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ENTERED
Office of Chief Counsel
February 9, 2026
Part of
Public Record

February 9, 2026

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 is the following:

1. Motion for Issuance of Subpoena to Sam E. Angel, II, on behalf of Epstein Transloading;
2. Motion for Issuance of Subpoena to Blake Livingston, on behalf of Livingston Pecan & Metal, Inc.;
3. Motion for Issuance of Subpoena to Robert Amacker, on behalf of Hollybrook Warehouse, Inc.;
4. Motion for Issuance of Subpoena to Complex Chemical Company, Inc.;
5. Motion for Issuance of Subpoena to Neil Martin, on behalf of Terral RiverService, Inc.;
6. Motion for Issuance of Subpoena to Daniel B. Robbins, President of North Louisiana and Arkansas Railroad;
7. Motion for Issuance of Subpoena to Wyly Gilfoil, former Port Director of the Lake Providence Port Commission;
8. Omnibus Brief in Support of Motions for Issuance of Non-Party Subpoenas.

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

Respectfully submitted,

John M. Scheib
Gentry Locke Attorneys
101 W. Main Street, Suite 750
Norfolk, VA 23510
757-916-3511

Attorney for:
Delta Southern Railroad, Inc.

cc: Parties of Record
Non-party Witness Counsel

**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 OMNIBUS BRIEF IN SUPPORT OF
MOTIONS FOR ISSUANCE OF NON-PARTY SUBPOENAS**

John M. Scheib
Noah P. Sullivan
William L. Spotswood
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Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 OMNIBUS BRIEF IN SUPPORT OF
MOTIONS FOR ISSUANCE OF NON-PARTY SUBPOENAS**

Pursuant to the Board’s January 16, 2026 order, as amended, DSRR files motions for issuance of non-party subpoenas for documents and deposition testimony, and in support whereof states as follows.

INTRODUCTION

The Lake Providence Port Commission (“LPPC”) filed its Amended Application with verified statements from purported shippers. The purpose of those statements was for LPPC to make a prima facie showing of certain elements for feeder line relief. Those statements form, in large part, the evidentiary basis for LPPC’s claims that (i) DSRR “refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over” the Line; (ii) that transportation over the Line “is inadequate for the majority of shippers who transport traffic over” the Line; and (iii) that a forced sale of the Line to LPPC “will be likely to result in improved railroad transportation for shippers that transport traffic over” the rail line at

issue in this case (the “Line”). 49 U.S.C. § 10907(c)(1)(A), (B), and (E) (three of five mandatory elements to meet the “public convenience and necessity” test).

The stakes in this proceeding are very high for DSRR. It faces one of the most extreme actions the government can take against a private entity—the forced sale of its private property. DSRR is indisputably entitled to discover evidence to oppose LPPC’s Amended Application, which necessarily involves questioning the accuracy and basis for the verified statements claiming, among other things, that DSRR’s service is inadequate to shippers on the Line. DSRR intends to show that its service is plainly adequate, and that LPPC’s Amended Application is an attempt to leverage the Board’s power to force its desired economic development project on DSRR, not to remedy inadequate rail service. Central to that, then, is the ability to discover evidence from the non-party witnesses—purportedly shippers on the Line—who submitted verified statements alleging inadequate service by DSRR.

The subpoenas sought by DSRR are tailored precisely to these issues in the proceeding and the specific verified statements by the witnesses. At this point, they are mostly agreed. What DSRR seeks is reasonable, and the areas of continued objection should be overruled. Accordingly, and for the reasons further set forth below, the Board should grant DSRR’s motions for issuance of subpoenas to these witnesses, as set forth in the specific motions filed contemporaneously herewith.

BACKGROUND

Pursuant to the Board’s January 16, 2026 order that clarified the proper procedure for obtaining this discovery, DSRR timely sent draft subpoenas on January 20 and 21 to each of seven witnesses: Sam E. Angel, II, on behalf of Epstein Transloading (“Epstein”); Blake Livingston, on behalf of Livingston Pecan & Metal, Inc. (“Livingston”); Robert Amacker, on behalf of Hollybrook Warehouse, Inc. (“Hollybrook”); Neil Martin, on behalf of Terral RiverService, Inc.

(“Terral”); Complex Chemical Company, Inc. (“Complex Chemical”); Wyly Gilfoil, former Port Director of LPPC; and Daniel B. Robbins, President of NLA.

The parties and non-party witnesses exchanged email about the draft subpoenas and later, through counsel, met-and-conferred on February 5. Now DSRR seeks issuance of the subpoenas included in its specific motions as to each non-party. For the most part, there is agreement on the subpoenas, as reflected in the below chart summarizing the relevant areas of agreement and disagreement. Messrs. Martin, Amacker, Gilfoil, and Robbins have agreed to their respective subpoenas. Counsel for Messrs. Angel and Livingston has had very serious personal complications due to weather events affecting his family, and DSRR has been unable to confer with their counsel. Complex Chemical, which DSRR is seeking to obtain documents from and not a deposition at this time, is standing on objections.

Non-Party Witness	Scope of Production	Production Date	Deposition Date, Location, and Time
Neil Martin, on behalf of Terrall RiverService Inc.	Agreed	February 23, or earlier if possible.	February 23, in Lake Providence, Louisiana at 9 a.m. CT
Robert Amacker, on behalf of Hollybrook Warehouse, Inc.	Agreed	February 23, or earlier if possible	February 23, in Lake Providence, Louisiana at 2 p.m. CT.
Wyly Gilfoil (former Port Director of LPPC)	N/A	N/A	February 24, in Lake Providence, Louisiana at 10 a.m. CT
Sam E. Angel, II, on behalf of Epstein	Objections on temporal scope	Not agreed	Proposed February 25 in Lake Village, Arkansas
Blake Livingston, on behalf of Livingston Metal	Objection on temporal scope	Not agreed	Proposed February 26 in Lake Village, Arkansas

Daniel B. Robbins (President of NLA)	N/A	N/A	February 27, in Russellville, Arkansas, beginning at 10a.m. CT
Complex Chemical	Objection to validity of document subpoena, overly broad in time and scope, unduly burdensome, seeking documents available from a party, and overly broad in subject matter	No agreement for any production.	N/A – DSRR has not, at this time, sought a deposition of Complex Chemical.

DSRR has worked in good faith and with accommodation given weather events beyond the parties' control to adhere to the Board's order regarding the important discovery DSRR seeks. The Board should issue the requested subpoenas so that discovery can proceed.

ARGUMENT

I. The Board Should Issue the Agreed Subpoenas

The non-party witnesses from which DSRR seeks discovery each have submitted verified statements in this case. Two of them are closely affiliated (former and current) executives of parties in the case, LPPC and NLA. DSRR tailored its document requests to squarely seek documents underlying the claims made in the verified statements, and it compromised to accommodate the witnesses on location, timing, and duration of their respective depositions. DSRR offers just a few specific points to memorialize the parties' agreements.

DSRR was able to reach agreement on the following general issues: (1) that it would seek issuance of one subpoena that included document requests and set a deposition, rather than separate subpoenas for documents and depositions; (2) that documents would be produced on the day of the witness's deposition unless available sooner; and (3) that the subpoena response to the document requests would not be limited to the individual but include search of records of the witness's respective business. Other particulars are noted below.

Subpoena to Neil Martin. Counsel for Mr. Martin and Terral has already searched for responsive documents to the subpoena and indicated there were no responsive documents. It will update and produce any if they are located. DSRR accepts that representation, but seeks issuance of the subpoena simply to formalize the response and to set Mr. Martin's deposition. The parties also agreed that it would proceed in the morning of February 23, 2026, and be limited to four on-the-record hours.

Subpoena to Robert Amacker. Counsel for Mr. Amacker and Hollybrook confirmed their availability for deposition on February 23, 2026 to begin at 2 p.m., and to a four on-the-record hour limit to the deposition. Counsel also confirmed that there was no objections to the documents sought.

Subpoenas to Messrs. Gilfoil and Robbins for Deposition. LPPC's counsel also represents both Mr. Gilfoil and Mr. Robbins, and the parties were able to agree on the dates, time, and location of those depositions.

DSRR asks the Board to issue the respective subpoenas for these witnesses because the issues amongst these parties on the particulars of the discovery DSRR seeks have been resolved. For completeness, however, DSRR has included with its motions on the agreed subpoenas a copy of the witness's verified statement to confirm the relevance of the discovery sought from these witnesses, though that issue is not disputed.

II. The Board Should Issue the Subpoenas to Messrs. Angel and Livingston

As of this filing, DSRR has been unable to conduct a meaningful meet-and-confer with counsel for Messrs. Angel and Livingston, Mr. William Mencer, due to unfortunate personal circumstances with his family related to a fire and loss of housing for his parents during the recent winter storm event. DSRR understands, however, as was relayed to it by counsel for Complex

Chemical, Mr. Russell, that both Messrs. Angel and Livingston object to the scope of the subpoenas, though they may agree to the deposition dates.

DSRR surely understands and wishes to accommodate Mr. Mencer. To avoid delay, however, the Board should issue the proposed subpoenas, as they are reasonable, and DSRR will work cooperatively to accommodate the witnesses and Mr. Mencer as appropriate. As described below, both witnesses make broad assertions against DSRR and in support of LPPC's Amended Application, and DSRR seeks discovery to scrutinize those claims.

