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January 5, 2026

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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 to file in the above-captioned proceeding is the Delta Southern Railroad, Inc.'s Response to Motion of Lake Providence Port Commission to Compel Supplementation of Responses to LPPC's Document Requests.

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

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Attorney for:
Delta Southern Railroad, Inc.

cc: ALJ Soulikias
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 RESPONSE TO MOTION OF LAKE
PROVIDENCE PORT COMMISSION TO COMPEL SUPPLEMENTATION OF
RESPONSES TO LPPC’S DOCUMENT REQUESTS**

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PROVIDENCE PORT COMMISSION TO COMPEL SUPPLEMENTATION OF
RESPONSES TO LPPC’S DOCUMENT REQUESTS**

Delta Southern Railroad, Inc. (“DSRR”) requests that the Board deny the motion to compel filed by Lake Providence Port Commission (“LPPC”). Motion of LPPC To Compel Supplementation of Responses to LPPC’s Document Requests, STB FD No. 36447 (STB filed Dec.16, 2025) (hereinafter “LPPC Motion to Compel”).¹ LPPC’s opportunity to provide valuation evidence has passed, and the Board has warned it about repeated attempts to supplement the record. LPPC’s motion is an attempt to distract from DSRR’s efforts to complete the taking of discovery (which the Board has ruled DSRR may complete) by arguing that its valuation evidence is stale. With its tiresome tactic, LPPC attempts to justify its motion with

¹ On December 31, 2025, the ALJ issued a decision directing the parties to file “replies to discovery motions” on or before Monday, January 5, 2026. ALJ Decision, STB FD No. 36447 (STB served Dec. 31, 2025). LPPC previously replied to DSRR’s motion to strike on November 24, 2025, and then inexplicably waived its right to reply to DSRR’s motion to strike on December 5, 2025. Therefore, the only pending reply to discovery motions is this one.

allegations that DSRR has delayed this proceeding. The bottom line is simple -- LPPC's opportunity to file evidence has passed and its latest gambit is nothing more than a vexatious distraction. Nevertheless, if the Board determines that LPPC's evidence is stale, DSRR will supplement but it does not know how long it will take to do so.

I. DSRR Response to LPPC's Motion to Compel

LPPC's opportunity to submit evidence has passed, and the Board has warned it about filing supplemental materials. This proceeding started in November of 2020. Applicants ran into substantial problems with its evidence and repeatedly filed supplemental materials. Thus, on August 23, 2022, the Board permitted LPPC to restart the case by filing a complete, amended application. In doing so, the Board cautioned LPPC:

The information shall be provided in a single submission that consists of a full application, without incorporating by reference the prior application or any other previous filings. LPPC has submitted numerous filings in this proceeding asserting various arguments on the merits throughout those filings. To ensure the fair and orderly resolution of LPPC's feeder line request, *LPPC must include in its amended application all of the arguments and evidence on which it will rely.* Additionally, to facilitate the development of a clear and coherent record, LPPC must present each witness's sworn testimony in support of the application in a single verified statement from each witness.

Lake Providence Port. Comm. – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Parishes, La., STB FD No. 36647 at 7 (STB served Aug. 23, 2022) (hereinafter “August 23, 2022, Decision”) (emphasis added).

LPPC filed that Amended Application on January 4, 2023, and the Board conditionally accepted it. *Lake Providence Port. Comm. – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Parishes, La.,* STB FD No. 36647 (STB served Dec. 11, 2023). In the decision conditionally accepting the Amended Application, the Board provided LPPC “45 days from the date of that notice to file and serve revised valuation calculations and supporting evidence for its amended application, if desired” and “[u]pon the completion of these

steps, notice of LPPC’s amended feeder line application will be published in the Federal Register and a procedural schedule will be issued.” *Id.* at 2. When LPPC sought twice to supplement the Amended Application, the Board said no. *Lake Providence Port. Comm. – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Parishes, La.*, STB FD 36447 at 15-16 (STB served Nov. 20, 2023).

LPPC availed itself of the opportunity to take discovery, update its valuation calculations, and complete its amended application. Verified Statement of Crowley and Nielsen, STB FD No. 36647 (STB filed July 5, 2024). That filing ended LPPC’s opportunity to provide evidence.² LPPC concedes the point in a recent filing: “[i]n its decision herein served September 25, 2025, the [Board] repeated its prior acknowledgement that LPPC’s amended application “*was completed with LPPC’s submission of the revised valuation evidence* just prior to the case being placed in abeyance.” LPPC Response to Decision of STB, STB FD No. 36447 at 1 (STB filed Nov. 19, 2025) (emphasis added) (hereinafter “LPPC Response”). LPPC has filed its evidence.

