governing provisions, it appears that the relevant provisions governing depositions and basic discovery requests were either ignored or never mentioned to the non-party shippers or their local attorneys who we do not believe have any background with regard to the STB and its regulations, in the hopes that those non-party witnesses or their

⁷ The Board's order, served December 12, 2025, ordered that all of the depositions scheduled by DSR's counsel for the week of December 15, 2025 not go forward until Your Honor could decide on the propriety of DSR's discovery requests.

counsel would cooperate with impermissible discovery requests. Whatever the case, the non-party shippers' attorneys have now familiarized themselves with the STB's regulations and processes and, in their various letters filed December 8-10, 2025 herein, obviously have relied in all instances on the correct readings and understandings of the Board's regulations governing discovery.

Respectfully submitted,

Richard H. Streeter

Michael F. McBride

/s/ Richard H. Streeter

/s/ Michael F. McBride

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Certificate of Service

I, Richard H. Streeter, do hereby certify that, on December 16, 2025, true copies of the foregoing with attachments were served on the following Parties of Record, via email:

Delta Southern Railroad, Inc. (the owning railroad)
c/o John M. Scheib scheib@gentrylocke.com. and
Noah P. Sullivan NSullivan@gentrylocke.com.

ALJ Jenifer Soulikias alf.soulikias.inbox@stb.gov

Timothy Crowley at tim@lepeabody.com
Thomas D. Crowley at tc@lepeabody.com

In addition, true copies were served, consistent with 49 C.F.R. § 1152.1(a) on the following:

- (1) All rail patrons who originated and/or received traffic on the line during The 12-month period preceding the month in which the amended application was filed:

mark.marionneaux@keanmiller.com

bryant.bremer@keanmiller.com

Counsel for Helena Chemical/South Delta Fertilizer

Dan Militaru
Rail Vehicle Services
dan.militaru@railcarco.com

Jerry J. Melton
Complex Chemical Co.
jmelton@complexchemical.com

Neil Martin
Terral River Service, Inc.
nmartin@terralriverservice.com

- (2) The designated State agency in the State where the property is located:

Louisiana Department of Transportation and Development
andrew.barry@la.gov
sanettria.pleasant2@la.gov

(3) County governments where the line is located:

East Carroll Parish Police Jury
Kendall Thompson, President
ecpj400@att.net

Madison Parish Police Jury
Jane Sanders, President
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William L. Mencer
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/s/ Richard H. Streeter

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Port Commission