A. DSRR's Interest in Discovery from Mr. Angel, on behalf of Epstein.

Mr. Angel is the owner of Epstein and he submitted a verified statement in support of LPPC's Amended Application. Epstein is a long-established agricultural company that ships cotton seed and offers transloading services to other seed-shippers. Although Epstein is not located on the Line, Mr. Angel claims that he is unable to use DSRR to move his freight due to safety concerns, claiming numerous derailments and other issues that prevent him from using the direct southern route to interchange with KCS. Angel VS ¶ 3-4. Much of the temporal focus of Mr. Angel's verified statement is 2010-2022, but also going back as far as 30 years. Mr. Angel makes many, lengthy claims regarding DSRR's ability to serve Epstein in interchange service with NLA, and claims that DSRR refused service to it when requested in 2019, as relayed to him by Mr. Robbins (of NLA). *Id.* ¶ 7.

B. DSRR's Interest in Discovery from Mr. Livingston, on behalf of Livingston Metal

Mr. Livingston is the Vice-President of Livingston Metal, which is also not located on the Line, and he submitted a verified statement in support of LPPC's Amended Application. Temporally, Mr. Livingston's verified statement goes back to 1988, and focuses on events from 2015 to 2020. Specifically, Mr. Livingston asserts that Livingston Metal tried to move its

shipments from NLA's portion of the line, with interchange with DSRR at Lake Providence to connect with KCS in Tallulah, LA, in 2019. *Livingston VS* ¶ 4. Without detail on who or how, Mr. Livingston asserts that he was "advised that NLA could not follow through because DSRR would not upgrade the track to a point where it would be able to reopen interchange with NLA." *Id.* Mr. Livingston asserts "repeated efforts to haul scrap to KSC" through DSRR that he claims were not possible. *Id.* ¶ 5. And Mr. Livingston makes claims about the safety and reliability of service, even if DSRR could and would accept his freight. *Id.* ¶ 6-7.

C. The Requested Subpoenas to Messrs. Angel and Livingston are Reasonable and Pose no Undue Burden.

DSRR seeks to depose Messrs. Angel and Livingston, and it seeks documents related to their claims about their businesses, their actual demand for rail service, and the adequacy of DSRR's rail service. Each of the document requests in the subpoenas DSRR seek align directly with documents that would or should exist. For instance, DSRR seeks documents regarding "rail service by DSRR," namely purported requests for or denials of rail service, or other service-related documents. DSRR seeks documents sufficient to show Epstein and Livingston Metal's use of rail, which relates to whether they have real rail traffic demand. And DSRR seeks documents that would underly claims made in specifically referenced statements in their verified statements. All of it is plainly in bounds, aimed at core factual issues in dispute in a feeder line case regarding adequacy of service to shippers. *See* 49 U.S.C. § 10907(c)(1)(A), (B), and (E) And, DSRR is setting the proposed date of production, as with the other agreed subpoenas, on the date of the deposition unless available sooner.

DSRR understands that Messrs. Angel and Livingston object to the temporal scope of the subpoenas and to requests for documents that could be obtained from DSRR or NLA. As to the temporal scope, LPPC's Amended Application includes numerous facts that date back decades, to

the 1980s, and with claims about DSRR’s service for the better part of the 2000s to present supporting their claims, including an allegation in 2019. During our meet-and-confers, DSRR asked if LPPC would agree to limit the relevant time period of its evidence to 2020-present. LPPC refused to do so, and so DSRR is simply seeking discovery during a period that LPPC is itself putting at issue. *See* Exhibit A (Corr. with LPPC Counsel).¹ Moreover, Messrs. Angel and Livingston themselves put a longer temporal scope at issue through their verified statements making claims about derailments, safety issues, purported refusals of service, all occurring before 2020.

As to certain requests that may implicate documents in the possession of parties (NLA or DSRR), this is not a valid basis for objection. The requests do not target documents in DSRR or NLA’s possession, but internal documents related to those entities. Regarding requests for or denials of rail service and other similar communications, DSRR is unaware of such documents. It is entitled, however, to confirm that Epstein and Livingston have no such documents either, to the extent they claim they exist. And, in any event, the volume of responsive documents we are considering—we fully expect very few documents to exist—does not make it unduly burdensome to produce documents even if they could, theoretically, be obtained through party discovery.

¹ LPPC claims that the Board required LPPC to “cover the history of the line before the filing date of the Amended Application,” citing the Board’s August 23, 2022 decision. That order did not require particular evidence from LPPC. That order, instead, allowed LPPC to amend its application and ordered it to include whatever evidence it wished to include in one, single filing due to its previous improper filings. *See* Aug. 23, 2022 Order at 7 (“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.”). The Board did not rule that a random slew of historical complaints about DSRR falling somewhere between 1988 and 2020 must be included. In any event, LPPC has not agreed to limit the temporal scope of relevant evidence on these issues, so DSRR should not be forced to limit its discovery in defense of those claims.

Moreover, and to narrow the scope of disagreement, DSRR is removing the request for documents sufficient to show rail traffic on the Line.

As to the deposition, DSRR has set it for a date we believe would be convenient to LPPC's counsel given their need to travel, and at a location that is located where Messrs. Angel and Livingston reside or regularly conduct business, in Lake Village, Arkansas. DSRR is willing, to the extent they would desire it, to also agree to a time-limit on the deposition, and so it has suggested a four on-the-record hour time limit in the proposed subpoena.

For these reasons, DSRR respectfully requests that the Board issue the proposed subpoenas to Messrs. Angel and Livingston.

III. The Board Should Issue the Subpoena to Complex Chemical

DSRR further seeks a subpoena be issued for documents from Complex Chemical. Complex Chemical is a chemical company that is an actual shipper over DSRR's Line (unlike others that claim to be "potential" shippers). At this time, DSRR seeks documents from Complex Chemical and not a deposition. Mr. Jerry Melton is the President of Complex Chemical, and he submitted a verified statement in support of LPPC's Amended Application. Though an active customer of DSRR that ships rail freight on the Line, Mr. Melton claims that Complex Chemical is unable to use DSRR's service north of its location to interchange with NLA and then UP in McGehee, Arkansas due to poor track conditions, and that DSRR refuses to maintain its rail line, among other claims. Melton VS ¶ 3, 6.

DSRR met-and-conferred with Complex Chemical's counsel and narrowed the scope of its original request, in light of the fact that, as an actual shipper, broad requests for documents related to rail service on DSRR would implicate a number of documents. Complex Chemical also raised temporal and scope objections similar to Messrs. Angel and Livingston. Complex Chemical has also argued that it cannot receive a documents-only subpoena and that because DSRR did not seek

to depose Mr. Melton, it cannot seek documents from Complex Chemicals. None of the objections have merit, and DSRR asks the Board to issue the proposed subpoena, which continues to reflect the narrowed scope offered. *See* Exhibit B (Corr. With Complex Chemical’s Counsel).

The scope of DSRR’s subpoena, similar to the above, is narrow and tailored to the issues Mr. Melton himself put at issue by providing his verified statement in this matter. DSRR will not repeat those arguments, but incorporates its arguments above about the temporal and other scope objections.

Complex Chemical’s remaining procedural objection is unfounded. Complex Chemical argues that 49 C.F.R. § 1113.2(b) does not permit a “documents-only” subpoena, and it must be tied to appearance at a hearing. The Board is empowered, by statute, to “subpoena witnesses *and records* related to a proceeding” of the Board. 49 U.S.C. § 1321(c)(1). And the regulation Complex Chemical relies upon—to the extent it governs discovery subpoenas under 49 C.F.R. Subpart 1114—plainly provides for two subpoena options. 49 C.F.R. § 1113.2(b)(1) regards how to request a subpoena “to compel the appearance of a person at a hearing to give oral testimony, but not to produce documents”; while (b)(2) concerns a request to “compel a witness to produce documentary evidence,” and which requires a formal written petition. Nothing about this regulation says that, for a witness to be required to produce documents, that witness must be testifying at a deposition. Moreover, Complex Chemical, through its officer Jerry Melton, *is a* witness in this proceeding through its verified statement. That DSRR has not sought to depose him is no obstacle to receiving documentary evidence.

For the avoidance of doubt, DSRR reserves the right to seek a deposition of Mr. Melton in this proceeding after reviewing any responsive documents. The Board’s regulations plainly state that discovery “may be used in any sequence,” 49 C.F.R. § 1114.21(d), and the Board’s January

16, 2026 Order did not alter this general rule nor DSRR's right to pursue a later deposition of Mr. Melton. Indeed, it would quite the anomalous result if the Board's rules and January 16 order meant that Complex Chemical is excused from providing *any* discovery because DSRR did not seek to impose a greater discovery burden on Complex Chemical at this time. Should the Board, nonetheless, determine that a records subpoena must be joined with a deposition subpoena to be valid, DSRR will confer with Mr. Melton on available dates and proceed in that fashion.

For these reasons, Complex Chemical's objections to the proposed subpoena duces tecum should be rejected, and the Board should issue the subpoena for records.

CONCLUSION

For the foregoing reasons, DSRR has worked diligently and in good faith to proceed with discovery of evidence central to its defense. The motions for issuance of subpoenas to certain non-party witnesses should be granted, and the Board should issue the subpoenas to complete this portion of discovery in February.