The Board has been clear that it does not want LPPC to make repeated attempts to add, correct, clarify, or supplement its evidence. August 23, 2022, Decision at 7 (“LPPC must include in its amended application all of the arguments and evidence on which it will rely.”). There is no reason for LPPC’s Motion to Compel other than to distract from its newest attempt to thwart DSRR from gaining discovery from LPPC’s witnesses.

² Although the procedural schedule to be issued may provide LPPC an opportunity to reply to the evidence that DSRR will file in response to the Amended Application, it is prohibited from introducing new argument or evidence. *See e.g., Ballard Terminal R.R. Co., L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB FD No. 35731, 2014 STB LEXIS 334, at *13 (STB served Dec. 30, 2014)(triggering further discovery when new evidence introduced on reply); *see also Visual Comfort & Co. v. COSCO Shipping Lines Co., Ltd.*, FMC Docket No. 24-01, 2024 FMC LEXIS 851 at (Dec. 6, 2024)(noting in a section called “A Quick Word About Sandbagging” that it is disfavored by federal courts).

The Board's rules spell out the three circumstances in which a party must supplement its discovery. 49 C.F.R. 1114.29. They are not applicable here. Further, Board precedent stands for the proposition that discovery is not appropriate after a party files its evidence. *Compare Wisc. Power & Light v. Union Pac. R.R. Co.*, STB FD No. 42051, 2000 STB LEXIS 539 (STB served Sept. 19, 2000)(rejecting request for discovery supplementation after the party seeking supplementation had filed its evidence) *with Tongue River R.R. Co., Inc.—Rail Construction and Operation--In Custer, Powder River and Rosebud Counties, Mont.*, STB FD No. 30186, 2015 STB LEXIS 283 (STB served Aug. 19, 2015)(granting motion to compel supplementation of discovery because the party seeking discovery had not filed its evidence).

The only discovery remaining is for DSRR to complete discovery, which LPPC is trying to prevent. The Board's order asking the parties to propose a procedural schedule was clear that they "should take into account a reasonable period of time for DSR to complete discovery . . ." *Lake Providence Port. Comm. – Feeder Line Application – Line of Delta South. R.R. Located in East Carroll and Madison Parishes, La.*, STB FD No. 36647 at 8 (STB served Sept. 25, 2025). That order applied by its plain language only to DSRR's discovery – presumably because LPPC's evidence is filed. *Id.*³

LPPC's claim that DSRR rejected something it had never seen is disingenuous. LPPC Motion to Compel at 2. Although DSRR questioned LPPC's right to further discovery given that LPPC had filed its complete case, (*see* Attachment A, Meet and Confer letter (to which LPPC did not respond or object) until it was served with the LPPC Motion to Compel, DSRR had never

³ Even then, LPPC ignored the Board's directive when it submitted a proposed procedural schedule and argued the Board should provide no specific time for discovery. LPPC Response at 11 ("The Board should adopt LPPC's proposed Procedural Schedule . . . without providing a period for discovery.").

seen Attachment 1 thereto, which LPPC asserts is a red-lined markup of DSRR's responses to prior discovery to show what LPPC thinks should be updated. This sandbagging, running to the Board, and trying to make DSRR look unreasonable is typical for LPPC.

In its motion, LPPC reprises one of its common tactics, which is to assume that the Board and others must accept whatever it says as gospel. DSRR does not subscribe to that belief; the Board should not either. Today's example is LPPC's claim that it needs updated information because its prior evidence is stale because of delay that is DSRR's fault. LPPC at 3.⁴ The record clearly shows that LPPC has caused the delay.

- First, substantial delay occurred because LPPC could not get its original application straight, repeatedly attempted to supplement it, and finally had to restart and file an Amended Application. Aug. 23, 2022, Decision at 7-8. That delay lasted from November 2020 to January 2023.
- Second, the next set of delays occurred because LPPC has fought on every front to prevent DSRR from taking discovery to probe the veracity of what it and its witnesses have said or omitted. LPPC's attempts (other than the current one) to thwart DSRR's right to discovery include: (1) Motion Seeking Entry of Protective Order Requested by NLA, STB FD No. 36447 at ¶ 4 (STB filed Feb 18, 2021) (arguing DSRR could not take discovery of LPPC's witness North Louisiana and Arkansas ("NLA")); (2) Emergency Motion for Ruling by ALJ McCarthy Or, In the Alternative, for Referral By ALJ McCarthy to the Board . . . , STB FD No. 36447 (STB filed Mar. 11, 2024) (seeking to avoid discovery of LPPC, Southeast Arkansas Economic Development District, and

⁴ The most recent example from LPPC is in its December 16, 2025, letter to Judge Soulikias in which LPPC attempts to conclusively state that its witnesses who filed verified statements are not parties to the proceeding, which is precisely one of the issues before the Judge. LPPC Letter to Judge Soulikias, STB FD No. 36447 at 3 & 5 (STB filed Dec. 16, 2025) (hereinafter "LPPC Soulikias Letter").

Another of LPPC's common tropes is to claim that the Board has accepted as fact the verified statements of LPPC's witnesses. LPPC Soulikias Letter at 4. The Board has said the opposite: "The Board reiterates its earlier reminder that a finding of completeness . . . is not a ruling on the merits that a Board-ordered sale would be warranted . . . DSR will be free to present additional evidence and argument relating to the claims in its motion to reject (and other claims bearing on the merits of the amended application), and the Board will issue a decision on the merits of the application when the record is complete." *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, La.* STB FD No. 36447 at 11 (STB served Nov. 20, 2023) (citations omitted).

NLA); and (3) Joint Reply of Lake Providence Port Commission, Southeast Arkansas Economic Development District and NLA to DSRR's Motions to Compel Discovery, STB FD 36447 (STB filed Mar 28, 2024) (arguing DSRR did not have the right to discovery). All these attempts to prevent DSRR from taking discovery were rejected,⁵ but LPPC created delays with its gamesmanship.

- Third, the case was delayed from August 2024 to September 2025 because of what Louisiana courts found to be LPPC's *ultra vires* actions, which caused the Board to place this matter in abeyance. *Delta South. R.R. v. Lake Providence Port Comm'n*, 2025 La. App. LEXIS 308 (La. App. Apr. 2, 2025). Given that "abeyance" "is a temporary suspension of activity,"⁶ LPPC's claim that DSRR should have been pursuing discovery during this period is disingenuous (and given its track record, LPPC would have fought that too⁷).
- Fourth, DSRR attempted to keep the case moving during the longest government shutdown in history by pursuing discovery (in keeping with a request from LPPC that DSRR do so). See Attachment A, Meet and Confer Letter. LPPC and its witnesses have caused further delay by fighting that discovery.

As shown above, just because LPPC says something does not make it true. That is why DSRR needs discovery of LPPC's witnesses, who discovery shows LPPC provided at least information to draft their verified statements if not the statements themselves and to other persons whose names prominently appear in discovery already obtained from Applicants. Attachment B, LPPC's Expanded Response to RFP No. 1; Attachment C, LPPC's Expanded Response to Interrogatory No. 35.

DSRR respectfully submits that LPPC's motion to compel should be denied. But if the Board rules that LPPC is entitled to updated information because the statement provided by Mr.

⁵ NLA Discovery Decision, at ¶ 4; Order Resolving LPPC's Emergency Motion and Ordering DSRR and LPPC to Meet and Confer, STB FD No. 36447 at 3 (STB served Apr. 15, 2024) (McCarthy, J.).

⁶ <https://www.law.cornell.edu/wex/abeyance#:~:text=donation%20payment%20processor.-,abeyance,property%20law>.

⁷ For example, in footnote 4 of LPPC Soulikias Letter, LPPC omits that it previously argued that DSRR was not entitled to any discovery prior to the Board accepting a complete application. Joint Reply to Motions to Compel, STB FD No. 36447 at 6-8 (STB filed Mar. 28, 2024). Judge McCarthy rejected LPPC's position and granted DSRR's motion to compel.

Crowley and Ms. Neilson on July 5, 2024, is stale (Motion to Compel at 2), DSRR will supplement. Although it does not know how long it will take, DSRR would work on it as expeditiously as possible.

II. DSRR's Response to ALJ's Request to Disclose Potential Disputed Witnesses and Statement of Other Currently-Known Potential Discovery Issues.

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 the fourth is Ms. Missy Courtwright of North Louisiana and Arkansas Railroad, which is a party to this proceeding and is the proposed alternate rail operator. Ms. Courtwright's name appears in numerous documents produced by applicants to date, including as the signer of the interchange form between NLA and DSRR,⁸ and NLA identified her as someone whose files were searched.⁹ Attachment D, NLA Response to Interrogatory No. 38. Despite the Board ruling that DSRR was entitled to discovery of LPPC's witness in part because "NLA thereafter joined the pleading filed in opposition to DSR's motion to dismiss," LPPC continues to fight DSRR taking discovery from its witnesses even though Epstein Gin Co. and Epstein Transloading, Livingston Pecan and Metal, Inc., and Hollybrook Warehouse, Inc. have all filed on December 8 or December 9, 2025, to join LPPC's opposition to DSRR's discovery. *Lake Providence Port*

⁸ Attachment E, NLA_000203. Applicants witnesses also reached out to her when DSRR reached out about potential business. Such customers never responded to DSRR's outreach – perhaps because they were directed not to. Attachment F, NLA_000223-NLA_000224. This are only a few examples of important documents and issues that Ms. Courtwright was involved in.