Respectfully Submitted,

/s/ John M. Scheib

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Noah P. Sullivan
William L. Spotswood
Gentry Locke Attorneys
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Norfolk, VA 23510
757-916-3511

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 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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Mr. Glover Alcorn "Russ" Russell, Jr.
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/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

Spotswood, William L.

From: Michael F. McBride <mfm@vnf.com>
Sent: Friday, February 6, 2026 2:51 PM
To: Sullivan, Noah P.; jacob@bristerlaw.com; Richard Streeter; Scheib, John M.; Spotswood, William L.; 'William Mencer'; 'Russ Russell'; 'Ernesto Cruz'
Subject: Re: Call

Use Caution: This email originated from an external sender.

Noah, Richard points out that the STB directed, in its August 23, 2022 decision, that the upcoming Amended Application cover the history of the line before the filing date of the Amended Application. So, we cannot agree to limit the relevant period to 2020-present. Regards, Mike
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From: Sullivan, Noah P. <NSullivan@gentrylocke.com>
Sent: Friday, February 6, 2026 3:43:13 PM
To: Michael F. McBride <mfm@vnf.com>; jacob@bristerlaw.com <jacob@bristerlaw.com>; Richard Streeter <rhstreeter@gmail.com>; Scheib, John M. <Scheib@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; 'William Mencer' <william@mencerlaw.com>; 'Russ Russell' <russ@gloverrussell.com>; 'Ernesto Cruz' <ernestoc@terralriverservice.com>
Subject: RE: Call

Mike and Richard,

Wanted to follow-up to see if LPPC's position on the relevant time period in the proceeding. We had discussed limiting that to 2020 forward to alleviate the need for discovery going back further, as some of the non-party witnesses thought that was causing undue burden. Let us know LPPC's position so we can adjust accordingly.

Best,
Noah



GENTR

Noah Sullivan

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VIRGINIA: Richmond | Roanoke | Lynchburg | Norfolk
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This email may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading/forwarding to others.

From: Michael F. McBride <mfm@vnf.com>
Sent: Thursday, February 5, 2026 2:55 PM
To: jacob@bristerlaw.com; Richard Streeter <rhstreeter@gmail.com>; Sullivan, Noah P. <NSullivan@gentrylocke.com>; Scheib, John M. <Scheib@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; 'William Mencer' <william@mencerlaw.com>; 'Russ Russell' <russ@gloverrussell.com>; 'Ernesto Cruz' <ernestoc@terralriverservice.com>
Subject: Re: Call

Use Caution: This email originated from an external sender.

Noah, your calendar invite is not “syncing” with my cell (which is all I have to connect today). Can you resend the invite with call-in link (which may be easier for Richard, too, just to press on the link to connect)?

If the shipper attorneys are agreeable to the deal John and I struck and that I laid out by email yesterday, including committing to deposition dates at times proposed (incl. Morton at 9 am, and Amacker in the afternoon, on Monday, Wyly Tuesday, Angel Wednesday, Livingston on Thursday, and Danny on Friday) and the document search as you requested, perhaps we don't need a group call, but when I last heard from Russ, he may want to have a call (and of course if others do as well, that's fine). Regards, Mike

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From: Michael F. McBride <mfm@vnf.com>

Sent: Wednesday, February 4, 2026 11:37:47 AM

To: jacob@bristerlaw.com <jacob@bristerlaw.com>; Richard Streeter <rhstreeter@gmail.com>; 'Sullivan, Noah P.' <NSullivan@gentrylocke.com>; 'Scheib, John M.' <Scheib@gentrylocke.com>; 'Spotswood, William L.' <Spotswood@gentrylocke.com>; 'William Mencer' <william@mencerlaw.com>; 'Russ Russell' <russ@gloverrussell.com>; 'Ernesto Cruz' <ernestoc@terralriverservice.com>

Subject: Re: Call

Based on my call with John, if Jacob and Ernesto can agree on who goes first and who goes second for a Monday depositions, and if the shipper attorneys will then concur in what I have proposed in my email earlier today, I believe DSRR's attorneys also will agree and we will have a deal. Regards, Mike

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From: jacob@bristerlaw.com <jacob@bristerlaw.com>

Sent: Wednesday, February 4, 2026 11:30:18 AM

To: Richard Streeter <rhstreeter@gmail.com>; Michael F. McBride <mfm@vnf.com>; 'Sullivan, Noah P.' <NSullivan@gentrylocke.com>; 'Scheib, John M.' <Scheib@gentrylocke.com>; 'Spotswood, William L.' <Spotswood@gentrylocke.com>; 'William Mencer' <william@mencerlaw.com>; 'Russ Russell' <russ@gloverrussell.com>; 'Ernesto Cruz' <ernestoc@terralriverservice.com>

Subject: Re: Call

Good morning all,

Regarding the Monday, February 23 depositions, my client is unavailable that morning. We are available that afternoon.

Thanks,

Jacob A. Brister
Brister Law Firm, APLC
318 Morgan St.
P. O. Box 266
Lake Providence, LA 71254
(318) 559-5800

From: Richard Streeter <rhstreeter@gmail.com>

Sent: Wednesday, February 4, 2026 9:26 AM

To: 'Michael F. McBride' <mfm@vnf.com>; 'Sullivan, Noah P.' <NSullivan@gentrylocke.com>; 'Scheib, John M.' <Scheib@gentrylocke.com>; 'Spotswood, William L.' <Spotswood@gentrylocke.com>; 'William Mencer' <william@mencerlaw.com>; 'Russ Russell' <russ@gloverrussell.com>; 'Ernesto Cruz' <ernestoc@terralriverservice.com>; 'Jacob' <jacob@bristerlaw.com>

Subject: RE: Call

Thank you to all. Richard

From: Michael F. McBride <mfm@vnf.com>

Sent: Wednesday, February 4, 2026 10:23 AM

To: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Scheib, John M. <Scheib@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; Richard Streeter <rhstreeter@gmail.com>; 'William Mencer' <william@mencerlaw.com>; Russ Russell <russ@gloverrussell.com>; Ernesto Cruz <ernestoc@terralriverservice.com>; 'Jacob' <jacob@bristerlaw.com>

Subject: Re: Call

Thanks, Noah. Understood and I'm glad you reserved the time. My offer to John this morning, just so everyone knows (and so I can spend time today with my wife on vacation rather than on endless emails) and subject to approval of the shipper attorneys, was (1) schedule Monday depositions so they are not at the same time, with Ernesto and Jacob to work out who goes first and who goes second; (2) agree on proposed deposition schedule for remaining depositions, (3) one subpoena per witness, with those receiving subpoenas duces tecum to bring documents (if any, other than privileged documents) to the depositions (or earlier if they are willing to provide earlier), (4) parties reserve all rights on privilege claims, and (5) Russ Russell for Complex CC to deal separately with DSRR's counsel on document issues, including burdensomeness. Regards to all, Mike

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From: Sullivan, Noah P. <NSullivan@gentrylocke.com>

Sent: Wednesday, February 4, 2026 11:09:54 AM

To: Michael F. McBride <mfm@vnf.com>; Scheib, John M. <Scheib@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; Richard Streeter <rhstreeter@gmail.com>; 'William Mencer' <william@mencerlaw.com>; Russ Russell <russ@gloverrussell.com>; Ernesto Cruz <ernestoc@terralriverservice.com>; 'Jacob' <jacob@bristerlaw.com>

Subject: RE: Call

Thanks, Mike—just so we are not playing “telephone”, we thought it would make sense to gather to make sure we are all on the same page. So this is more just to hold the time.

But I do think we want to clarify what we expect in terms of the scope of any response to the document requests, on timing, and w/r/t to scheduling the depositions. While we are happy to align to one subpoena rather than separate dep/doc subpoenas, we see that as merely a change in form and not substance. In short, we expect subpoena responses to include diligent searches for business/corporate records, not just personal records of the individual. If we are aligned on that, then I think we will be very close. And certainly, if there are particular concerns on scope, etc, we are happy to discuss those tomorrow.

Best,
Noah



Noah Sullivan

Direct: 804.956.2069 | Cell: 804.914.2703

VIRGINIA: Richmond | Roanoke | Lynchburg | Norfolk

web | bio | map

This email may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading/forwarding to others.

From: Michael F. McBride <mfm@vnf.com>

Sent: Wednesday, February 4, 2026 10:02 AM

To: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Scheib, John M. <Scheib@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; Richard Streeter <rhstreeter@gmail.com>; 'William Mencer' <william@mencerlaw.com>; Russ Russell <russ@gloverrussell.com>; Ernesto Cruz <ernestoc@terralriverservice.com>; 'Jacob' <jacob@bristerlaw.com>

Subject: Call

Use Caution: This email originated from an external sender.

Noah, thanks for setting up the call tomorrow. Per my discussion this morning with John, the substance of which Richard will report to the shipper attorneys when he gets a chance, perhaps the call won't be necessary, which is why I replied "maybe." Regards, Mike

Get [Outlook for iOS](#)

Spotswood, William L.