⁹ 49 C.F.R. 1114.22 ("The testimony of *any person*, including a party, may be taken by deposition upon oral examination.") (emphasis added).

Comm.— Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, La. STB FD No. 36447 at ¶ 4 (STB served June 1, 2021) (“NLA Discovery Decision”).

The December 31, 2025, ALJ Decision in footnote 2 requested that “[a]ny other disputed witnesses should be identified and included now.” Currently, there are no other “disputed witnesses.” However, DSRR identifies that it may seek to depose other LPPC witnesses, including Mr. Wyly Gilfoil, former Executive Director of LPPC, Mr. Danny Robbins of NLA, Ms. Patrecia Hargrove of Southeast Arkansas Economic Development District (“SEAEDD”), Mr. Donald Bush, Mr. Jerry Melton of Complex, Mr. Neil Martin of Terral RiverService, Inc., and Mr. Thomas D. Crowley and Ms. Christena Nielson of L.E. Peabody. In addition, DSRR understands that the Executive Director of LPPC has changed, and it may seek to depose the current director, Mr. Bryant Killen. Further, there are other entities identified by LPPC in various filings and discovery responses that did not file verified statements of which DSRR may seek to depose a representative. DSRR preserves its right to seek discovery in any order it chooses. But it also notes that a resolution of the currently pending objections to DSRR’s discovery will guide the parties regarding discovery of these additional LPPC witnesses.

DSRR appreciates the efforts to consolidate the current discovery disputes. Without waiving its rights to pursue other discovery issues, DSRR discloses that it intends to pursue deficiencies in discovery responses provided to date by LPPC, NLA, and SEAEDD as they are identified, including through obtaining discovery from LPPC’s witnesses. As but one example, LPPC has claimed in LPPC’s Expanded Response to RFP No. 1 that “communications were exchanged between counsel and shippers involving the preparation of verified statements are being withheld on the grounds that they are protected by the work product doctrine in anticipation of litigation,”

and that includes shippers who refused to provide verified statements in support of applicants. *See* Attachment B; Attachment C. Counsel for LPPC, NLA, and SEAEDD has confirmed that they do not represent or have an attorney-client relationship with those shippers. Yet, LPPC has not produced those communications nor the draft verified statements that it sent these shippers.

If counsel provided those drafts to LPPC (or NLA) to send and communicate with the shippers about, LPPC (nor NLA) has not produced those communications or the attached draft verified statements. Communications between LPPC (or NLA) and shippers, including attached draft verified statements, are not privileged.

The draft statements and the communications with those shippers are neither work product nor privileged communications even if the draft verified statements were prepared by LPPC's counsel or LPPC's counsel communicated with the witnesses. The mere assertion of attorney-client privilege is not enough, and the party asserting the privilege bears the burden of establishing all of its essential elements. This is not a case in which privilege would apply to "not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice." *Upjohn Co. v. United States*, 449 U.S. 383, 390 (1981). Nor are the draft statements and communications with shippers the attorney's interviews, statements, memoranda, correspondence, briefs, mental impressions, or personal beliefs, which are subject to work product protection. *Hickman v. Taylor*, 329 U.S. 495, 511 (1947). Work product protection does not even apply to documents provided by counsel to testifying experts, who are afforded more protection than other witnesses, related to subject matter of litigation (FRCP 26(a)(2)). *See e.g., Karn v. Ingersoll Rand*, 1996 U.S. Dist. LEXIS 14079 (N.D. Ind. 1996).

The shippers, whether they provided a witness statement or declined to provide one, are not LPPC's counsel's clients. Communications like the ones from LPPC's counsel to non-client shippers do not qualify as attorney work product. *Lakehal-Ayat v. St. John Fisher Coll.*, 2022 U.S. Dist. LEXIS 226235 at *19 (W.D.N.Y. 2022) (citations omitted). Moreover, the disclosure of the draft statements to the non-client shippers waived any privilege as to the draft statements. "Ordinarily, voluntary disclosure of an otherwise privileged document to a third party waives privilege." *Id.* at (citations omitted). DSRR is hopeful to resolve this issue with LPPC, but if LPPC does not alter its position, it would be proper for DSRR to file a motion to compel.

Respectfully submitted,

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January 5, 2026

CERTIFICATE OF SERVICE

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

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/s/ John M. Scheib

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Dated: January 5, 2026

ATTACHMENT A



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October 23, 2025

VIA ELECTRONIC MAIL

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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 SEAEEDD 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.

ATTACHMENT B

Expanded Response to RFP NO. 1

RFP NO. 1: Please Produce all communications with shippers concerning either (i) LPPC's feeder line application, (ii) DSRR's service over the Line, (iii) DSRR, or (iv) the shipper's rail transportation needs.

Response: For all the above-stated reasons set forth in the responses to Interrogatories Nos. 34 and 35, the request for production of *all communications* concerning either (i) LPPC's feeder line application, (ii) DSRR's service over the Line, (iii) DSRR, or (iv) the shipper's rail transport needs is overly broad and unduly burdensome as it seeks voluminous information that spans over 20 years that is not relevant to this proceeding, as well as extensive communications with shippers that were made during the preparation of the two (2) INFRA applications that were filed in 2017 and 2019 that were intended to provide revenues for DSRR to use to rehabilitate its rail infrastructure and upgrade its bridges that DSRR estimated would cost \$12,448,000.

Expanded Response:

Due to its efforts to preserve the entire Lake Providence Branch Line between McGehee, Arkansas and Tallulah, LA, LPPC has been aware of the inadequate nature of DSRR's operations over the Lake Providence Branch Line that ultimately prompted it, along with SEAEDD and NLA, to acquire ownership of all the Line north of milepost 471.0. Following Continental Rail's purported acquisition of the portion of the Lake Providence Branch Line between milepost 471.0 and the point of interchange with KCS in June of 2015, LPPC considered DSRR to be a partner and readily agreed to work with

DSRR to rebuild the entire Lake Providence Branch Line. LPPC's efforts to work with DSRR are reflected in the two INFRA Grant Applications. LPPC confirms that it has no written documents, correspondence or emails with any shippers regarding DSRR, DSRR's service over the segment of the Lake Providence Branch Line that is at issue herein that predate LPPC's decision in September of 2020 to file a Feeder Line Application. That decision was based on LPPC's realization in August of 2020 that DSRR would not commit to the use of any INFRA Grant Funds to restore interchange rail service over the 20 miles of track to the south of milepost 471.0 and would only use any INFRA funds to restore the track between milepost 491.0 and the point of interchange with KCS.

Because Mr. Gilfoil was aware that Jerry Melton, the President of Complex Chemical, had supported the INFRA Grant Application, and after interchange was reopened by NLA in 2016, had repeatedly complained about the condition of the tracks between mileposts 471.0 and 491.0, which deprived Mr. Melton from receiving adequate rail service, Mr. Melton was asked to file a statement of support. Mr. Melton's original statement of support was included in LPPC's first Feeder Line application filed November 12, 2020.

On October 7, 2020, LPPC's counsel conferred with Sam Angel, who is the owner of Epstein Gin Co. and Epstein Transloading.

On March 4, 2021, a copy of DSRR's *Motion to Dismiss Proceeding and Request to Hold Proceeding in Abeyance* was forwarded to Mr. Melton. LPPC's counsel and Mr. Melton had follow-up conversations regarding the motion and

a potential response. On March 5, 2021, counsel filed Mr. Melton's *Support of LPPC's Reply to Delta Southern Railroad, Inc.'s Motion to Dismiss Proceeding and Request to Hold Proceeding in Abeyance*. To ensure full compliance with the Board's regulations, Mr. Melton was retroactively requested to attest his statement on April 7, 2021, which attestation was entered of record on April 8, 2021, without objection from DSRR.

On October 13, 2022, and November 1, 2022, Mr. Gilfoil forwarded emails requesting information to be used to prepare the initial valuation of the line to various shippers. Copies of the survey and emails forwarded by Mr. Gilfoil are being produced herewith.

Copies of all verified statements that have been received from past, current, and potential shippers that involved communications with LPPC's counsel have been published in the Feeder Line application filed January 4, 2023.

Communications that were exchanged between counsel and shippers involving the preparation of verified statements are being withheld on the grounds that they are protected by the work product doctrine in anticipation of litigation. *See Privilege Log*.

ATTACHMENT C

INTERROGATORY NO. 35.

Please Identify all shippers with which LPPC has communicated concerning either (i) LPPC's feeder line application, (ii) DSRR, (iii) DSRR's service over the Line, or (iv) the shipper's rail transport needs. Describe in detail and Identify the communications with each shipper identified.

Response: LPPC objects to Interrogatory 35 on the grounds that it is overly broad and unduly burdensome and beyond the scope of permissible discovery. Indeed, it is incapable of being answered with any precision. Without waiving the foregoing objectives, LPPC answers that it is in the business of assisting shippers and promoting the movement of their freight, whether by rail, barge, or truck on a non-discriminatory basis. As a result, for the past 25+ years, LPPC has been in constant contact with shippers that are looking to move their products to and from the Lake Providence Port.