From: Sullivan, Noah P.
Sent: Friday, February 6, 2026 8:22 PM
To: Russ Russell; Spotswood, William L.
Cc: Scheib, John M.; mfm@vnf.com; Richard Streeter
Subject: Re: DSRR meet and confer

Russ,

Is there a counter-proposal from Complex that it would accept? We'd prefer an agreed resolution, but also can't keep throwing darts at the board.

Best,
Noah



GENTR

Noah Sullivan

Direct: 804.956.2069 | Cell: 804.914.2703

VIRGINIA: Richmond | Roanoke | Lynchburg | Norfolk

[web](#) | [bio](#) | [map](#)

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From: Russ Russell <russ@gloverrussell.com>
Sent: Friday, February 6, 2026 7:35:40 PM
To: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>
Cc: Scheib, John M. <Scheib@gentrylocke.com>; mfm@vnf.com <mfm@vnf.com>; Richard Streeter <rhstreeter@gmail.com>
Subject: RE: DSRR meet and confer

Use Caution: This email originated from an external sender.

Noah,

Thank you for the revisions to the draft Subpoena Duces Tecum. Unfortunately, even with the scope of several of the requests narrowed, Complex still objects to the draft Subpoena Duces Tecum, and the requests being overly broad in time and scope; unduly burdensome, requiring extensive time and effort to locate, review, and produce; seeking documents available from a party; and overly broad in subject matter.

Please contact me if you have any questions.

Thank you,

Russ

Glover Alcorn "Russ" Russell, Jr., J.D., LL.M., CPA.

Telephone No.: 601.709.7000

Facsimile No.: 601.709.7005
Toll Free No.: 866.505.3533
Email: russ@gloverrussell.com



Glover Russell, P. A.
Attorneys and Counselors at Law

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Under requirements imposed by the Internal Revenue Service, 31 CFR Part 10, Section 10.35, we inform you that, if any advice concerning one or more U.S. federal tax issues is contained in this communication (including any attachment or enclosure), such advice was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another person a partnership or other entity, investment plan or arrangement, or any transaction or tax-related matter discussed in this communication.

From: Sullivan, Noah P. <NSullivan@gentrylocke.com>
Sent: Friday, February 6, 2026 3:02 PM
To: Spotswood, William L. <Spotswood@gentrylocke.com>; Russ Russell <russ@gloverrussell.com>
Cc: Scheib, John M. <Scheib@gentrylocke.com>; mfm@vnf.com; Richard Streeter <rhstreeter@gmail.com>
Subject: RE: DSRR meet and confer

Russ,

In light of LPPC's refusal to limit the scope on timeline, our hands are tied on the temporal scope. I think, however, that the narrower scope of the requests should make this more manageable and targeted such that it would not require a voluminous search of old paper business records, etc.

Let us know as soon as possible where your client, Complex, is on this issue.

Best,
Noah

Noah Sullivan

Direct: 804.956.2069 | Cell: 804.914.2703
VIRGINIA: Richmond | Roanoke | Lynchburg | Norfolk
web | bio | map

This email may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading/forwarding to others.

From: Spotswood, William L. <Spotswood@gentrylocke.com>
Sent: Friday, February 6, 2026 2:05 PM
To: Russ Russell <russ@gloverrussell.com>
Cc: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Scheib, John M. <Scheib@gentrylocke.com>; mfm@vnf.com;
Richard Streeter <rhstreeter@gmail.com>
Subject: RE: DSRR meet and confer

Mr. Russell:

Per our conversation yesterday, a revised subpoena duces tecum to Complex Chemical Company is attached. We acknowledge your procedural disagreements voiced yesterday. However, we hope that the revised subpoena sufficiently addresses your concerns regarding the scope of the proposed subpoena such that Complex will agree to comply.

Please note that we have left the timeframe for shipping records as “January 1, 2000 to present.” Should Messrs. Streeter and McBride agree that documents prior to 2020 are not relevant to this proceeding, as discussed on our call yesterday, we would agree to adjust our request accordingly. We will point out, however, that DSRR’s request simply seeks “all documents sufficient to show” Complex rail shipments, not necessarily “all documents.” For example, a spreadsheet summarizing Complex’s rail shipments would be sufficient.

We look forward to continuing to work with you as we finalize these details. Please reach out should you have any questions or concerns.

Will

William L. Spotswood

Direct: 540.983.9329 | Cell: 540.798.2257
VIRGINIA: Roanoke | Lynchburg | Richmond | Norfolk
web | bio | map

This email may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading/forwarding to others.

From: Scheib, John M. <Scheib@gentrylocke.com>
Sent: Thursday, February 5, 2026 3:06 PM
To: Russ Russell <russ@gloverrussell.com>
Cc: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>;
mfm@vnf.com; Richard Streeter <rhstreeter@gmail.com>
Subject: RE: DSRR meet and confer

Mr. Russell:

We did not receive any concerns from you in writing per the last sentence of your email below. We assume that means that your client has no other concerns specific to them (excluding the general issues voiced by Messrs. Streeter and McBride about 2 depositions on one day and the single subpoena issue).
John

John M. Scheib

Direct: 757.916.3511 | Cell: 757.910.7072
VIRGINIA: Norfolk | Roanoke | Lynchburg | Richmond
web | bio | map

From: Russ Russell <russ@gloverrussell.com>
Sent: Wednesday, February 4, 2026 11:19 AM
To: Scheib, John M. <Scheib@gentrylocke.com>
Cc: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; mfm@vnf.com; Richard Streeter <rhstreeter@gmail.com>
Subject: RE: DSRR meet and confer

Use Caution: This email originated from an external sender.

Mr. Scheib,

I am available this afternoon from 3:00 EST on this afternoon for a meet and confer. Please let me know what time you would like to meet.

I will email you a little later in the day my clients objections to the draft subpoena duces tecum.

Sincerely,

Russ

Glover Alcorn "Russ" Russell, Jr., JD, LL.M., CPA.

Telephone No.: 601.709.7000

Facsimile No.: 601.709.7005

Toll Free No.: 866.505.3533

Email: russ@gloverrussell.com



Glover Russell, P. A.
Attorneys and Counselors at Law

The Plaza Building
120 North Congress St., Suite 600
Jackson, Mississippi 39201

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Revenue Code or (2) promoting, marketing or recommending to another person a partnership or other entity, investment plan or arrangement, or any transaction or tax-related matter discussed in this communication.

From: Scheib, John M. <Scheib@gentrylocke.com>

Sent: Tuesday, February 3, 2026 12:01 PM

To: Russ Russell <russ@gloverrussell.com>

Cc: Sullivan, Noah P. <NSullivan@gentrylocke.com>; Spotswood, William L. <Spotswood@gentrylocke.com>; mfm@vnf.com; Richard Streeter <rhstreeter@gmail.com>

Subject: DSRR meet and confer

Mr. Russell:

Per the ALJ order, we need to meet and confer this week regarding the draft subpoena duces tecum regarding your client that was provided to you timely. We have not heard from you, but we are available on Wednesday and Thursday afternoon of this week EST. We are open to different, mutually agreeable dates for a deposition, provided the court reporter is also available. If your client has any concerns it would be helpful for you to express them in writing in advance to make the meet and confer the most productive.

Regards, John

John M. Scheib

Direct: 757.916.3511 | Cell: 757.910.7072

VIRGINIA: Norfolk | Roanoke | Lynchburg | Richmond
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**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 ISSUANCE OF SUBPOENA TO
COMPLEX CHEMICAL COMPANY, INC.**

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO
COMPLEX CHEMICAL COMPANY, INC.**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Complex Chemical Company, Inc. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Jerry Melton’s, President of Complex Chemical Company, Inc., verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

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

Mr. Michael F. McBride
Van Ness Feldman
2000 Pennsylvania Ave, NW
Suite 6000
Washington, DC 20006
mfm@vnf.com

Noah P. Sullivan
919 East Main Street, Suite 1130
Richmond, VA 23219
Tel: 804-956-2069
nsullivan@gentrylocke.com

Thomas D. Crowley
1501 Duke Street, Ste. 200
Alexandria, VA 22314
tc@lepeabody.com

Mr. Ernesto Andre Silva Cruz
Terral RiverService, Inc.
112B Monument Place
Vicksburg, MS 39180
ernestoc@terralriverservice.com

Mr. Glover Alcorn "Russ" Russell, Jr.
Glover Russell, P.A.
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russ@gloverrussell.com

Mr. William L. Mencer
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Lake Village, AR 71653
Phone: (870) 265-6737
William@mencerlaw.com

Mr. Jacob A. Brister
Brister Law Firm, PLC
318 Morgan Street
P.O. Box 266
Lake Providence, LA 71254
Phone: (318) 559-5800
jacob@bristerlaw.com

/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**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.**

**SUBPOENA DUCES TECUM TO COMPLEX CHEMICAL COMPANY, INC.
TO PRODUCE DOCUMENTS**

To: Complex Chemical Company, Inc.
c/o Jerry J. Melton, President
177 Complex Chemical Road
Tallulah, LA 71282

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R §
1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to produce the items described in Attachment A to
this subpoena by 5:00 p.m. on February 23, 2026, by electronic or physical mail to Delta Southern
Railroad, Inc., c/o GENTRY LOCKE ATTORNEYS, William L. Spotswood, Esq.
(spotswood@gentrylocke.com), 10 Franklin Road, SE, Suite 900, P.O. Box 40013 (zip 24022)
Roanoke, Virginia 24011 and J. Cole Gayle, Esq. (CGayle@gentrylocke.com), 919 East Main
Street, Suite 1130, Richmond, Virginia 23219.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA DUCES TECUM

INSTRUCTIONS AND DEFINITIONS

1. “Document(s)” shall mean anything on or in which data or information is recorded or stored, including, but not limited to: writings or representations of every kind, correspondence, electronic mail and files, text messages, memoranda, notes, statements, paraphrases or summaries of statements, drawings, tabulations, charts, graphs, plans, maps, sketches, photographs, brochures, diaries, records, rules, regulations, summaries, reports, report forms, studies, papers, work papers, letters, books, notebooks, schedules, lists, worksheets, agreements, contracts, records of telephone calls or any other communications or conversations, telegrams, teletypes, radiograms, cables, discs, tapes or any other forms of mechanical recordings of all statements not reduced to writing, film, microfilm, computer printouts and computations potentially generated to summarize information stored in computer storage by whatever means. The word “Document(s)” also includes, but is not limited to, all handwritten, typed, printed and photocopied matter, including all marginal notations and drafts, duplicates, carbon copies and any other copies thereof, all electronically stored documents such as information stored on computer drives, hard discs, diskettes, floppy discs, DVD, CD, memory sticks, any other means of electronic storage, and all information posted online such as information posted on social media or a blog, even if such information was later edited or deleted.