Based on information that is part of the record that was developed in 2015-2016 by NLA in conjunction with DSRR's former General Manager, LPPC is aware that there are several shippers, in addition to those that have been named in response to Interrogatory 33, who are not physically located on the Line, that have previously forwarded shipments over the Line and have stated their intent and willingness to move their freight over the Line in the future. However, they were denied transportation due to DSRR's policy that caused its employees to focus on storage revenues instead of developing interchange freight transportation service with shippers that were identified by Craig Huff and Daniel Robbins. Such shippers that have been identified in LPPC's

Application include Stepan Company, Clearwater Paper Corp., Livingston Pecan and Metal, Epstein Gin & Transloading Company; Hollybrook Gin & Warehouse, Riceland Foods, Sullivan Log Yard, Anderson Trade Group, Hensley Farms (f/k/a Big River Grain), Rail Vehicle Services, Helena Chemical, Nutrien (f/k/a CPS); Terral River Services, MD Power, Simplot (f/k/a Lake Village Seed), Gavilon (f/k/a CHS); APEX, Scott Petroleum, Complex Chemical, Bayou Bioenergy, LLC and John Deere.

Documents that confirm the intent of many of the foregoing shippers have been previously provided to DSRR and its attorneys in response to DSRR's First Set of Interrogatories and First Set of Requests to Produce. LPPC incorporates its prior responses to this interrogatory by reference thereto. By way of further response, LPPC states that DSRR, after evaluating the extensive documents that were provided, advised the Board that it deemed discovery concluded. Those documents have been available for review by DSRR's counsels since June 2021 and would be burdensome for LPPC to produce duplicative or cumulative information when DSRR's attorneys have already received and reviewed them.

Expanded Response: In response to DSRR's letter, dated March 3, 2023, LPPC further states that to acquaint former shippers and potential shippers with LPPC's intent to file an expanded feeder application and to request information that could be used to prepare some preliminary estimates of potential usage to determine going concern value, a Shipper Survey was forwarded in mid-October to current, former and potential shippers that have

used or sought to use rail service over the Lake Providence Branch Line. Following receipt of the surveys, some of the shippers were personally contacted by LPPC's counsel to determine whether they would be willing to submit verified statements in support of LPPC's application. Counsel for LPPC assisted Sam Angel, Blake Livingston, Robert Amacker and Neil Martin, in the preparation of verified statements based on information they provided regarding their inability to obtain any rail service and/or their reasons for finding DSRR's service to be inadequate. Their Verified Statements were included in LPPC's expanded Feeder Line Application, dated January 4, 2023.

Prior conversations involving known or potential shippers and LPPC's counsel occurred in March of 2021. On March 18, 2021, counsel spoke with Dan Militaru, CEO of Rail Vehicle Services a/k/a RailcarCo., regarding his intent to reach UP at McGehee over the Lake Providence Branch Line.

On August 9, 2022, counsel spoke with Mr. Militaru regarding the condition of the track north of the Madison Parish Port and LPPC's pending feeder application.

On November 18, 2022, counsel forwarded a copy of Complex Chemical's verified statement to Railcar Co. for consideration.

On January 3, 2023, counsel spoke with Mr. Militaru to determine the address to which LPPC Feeder Application should be mailed. Counsel spoke with Jose Hernandez at Helena Agri to obtain mailing address.

On January 4, 2023, a copy of LPPC's expanded feeder line application was served on Complex Chemical, Co., Inc.; Terral River Services; Helena Fertilizer; and Railcar Co.

On March 4 and 5, 2021, counsel spoke with Jerry J. Melton, President, Complex Chemical regarding Mr. Melton's intent to file a statement of support for LPPC's Feeder Line Application.

On April 5, 2021, counsel spoke with Mr. Melton regarding need to verify his statement of support that was filed on March 5, 2021. The verification was filed with Board, without objection, on April 8, 2021.

In late April and May of 2021, counsel spoke with Donald Bush, the former manager of Bayou Bioenergy, LLC, regarding DSRR's refusal to accept interchange traffic with NLA. Mr. Bush's Verified Statement was verified on May 3, 2021, and is included in LPPC's expanded Feeder Line Application.

On December 13, 2022, Mr. Gilfoil spoke with Chip Sullivan, who is the owner and President of E. Sondheimer Co., a former shipper whose facilities are located at MP 487.5 on the Lake Providence Branch Line. Mr. Gilfoil requested Mr. Sullivan speak with LPPC's counsel regarding a possible statement in support of LPPC's application. Later that day, LPPC's counsel left a call on Mr. Sullivan's phone. The following day, Mr. Sullivan returned the call and engaged in multiple conversations with counsel.

On December 16, 2022, LPPC's attorney received a telephone call from Blake Sullivan, Mr. Sullivan's daughter, who informed him that she was a law student and that her father had requested her to discuss a recent agreement

that Mr. Sullivan's trucking company, BLP Trucking, had reached with Precision Terminal Logistics, LLC ("Precision") to use his property as a transloading facility. LPPC's counsel advised Ms. Sullivan to tell her father to speak with his attorneys regarding the verified statement. Later that day, Ms. Sullivan forwarded a copy of DSRR's news release, dated September 16, 2022, regarding Precision's opening of a rail transload terminal on DSRR's Tallulah/Lake Providence branch in Sondheimer. No further conversations were had between the Sullivans and LPPC's attorney.

ATTACHMENT D

INTERROGATORY NO. 37: Please list all shippers who have moved freight over LPPC lines operated by NLA.

NLA responds that since January 1, 2017, the only shippers for whom NLA has moved freight over LPPC's Lines are APEX and Rail Vehicle Services, which involved the movement of a Schnabel car. As previously disclosed, on August 24, 2017, DSRR declined to accept cars destined to Complex Chemical that NLA had placed in interchange because DSRR had closed the interchange based upon track issues on the DSRR side.

INTERROGATORY NO. 38: Please list all employees whose email and hard copy files have been searched in order to respond to DSRR's second set of discovery requests.

Response: Daniel B. Robbins, Timothy K. Robbins, Michael Robbins, Noah Robbins and Missy Courtwright.

INTERROGATORY NO. 39: Please Identify each employee of NLA who has participated in discussions about any governmental grants, including but not limited to INFRA grants, for expenditure on LPPC's current rail lines that are operated by NLA.

Response: NLA objects to this Interrogatory on the grounds that it is not relevant to the issue of valuation, which is the only

ATTCHMENT E

NLA Attachment 5
Supplemental Response to Interrogatory 7

Thank You,

Missy Courtwright
Office/Customer Service Manager
Arkansas Short Line Railroads, Inc.
479-968-6455 office|479-968-2634 fax|479-857-6104 cell

From: Missy Courtwright [<mailto:billing@drrailroad.com>]
Sent: Tuesday, February 09, 2016 3:16 PM
To: 'craig.huff@deltasouthernrr.com'
Subject: Junction Interchange Update Form

Mr. Huff,

If you could please complete the bottom portion of the form and either fax or email back to me.

Thank You,

Missy Courtwright
Office/Customer Service Manager
Arkansas Short Line Railroads, Inc.
479-968-6455 office|479-968-2634 fax|479-857-6104 cell

From: Craig Huff <Craig.Huff@deltasouthernrr.com>

Sent: Tuesday, February 09, 2016 5:02 PM

To: Missy Courtwright <billing@dr railroad.com>

Subject: RE: Junction Interchange Update Form

Missy,

Attached you'll find a signed copy of the interchanged form.

Let me know if you need anything else.

Thanks,

FORM AD 103

JUNCTION INTERCHANGE UPDATE FORM

Junction Industry Reference File

FAX completed form to the
RAILINC at (919) 651-5191

JUNCTION - unique identification of the LOCATION of an INTERCHANGE

JUNCTION ABBREVIATION :

STANDARD POINT LOCATION CODE (SPLC) :

JUNCTION LOCATION NAME :

JUNCTION STATE / PROVINCE :

651130(000)

Lake Providence

LA

INTERCHANGE - description of ACTIVITIES between two transportation entities at a JUNCTION

ACTION REQUESTED : A (A = add, C = change, E = expire)

INTERCHANGE TYPE : 0

	INTERCHANGING CARRIER	REPORTING CARRIER	CSM STATION FSAC (when required)
MARK / SCAC 1	NLA	NLA	35
MARK / SCAC 2	DSRR	DSRR	35

DELIVERY ONLY FLAG : N (Y = yes, N = no)

INHIBIT JUNCTION ADVICES : N (Y = yes, N = no)

EFFECTIVE DATE OF ACTION : 2016-05-01 (CCYY-MM-DD)

AGREEMENT - signatures of transportation entity representatives (as required by Interchange TYPE)

	MARK / SCAC 1	MARK / SCAC 2
SIGNATURE	Missy Courtwright	Craig Huff
CONDITIONAL AGREEMENT?	N Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement	N Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement
NAME (please print)	Missy Courtwright	Craig Huff
COMPANY	North Louisiana & Arkansas	Delta Southern Railroad
PHONE NUMBER	479-968-6455	318-600-4489
FAX NUMBER	479-968-2634	318-537-9356

SUBMISSION - FAX completed form to RAILINC at (919) 651-5191 (or mail to address in the instructions)

Last modified: 9/27/06

NLA_000203

From: Missy Courtwright [<mailto:billing@dr railroad.com>]
Sent: Tuesday, February 09, 2016 3:16 PM
To: Craig Huff <Craig.Huff@deltasouthernrr.com>
Subject: Junction Interchange Update Form

Mr. Huff,

If you could please complete the bottom portion of the form and either fax or email back to me.