2. The connectors “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests any information that might otherwise be construed to be outside the scope of the interrogatory or request.

3. The word “person” shall mean any individual, firm partnership, corporation, association, business or governmental entity or subdivision, agency, department, and any “person” acting by or through, directly or indirectly, and other “person” as well as any “person” by whom such “person” was controlled with respect to the matter in question.

4. The word “including” shall mean “including but not limited to.”

5. “Complex,” “You,” and “Your” shall mean Complex Chemical Company, Inc. and each of its agents, attorneys, accountants, consultants, officers, commissioners, employees, independent contractors, and any other individual or entity associated or affiliated with it or purporting to act on its behalf.

6. “DSRR” shall mean line-owner Delta Southern Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

7. “NLA” shall mean the North Louisiana and Arkansas Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

8. The “Line” means the portion from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana, which is the complete and only subject of the amended feeder line application filed on January 3, 2023.

9. “Proceeding” shall mean Surface Transportation Board Docket No. FD 36447.

10. “Verified Statement” means the Verified Statement of Jerry J. Melton dated November 11, 2022, and that was submitted in LPPC’s Amended Application in the Proceeding.

11. Responsive documents should be produced as they are kept in the usual course of business, or organized and labeled to correspond with the categories in these requests.

12. Procedure for production of ESI: All metadata is to be included on every document, email, etc. produced electronically. All E-mails are to be produced in PST format. All data and documents to be produced electronically shall be produced using a Concordance Load File. Documents produced in PDF format should be text searchable (OCR). All documents stored in electronic format should be produced in electronic format.

DOCUMENTS REQUESTED:

1. All Documents referenced or relied upon in the Verified Statement.
2. All Documents related to any refusal to provide rail service by DSRR or NLA.
3. All Documents regarding adequacy of service by DSRR or NLA.
4. All Documents regarding requests for rail service from DSRR that involve an interchange with NLA.
5. All Documents regarding decisions to ship by rail or by truck, including cost analyses, price quotes, and other comparisons.
6. All Documents regarding any refusal by DSRR to take steps to maintain, rebuild, or improve the Line.
7. Any shipper surveys received or completed related to rail shipping.
8. All Documents regarding the proceeding, including any communications regarding, or drafts of, the Verified Statement.

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**LAKE PROVIDENCE PORT COMMISSION—FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF JERRY J. MELTON

1. My name is Jerry J. Melton. I am the President of Complex Chemical Co. (Complex Chemical), whose facilities are located within the Madison Parish Port in Tallulah, Louisiana. My address is P.O. Box 1352, Tallulah, Louisiana (318) 574-0382. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of Complex Chemical.

2. Complex Chemical produces brake fluid, antifreeze/coolants, Lubrications, oil additives, materials used in paving, mining & drilling, and various glycols via distillation of glycol residues for multiple markets. It is heavily dependent upon rail service for 50% of its gross revenues. In 2021, due to Covid-19, Complex only received or shipped 850 jumbo railcars of material. Immediately thereafter, there was a surge of demand as customers had literally run out of product. However, because they needed immediate service, Complex Chemical was forced to switch to trucking to keep up with demand. It is anticipated that the recently completed expansion of a glycol distillation project

and the installation of an additional reactor to expand capacity for manufacturing materials for the mining and drilling markets will increase our need for adequate rail service and surpass the 1,100 jumbo carloads that we received or shipped from 4/30/2019 to 5/1/2020. To illustrate the financial benefits that the various railroads have received from Complex Chemical over the years, I ask the Board to consider the fact that in 1987, we received only 3,270 tons of product consisting of intermediate feedstocks and base oils for further processing and shipped 2,660 tons of brake fluids and lube oil additives for crankcase lubrications. Because the line between McGehee and Tallulah was saved from abandonment in 1988, Complex Chemical has been able to prosper and contribute to the railroads' and the region's economy.

3. For many years, Complex Chemical was able to route traffic over either the Delta Southern Railroad, Inc. ("DSRR")/the Kansas City Southern Railway Company ("KCS") or DSRR/the North Louisiana & Arkansas Railroad ("NLS")/and the Union Pacific Railroad Company ("UP"). However, DSRR's extended refusal to maintain its line between MP 471.0 and 491.0 has deprived Complex Chemical of its ability to reach NLA and UP directly. Because of that loss, Complex Chemical has been forced to utilize the much longer DSRR/KCS/UP routing at a much higher rate than the rate paid for its DSRR/NLA/UP routing.

4. Complex Chemical currently supplies roughly 30% of all the DOT 3 and DOT 4 brake fluid sold in the United States. It also manufactures three (3) products that are used in roughly 40% of all the heavy-duty diesel crank case

oil sold in North America. The expansion and capacity increase will allow Complex Chemical to be the second largest producer of glycols from residues in the United States.

5. This is significant in that Complex Chemical has 15 outbound destinations scattered throughout the United States, Canada and Mexico. In addition, it has inbound material from points in Texas, Louisiana, and Canada. Seven (7) of its outbound customers are captive UP customers, while four (4) are captive KCS customers. In terms of incoming materials, five (5) origins are captive UP customers. As a result, the relationship between Complex Chemical and UP is significant.

6. As I previously stated in my sworn letter filed in this proceeding in April 2021, having to pay the higher rates that are charged for the current routing that has been created by DSRR's refusal to maintain its rail line imposes a penalty on Complex Chemical. As a result, I view DSRR's owner's self-imposed refusal to bear the cost of maintaining its own line as a restraint on trade and contrary to the public convenience and necessity and the public interest. That restraint also causes its service to be inadequate from an economic standpoint. While it may be financially rewarding for DSRR to exact higher rates while collecting rental payments for storing railcars on its mainline, that action is, in my mind, a violation of its statutory rail common carrier obligation. Furthermore, I request the Board to note that DSRR's storage activities are troublesome due to the fact that the crossing at the

entrance of the Port is blocked excessively when DSRR is switching rental storage cars.

7. I firmly believe that LPPC's ownership of the entire Lake Providence Branch Line promises to restore competitive direct routings to Complex Chemical. In addition, because Complex Chemical has been the largest of DSRR's customers and the major shipper on the direct line to UP at McGehee, Arkansas, I also believe that LPPC's ownership will directly contribute to the local region's economic prosperity as has Complex Chemical. The same would not be true of a railroad that has no existing ties to northeast Louisiana and southeast Arkansas which would skim needed revenues from LPPC and NLA. Because DSRR's owners are intent upon selling its shares to a different railroad, I fail to see how they would be impacted by the sale to LPPC.

I, Jerry J. Melton, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 11th day of November 2022.



Jerry J. Melton

**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 ISSUANCE OF SUBPOENA TO SAM E. ANGEL, II, ON BEHALF OF
EPSTEIN GIN CO., D/B/A EPSTEIN TRANSLOADING**

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO SAM E. ANGEL, II, ON BEHALF OF
EPSTEIN GIN CO., D/B/A EPSTEIN TRANSLOADING**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Sam E. Angel, II, on behalf of Epstein Gin Co., d/b/a Epstein Transloading. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Angel’s verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

CERTIFICATE OF SERVICE

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

Mr. Richard H. Streeter
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Washington, DC 20016
rhstreeter@gmail.com

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Washington, DC 20006
mfm@vnf.com

Noah P. Sullivan
919 East Main Street, Suite 1130
Richmond, VA 23219
Tel: 804-956-2069
nsullivan@gentrylocke.com

Thomas D. Crowley
1501 Duke Street, Ste. 200
Alexandria, VA 22314
tc@lepeabody.com

Mr. Ernesto Andre Silva Cruz
Terral RiverService, Inc.
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Vicksburg, MS 39180
ernestoc@terralriverservice.com

Mr. Glover Alcorn "Russ" Russell, Jr.
Glover Russell, P.A.
The Plaza Building
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Phone: (601) 709-7000
russ@gloverrussell.com

Mr. William L. Mencer
Law Office of William L. Mencer, LLC
P.O. Box 523
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Mr. Jacob A. Brister
Brister Law Firm, PLC
318 Morgan Street
P.O. Box 266
Lake Providence, LA 71254
Phone: (318) 559-5800
jacob@bristerlaw.com

/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**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.**

**SUBPOENA DUCES TECUM TO NEIL MARTIN, ON BEHALF OF TERRAL
RIVERSERVICE, INC., TO TESTIFY IN A DEPOSITION AND PRODUCE
DOCUMENTS**

To: Terral RiverService, Inc.
c/o Neil Martin, Vice President
10100 Hwy 65 South
Lake Providence, LA 71254

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R. § 1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear at Lake Providence Municipal Courtroom, 201 Sparrow Street, Lake Providence, Louisiana 71254 at 9:00 a.m. on February 23, 2026, to provide testimony by oral deposition at the request of Delta Southern Railroad, Inc., in the above-caption proceeding. Your testimony will be recorded stenographically, by an officer authorized to administer oaths, and may be used as evidence in this proceeding. The deposition is anticipated to be completed within one-half of a business day, but may be continued from time to time until completed. Specific topics for which you will be expected to provide testimony are included in Attachment A to this subpoena.