Thank You,

Missy Courtwright
Office/Customer Service Manager
Arkansas Short Line Railroads, Inc.
479-968-6455 office|479-968-2634 fax|479-857-6104 cell

From: Craig Huff <Craig.Huff@deltasouthernrr.com>
Sent: Thursday, March 17, 2016 1:00 PM
To: Missy Courtwright <billing@dr railroad.com>
Subject: RE: Junction Interchange Update Form

They did and we filled it out over the phone. They have all the info.

Craig Huff
General Manager



Delta Southern Railroad
469 Port Road
Tallulah, LA. 71282
craig.huff@deltasouthernrr.com
Office: 318-600-4489
Mobile: 318-537-5720
Fax: 318-537-9356

From: Missy Courtwright [<mailto:billing@dr railroad.com>]
Sent: Thursday, March 17, 2016 11:04 AM
To: Craig Huff <Craig.Huff@deltasouthernrr.com>
Subject: FW: Junction Interchange Update Form

Mr. Huff,

I know you sent them this form signed back to me but did Railinc contact you in regards to DSRR filling out their own form?

ATTACHMENT F

Richard Streeter

From: dan.b.robbins <dan.b.robbins@gmail.com>
Sent: Monday, January 8, 2024 12:43 PM
To: Richard Streeter
Subject: Fw: DSRR Reach Out

See below

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Brad R Whittle <bradwhittle@msn.com>
Date: 1/8/24 11:14 AM (GMT-06:00)
To: Missy Courtwright <billing@drrailroad.com>, "dan.b.robbins" <dan.b.robbins@gmail.com>
Subject: Fw: DSRR Reach Out

Got this today can yall shed so light on it for me

*Brad Whittle
Epstein Transloading Co. LLC
Epstein Land Co.
General Manager
537 Reynolds St.
P.O. Box 748
Lake Village AR 71653
870-265-2332 Office
870-265-6245 Cell*

From: Tyler Reddan <Tyler.Reddan@patriotrail.com>
Sent: Monday, January 8, 2024 9:53 AM
To: bradwhittle@msn.com <bradwhittle@msn.com>
Subject: DSRR Reach Out

DATE:1/8/2024

Good Morning,

On behalf of Delta Southern Railroad, Inc. ("DSRR"), I write to extend to wish you a Happy New Year. We are sorry that you have not had any railcars to ship on DSRR so far in 2023.

As you may know, 2023 was an exciting year for DSRR, with new ownership at Patriot Rail that has provided excellent support and investment in improving DSRR's service offerings for customers. Since taking over as owners of DSRR earlier this year:

- DSRR has been working with customers starting on the day Patriot Rail LLC et al. ("Patriot Rail") closed on ownership of DSRR. As a result, customer have shipped over 700 cars on the Lake Providence Subdivision through the end of November 2023.
- DSRR quickly opened lines of communication with NLA – mere weeks after Patriot Rail closed on ownership of DSRR. Regrettably, NLA has not tendered any traffic to DSRR in 2023, but we stand ready for it.
- DSRR has also made substantial investments in segments of the Lake Providence Subdivision. For instance, in July of 2023, DSRR installed 700 rail ties between MP 471.0 and MP 472.5. DSRR also installed 2,200 ties between MP 491 and 499 during 2023. Over the same stretch of railroad, we added ballast and completed surfacing work. Further, we completed bridge repairs. In total, we invested about \$400,000 this year on the line.
- DSRR has created operating procedures to ensure that any railcars on the Lake Providence Subdivision do not prevent the movement of freight in either direction.
- DSRR has developed a multi-year investment plan for the Lake Providence Subdivision.

We are excited for the future and hope to continue to grow our services in the Lake Providence region.

With the start of 2024, I wanted to again reach out to connect about any way DSRR could be helpful to your business. DSRR is committed to serving the rail transportation needs of businesses in our region, and we want to make sure you are aware of our services and to explore ways in which we may be able to assist your operations.

We would love to have further conversation with you. If you are interested in exploring ways that DSRR can serve your business, please contact me at your earliest convenience. I can be reached at 463-254-5533.

In the meantime, I wish you the best and wish you a happy belated 2024. And, bring on the freight.

Sincerely,

Tyler Reddan

Account Manager

Patriot Rail Company

C: 463.254.5533

Tyler.reddan@patriotrail.com | Patriotrail.com



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