YOU ARE ALSO COMMANDED to produce the items described in Attachment B to this subpoena by 9:00 a.m. on February 23, 2026, to Delta Southern Railroad, Inc., c/o GENTRY LOCKE ATTORNEYS at Lake Providence Municipal Courtroom, 201 Sparrow Street, Lake

Providence, Louisiana 71254 by physical copy or electronic mail to William L. Spotswood, Esq. (spotswood@gentrylocke.com) and J. Cole Gayle, Esq. (CGayle@gentrylocke.com), or at such time and place as the attorneys for Delta Southern Railroad, Inc. and you agree.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA DUCES TECUM

Delta Southern Railroad, Inc. (“DSRR”) seeks to depose you in order to obtain relevant evidence to the Lake Providence Port Commission’s (“LPPC”) Amended Feeder Line Application to acquire the Line of DSRR located in East Carroll and Madison Parishes, Louisiana, STB Docket No. FD 36447 (the “proceeding”). Specifically, DSRR seeks testimony regarding the following topics:

1. All subject matter and facts asserted in Your verified statement submitted in this proceeding, including the factual basis for any such assertions.
2. Requests for rail service made by Terral RiverService, Inc. (“Terral”) to DSRR.
3. Rail service provided to Terral by DSRR.
4. Requests for rail service made by Terral to North Louisiana & Arkansas Railroad, Inc. (“NLA”).
5. Rail service provided to Terral by NLA.
6. Costs and effectiveness of transportation options for Terral, as comparing trucking, rail, and other alternatives.
7. Current and anticipated demand for rail service by Terral.
8. Drafts and communications regarding Your verified statement in this proceeding with LPPC (including its counsel) or any third party.
9. Documents produced by Terral in response to a subpoena duces tecum in this proceeding.

ATTACHMENT B TO SUBPOENA DUCES TECUM

INSTRUCTIONS AND DEFINITIONS

1. “Document(s)” shall mean anything on or in which data or information is recorded or stored, including, but not limited to: writings or representations of every kind, correspondence, electronic mail and files, text messages, memoranda, notes, statements, paraphrases or summaries of statements, drawings, tabulations, charts, graphs, plans, maps, sketches, photographs, brochures, diaries, records, rules, regulations, summaries, reports, report forms, studies, papers, work papers, letters, books, notebooks, schedules, lists, worksheets, agreements, contracts, records of telephone calls or any other communications or conversations, telegrams, teletypes, radiograms, cables, discs, tapes or any other forms of mechanical recordings of all statements not reduced to writing, film, microfilm, computer printouts and computations potentially generated to summarize information stored in computer storage by whatever means. The word “Document(s)” also includes, but is not limited to, all handwritten, typed, printed and photocopied matter, including all marginal notations and drafts, duplicates, carbon copies and any other copies thereof, all electronically stored documents such as information stored on computer drives, hard discs, diskettes, floppy discs, DVD, CD, memory sticks, any other means of electronic storage, and all information posted online such as information posted on social media or a blog, even if such information was later edited or deleted.

2. The connectors “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests any information that might otherwise be construed to be outside the scope of the interrogatory or request.

3. The word “person” shall mean any individual, firm partnership, corporation, association, business or governmental entity or subdivision, agency, department, and any “person” acting by or through, directly or indirectly, and other “person” as well as any “person” by whom such “person” was controlled with respect to the matter in question.

4. The word “including” shall mean “including but not limited to.”

5. “Terral,” “You,” and “Your” shall mean Terral RiverService, Inc. and each of its agents, attorneys, accountants, consultants, officers, commissioners, employees, independent contractors, and any other individual or entity associated or affiliated with it or purporting to act on its behalf.

6. “DSRR” shall mean line-owner Delta Southern Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

7. “NLA” shall mean the North Louisiana and Arkansas Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

8. The “Line” means the portion from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana, which is the complete and only subject of the amended feeder line application filed on January 3, 2023.

9. The phrase “request for rail service” shall mean any request made by Terral to DSRR that is specific to a commodity and date that DSRR provided said rail service.

10. “Proceeding” shall mean Surface Transportation Board Docket No. FD 36447.
11. “Verified Statement” means the Verified Statement of Neil Martin dated December 14, 2022, and that was submitted in LPPC’s Amended Application in the Proceeding.
12. Responsive documents should be produced as they are kept in the usual course of business, or organized and labeled to correspond with the categories in these requests.
13. Procedure for production of ESI: All metadata is to be included on every document, email, etc. produced electronically. All E-mails are to be produced in PST format. All data and documents to be produced electronically shall be produced using a Concordance Load File. Documents produced in PDF format should be text searchable (OCR). All documents stored in electronic format should be produced in electronic format.

DOCUMENTS REQUESTED:

1. All Documents referenced or relied upon in the Verified Statement.
2. All Documents regarding rail service by DSRR, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
3. All Documents regarding rail service by NLA, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
4. All Documents regarding the condition of the Line, including to any alleged inability of the Line to transport safely 100 ton gondola cars used by Terral.
5. All Documents sufficient to show Terral’s qualifications regarding rail safety.
6. Documents sufficient to show all Terral rail shipments received or sent on the Line from January 1, 2000 to present, including the railroad that transported each shipment.

7. All documents regarding DSRR's storage of railcars on the Line, including any alleged impact to Terral as a result of such storage.
8. All Documents regarding decisions to ship by rail or by truck, including cost analyses, price quotes, and other comparisons.
9. All Documents regarding any refusal by DSRR to take steps to maintain, rebuild, or improve the Line.
10. Any shipper surveys received or completed related to rail shipping.
11. All Documents regarding the proceeding, including any communications regarding, or drafts of, the Verified Statement.

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, LA.

Verified Statement of Sam E. Angel II
in Support of
Feeder Line Application filed by
Lake Providence Port Commission

1. My name is Sam E. Angel II. I am the owner of Epstein Gin Co. and Epstein Transloading. I am duly authorized to present this Statement in Support of the Feeder Line Application that has been filed by the Lake Providence Port Commission ("LPPC"). My business address is 537 Reynolds St, Lake Village, AR 71653. My telephone number is (870) 265-2332. I have been involved with Epstein Gin for 30 years and have personal knowledge about the facts that are stated herein. Those facts are true to the best of my knowledge.

2. Epstein Gin has been in this location since the early 1900s. The ginning process separates the seed from the cotton fiber. We store up to sixteen thousand tons of seed here. Storage and rail are critical to our operations because the cotton harvest is approximately 60 days annually. Therefore, the seed markets quickly flood, and prices drop just

as fast. With seed storage we can ship and sell throughout the year using rail to reach distant dairy markets. Epstein Transloading does the same for other cotton gins located in the Mississippi Delta that have seed storage but no access to transloading or rail services. In addition to selling and shipping our own seed, Epstein has loaded cars for various Commodity Companies that have included Anderson Grain, Apex Commodities and Gavilon. In all instances, we are not considered to be the shipper. Instead, the above-named companies are the actual shippers. When they are ready to ship, they tell us how many empty cars they need for us to load, and we schedule the cars for loading. It is left to the shippers to determine the routing. While we are generally aware of the destination markets, and may influence the routing, the shipper works with the railroads to establish their rates and routing.

3. Because of the price differential between the Union Pacific Railroad ("UP") and Kansas City Southern Railroad ("KCS") can be substantial, Epstein Gin and the shippers whose cars we load, would prefer to route cars that are destined to markets in Mexico and other locations in the United States that are served by KCS, directly to KCS at Tallulah. The grant of LPPC's feeder line application, would result in a single movement of only 65 miles as NLA would interchange directly with KCS. This would eliminate two (2) inefficient interchanges that involve DSRR. In addition, it will eliminate the alternate routing that has NLA moving the cars 24.1 miles to McGehee, where they are interchanged

with UP. UP then moves the cars 95 miles to Monroe, Louisiana where it interchanges with KCS. Although this alternative “works,” it adds to the cost of the entire movement. Given the markets in which we operate, any extra costs and unnecessary interchanges are counterproductive. At present, we are in discussions with Central Valley Ag Products from California about loading for it. While they would prefer shipping via KCS for some shipments, the added costs have caused them to hold back until they can be assured that the entire Line south of Lake Providence, Louisiana has been fully restored. To understand the hesitancy to take a chance that the unrestored track will be able to safely handle the high-gravity cars that are used to transport cotton seed, it is necessary to realize that about 95 percent of the cars are privately owned by the companies that hire us to load them. Having experienced several expensive derailments attributed to DSRR’s deteriorated tracks, Epstein Gin got rid of all the private cars that it once owned.

4. The Epstein Companies and the companies for which it loads have been denied interchange rail service ever since William Wainwright, the former owner of Delta Southern Railroad, Inc. (“DSRR”), on November 2, 2010, embargoed the Line between milepost 408.9 and milepost 433.0. Two (2) years before he allowed the track to disintegrate to the point that the high-center-of-gravity Hopper cars used to transport our products could not be safely operated, Epstein Gin had shipped 451 carloads. That number had fallen to 20 carloads by the end of October 2010. That

decline was totally attributed to track conditions and DSRR's horrendous rail service. Not only did it suffer numerous derailments, which resulted in the loss of product and damaged railcars, but its service was unreliable. While DSRR would promise to deliver cars for loading on a Friday, it often failed to arrive until the next Friday. In our business, repeated delays of a week for delivery results in the loss of customers who use the cotton seed to feed their cattle. Due to the unreliable rail service, we had to resort to transloading shipments for delivery to UP. This necessarily and substantially increased our cost of transportation. As a result, all use of DSRR's services to the north of milepost 471.0 ceased.

5. Even after LPPC and NLA acquired ownership of the track, track conditions continued to plague NLA's ability to safely operate the type of railcar upon which we rely. Because NLA and the Southeast Arkansas Economic Development District ("SEAEDD") have already used the INFRA Grant funds, as well as previous grants, to rehabilitate the Line between McGehee and the Arkansas/Louisiana State boundary and the spur track into our facilities at Lake Village, that track can now be safely operated to reach UP in McGehee. I am informed that LPPC has also taken steps to improve the Line between the State Line and the point of interchange with DSRR at the Port of Lake Providence. I also know that NLA can safely move our cars over that section of the track between the Arkansas/Louisiana boundary since 2016.

6. In 2015, Wainwright sold his shares of DSRR's stock and the last segment of the Line that he had not abandoned to some other entities which, I am advised, include Golden Gate Capital, a private equity investment firm which is headquartered in San Francisco, with no apparent ties to this region. While the new investors encouraged efforts to upgrade DSRR's track between the Madison Parish Port and the point of interchange with KCS, they refused to take any steps to rebuild the segment of track that must be rebuilt before Epstein Gin can reach KCS. That refusal continued for approximately 21 months after Epstein Gin filed its letter of support for LPPC's original feeder line application in November 2020.

7. In June of 2019, Epstein Gin requested NLA to ship the remaining 40+ cars of cottonseed that were then stored in its Lake Village facility to KCS. These cars would have moved in interchange service with DSRR. Although NLA was ready, willing and able to move the 43 cars, Mr. Robbins informed us that Dino Trevino, who is DSRR's current General Manager, had advised him that he had to refuse interchange because DSRR's tracks between mileposts 471.0 and 491.0 could not accommodate the movement of the cars. Mr. Robbins also reported that Mr. Trevino had also claimed that DSRR had approximately 200 cars stored on a portion of that track. That DSRR was recently able to move a specialized low-gravity car over its track plainly demonstrates that if DSRR's owners had consistently taken steps during the seven (7)

years that they have owned the track, it could have been properly rehabilitated at an earlier date. That it could handle the specialized car in September 2022 does not, by itself, demonstrate that DSRR can now handle our top-heavy loads of cotton seed.

8. I hereby confirm the statement in the earlier letter that Epstein Gin and Epstein Transload intend to expand sales into Mexico and other destinations via the KCS once it can be assured that its cars can be safely operated over the 20-mile segment of track. As I view the situation, the expectancy of increased new business and increased revenues would have prompted most short line railroads to repair their tracks. As is obvious from DSRR's response to Epstein Gin's testimony and the joint business development activities that were undertaken shortly after Wainwright sold his stock, DSRR's new owners have never committed to take the necessary steps to rebuild the segment of the Line that must be repaired if DSRR is to provide the rail service that Epstein Gin requires. Instead, they continued to argue as late as March 2021, that the renovation of its "long-dormant" was unjustified and unwarranted.

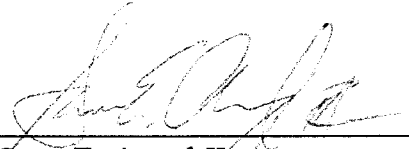
9. Epstein Gin and Epstein Transloading support LPPC for several other reasons. First, LPPC's ownership of the segment from milepost 471.0 and the point of interchange with KCS will ease the administrative burdens of having to deal with three (3) distinct railroads to establish contracts, obtain rate quotes, track the location of cars, and settle freight claims in the event of a problem. In other words, it will enhance

efficiencies both administratively and operationally. In addition, our support for LPPC is also based on a shared belief that preservation of rail service will benefit the economic development of the area. I am a current member of the Lake Village Economic Development Commission as well as the Chicot-Desha Metropolitan Port Authority, which is heavily involved in the effort to further develop the Yellow Bend Slackwater Harbor. That Port is currently underutilized with regard to its potential. In addition, I am a Board Member of the SEAEDD. As such, I am very aware of the urgent need for economic development and the need to fully restore the entire Lake Providence Branch Line. Without the full support that LPPC and SEAEDD have provided Epstein Gin in preserving rail service for the past 34 years, the Line would have been abandoned. As the Interstate Commerce Commission's ("ICC") decision in *Missouri Pacific Railroad Company – Abandonment – In Desha and Chicot Counties, AR, and East Carroll, Madison, Tensas, and Concordia Parishes, LP*, dated July 11, 1988, reflects, Epstein Gin, along with LPPC and SEAEDD, opposed MoPac's application. It was only because of offers of financial assistance filed by LPPC and the predecessor of Delta Southern Railroad Company that the Line is still in place.

10. I am personally aware that SEAEDD's and NLA's use of INFRA Grant funds for the recent reconstruction of the Line has already resulted in two (2) new industries announcing their intent to consider the construction of new facilities in Chicot County. In fact, I attended the

groundbreaking that was conducted on November 14, 2022, for MD Power and its Waste to Energy facility that is being constructed in Chicot County. It is anticipated that this will result in an increase of hundreds of jobs within the next two (2) years and will substantially increase rail traffic over the Line between McGehee and Tallulah. LPPC's, SEAEDD's and NLA's joint ownership of the entire Lake Providence Branch Line will benefit Epstein Gin and Epstein Transloading and their employees.

I, Sam E. Angel II, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 20th day of December 2022.



Sam E. Angel II

**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 ISSUANCE OF SUBPOENA TO ROBERT AMACKER, JR., ON
BEHALF OF HOLLYBROOK WAREHOUSE, INC.**

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO ROBERT AMACKER, JR., ON
BEHALF OF HOLLYBROOK WAREHOUSE, INC.**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Robert Amacker, Jr., on behalf of Hollybrook Warehouse, Inc. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Amacker, Jr.’s verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

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

Mr. Michael F. McBride
Van Ness Feldman
2000 Pennsylvania Ave, NW
Suite 6000
Washington, DC 20006
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Mr. Jacob A. Brister
Brister Law Firm, PLC
318 Morgan Street
P.O. Box 266
Lake Providence, LA 71254
Phone: (318) 559-5800
jacob@bristerlaw.com

/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**BEFORE THE
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**LAKE PROVIDENCE PORT COMMISSION – FEEDER LINE APPLICATION – LINE
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**SUBPOENA DUCES TECUM TO ROBERT N. AMACKER, JR., ON BEHALF OF
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PRODUCE DOCUMENTS**

To: Robert N. Amacker, Jr.
Hollybrook Warehouse, Inc.
10971 Hwy 65 South
Lake Providence, LA 71254

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R. § 1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear at Lake Providence Municipal Courtroom, 201 Sparrow Street, Lake Providence, Louisiana 71254 at 2:00 p.m. on February 23, 2026, to provide testimony by oral deposition at the request of Delta Southern Railroad, Inc., in the above-caption proceeding. Your testimony will be recorded stenographically, by an officer authorized to administer oaths, and may be used as evidence in this proceeding. The deposition is anticipated to be completed within one-half of a business day, but may be continued from time to time until completed. Specific topics for which you will be expected to provide testimony are included in Attachment A to this subpoena.

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Providence, Louisiana 71254 by physical copy or electronic mail to William L. Spotswood, Esq. (spotswood@gentrylocke.com) and J. Cole Gayle, Esq. (CGayle@gentrylocke.com), or at such time and place as the attorneys for Delta Southern Railroad, Inc. and you agree.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA DUCES TECUM

Delta Southern Railroad, Inc. (“DSRR”) seeks to depose you in order to obtain relevant evidence to the Lake Providence Port Commission’s (“LPPC”) Amended Feeder Line Application to acquire the Line of DSRR located in East Carroll and Madison Parishes, Louisiana, STB Docket No. FD 36447 (the “proceeding”). Specifically, DSRR seeks testimony regarding the following topics:

1. All subject matter and facts asserted in Your verified statement submitted in this proceeding, including the factual basis for any such assertions.
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4. Requests for rail service made by Hollybrook to North Louisiana & Arkansas Railroad, Inc. (“NLA”).
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5. “Hollybrook,” “You,” and “Your” shall mean Hollybrook Warehouse, Inc., and each of its agents, attorneys, accountants, consultants, officers, commissioners, employees, independent contractors, and any other individual or entity associated or affiliated with it or purporting to act on its behalf.

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DOCUMENTS REQUESTED:

1. All Documents referenced or relied upon in the Verified Statement.
2. All Documents regarding rail service by DSRR, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
3. All Documents regarding rail service by NLA or DSRR, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
4. All Documents regarding the condition of the Line, including any alleged inability of the Line to transport safely commodities owned or leased by Hollybrook.
5. Documents sufficient to show all Hollybrook rail shipments received or sent on the Line from January 1, 2000 to present, including the railroad that transported each shipment.

6. All Documents regarding decisions to ship by rail or by truck, including cost analyses, price quotes, and other comparisons.
7. All Documents regarding maintenance activities DSRR performed on the Line, as referenced in paragraph 5 of the Verified Statement.
8. All Documents regarding any refusal by DSRR to take steps to rebuild or improve the Line.
9. Any shipper surveys received or completed related to rail shipping.
10. All Documents regarding the proceeding, including any communications regarding, or drafts of, the Verified Statement.

Hollybrook

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF ROBERT N. AMACKER JR.

1. My name is Robert N. Amacker Jr.. I am the President of Hollybrook Warehouse, Inc. ("Hollybrook"). My address is 10971, Hwy 65 South, Lake Providence, Louisiana 71254. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified State on behalf of Hollybrook.

2. In addition to being employed by Hollybrook, I also serve as the Mayor of Lake Providence. As a result, I am acquainted with the adverse impact that the lack of adequate rail service has had on the entire region over the past 25 years. I have attached a copy of a letter that Hollybrook Warehouse, Inc. filed with the Interstate Commerce Commission ("ICC") in 1988 to protest the Missouri Pacific Railroad's ("MP") proposed abandonment of the entire Lake Providence Branch Line from milepost 408.9 in McGehee, Arkansas to milepost 651.6 at Vidalia. As described in that letter, our customers directed Hollybrook Warehouse not to use MP's service because of the deteriorating and undependable service. As was also detailed, MP's rail service could not be relied

upon when movements were time sensitive. Despite the protests of various shippers, the ICC authorized MP to abandon the entire Line. In response to the ICC's decision, the Lake Providence Port Commission ("LPPC") filed an offer of financial assistance to preserve the Line between McGehee and Tallulah, Louisiana. Because LPPC subsequently agreed to permit Delta Southern Railroad Company ("DSRC") to acquire the Line, LPPC did not acquire ownership of the Line at that time.

3. Before turning to Delta Southern Railroad, Inc. ("DSRR"), I will first explain some corporate changes that have occurred since 1988. Hollybrook Warehouse was started in 1971 by Jack Hamilton and my father. Jack Hamilton was president of the warehouse from its beginning until his death in 2001. When he died, I became president and am still president to this day. When we sold Hollybrook Gin in 2006, the name was changed from Hollybrook Gin, Inc. to Hollybrook Enterprises, LLC. Hollybrook Enterprises owns a cotton gin, a grain facility, and 25% of the stock of Hollybrook Warehouse, Inc. Three other gins each own a 25% interest in the warehouse.

4. In 1999, DSRC sold the Line to William Wainwright, who had managed DSRC's operations as its President for the previous ten years. To acquire the Line, Mr. Wainwright and his wife incorporated a new railroad that was named Delta Southern Railroad, Inc. ("DSRR"). However, instead of providing adequate rail service, Wainwright allowed the Line to deteriorate to the point that it could not be safely operated. In 2004, he started seeking authority to abandon various segments of the line north of Lake Providence.

This prevented Hollybrook from using rail service to ship railcars directly to the Union Pacific Railroad Company ("UP") in McGehee. Furthermore, DSRR began to store several hundred railcars on the track to the south of Hollybrook's facilities, which are located at milepost 474.0 and 475.0. Because DSRR could not efficiently operate to the north due to the deteriorated track north of milepost 471.0, all rail traffic ground to a halt.

5. I am aware that in 2015, Wainwright sold the stock of DSRR to an entity that is based in San Francisco. That sale did not improve rail service for Hollybrook. Even though Craig Huff, DSRR's General Manager, and Danny Robbins approached Hollybrook in late 2015 or early 2016 with the promise that things would improve under the new owners, nothing changed. Since their visit, I have not had any further contact with DSRR. Nor was I ever made aware of any work being done on the track, which had previously been used to move railcars to the two spur tracks that were used to receive and ship cotton, cotton seed, and grains. I must note that DSRR, or some other entity that it hired, has recently engaged in some maintenance activities on its track. I must presume that those activities are intended to support DSRR's opposition to the Feeder Line Application that LPPC has filed to acquire the track.

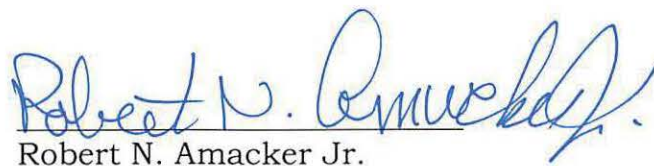
6. I am aware that the United State Department of Transportation ("DOT"), in 2019, awarded the owners of the entire line over \$10.5 million to be used to restore adequate rail service. I have also learned that DSRR's owners refused to commit to use any of those funds to restore the section of the Line that would be used to provide service to Hollybrook. Because I fully agree with

DOT's conclusion that the rebuilding of the entire Line between McGehee and Tallulah and the restoration of reliable rail service will help catalyze greater opportunities for economic development in the region, Hollybrook fully supports LPPC's Feeder Line Application. If the Line is fully upgraded and future rail service is reliable, Hollybrook and other entities in and around Lake Providence will reduce their forced reliance on trucking and once again make full use of rail service. The return to rail service will not only reduce the cost of transportation but will reduce the wear and tear on the highways in the region and the air pollution associated with trucking.

VERIFICATION

I, Robert N. Amacker, Jr. declare under penalty of perjury that the foregoing is based on my personal knowledge and is true and correct.

Executed on December 31, 2022.


Robert N. Amacker Jr.

**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 ISSUANCE OF SUBPOENA TO BLAKE LIVINGSTON, ON BEHALF
OF LIVINGSTON PECAN & METAL, INC.**

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO BLAKE LIVINGSTON, ON BEHALF
OF LIVINGSTON PECAN & METAL, INC.**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Blake Livingston, on behalf of Livingston Pecan & Metal, Inc. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Livingston’s verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

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

Mr. Michael F. McBride
Van Ness Feldman
2000 Pennsylvania Ave, NW
Suite 6000
Washington, DC 20006
mfm@vnf.com

Noah P. Sullivan
919 East Main Street, Suite 1130
Richmond, VA 23219
Tel: 804-956-2069
nsullivan@gentrylocke.com

Thomas D. Crowley
1501 Duke Street, Ste. 200
Alexandria, VA 22314
tc@lepeabody.com

Mr. Ernesto Andre Silva Cruz
Terral RiverService, Inc.
112B Monument Place
Vicksburg, MS 39180
ernestoc@terralriverservice.com

Mr. Glover Alcorn "Russ" Russell, Jr.
Glover Russell, P.A.
The Plaza Building
120 N. Congress Street, Ste. 600
Jackson, MS 39201
Phone: (601) 709-7000
russ@gloverrussell.com

Mr. William L. Mencer
Law Office of William L. Mencer, LLC
P.O. Box 523
Lake Village, AR 71653
Phone: (870) 265-6737
William@mencerlaw.com

Mr. Jacob A. Brister
Brister Law Firm, PLC
318 Morgan Street
P.O. Box 266
Lake Providence, LA 71254
Phone: (318) 559-5800
jacob@bristerlaw.com

/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**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.**

**SUBPOENA DUCES TECUM TO BLAKE LIVINGSTON, ON BEHALF OF
LIVINGSTON PECAN & METALS, INC., TO TESTIFY IN A DEPOSITION AND
PRODUCE DOCUMENTS**

To: Blake Livingston
Livingston Pecan & Metals, Inc.
219 Commerce Street
Lake Village, AR 71653

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R. § 1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear at Robert G. Bridewell Attorney, PLC, 113 N. Court Street, Lake Village, Arkansas 71653 at 10:00 a.m. on February 26, 2026, to provide testimony by oral deposition at the request of Delta Southern Railroad, Inc., in the above-caption proceeding. Your testimony will be recorded stenographically, by an officer authorized to administer oaths, and may be used as evidence in this proceeding. The deposition is anticipated to be completed within one-half of a business day, but may be continued from time to time until completed. Specific topics for which you will be expected to provide testimony are included in Attachment A to this subpoena.

YOU ARE ALSO COMMANDED to produce the items described in Attachment B to this subpoena by 10:00 a.m. on February 26, 2026, to Delta Southern Railroad, Inc., c/o GENTRY LOCKE ATTORNEYS at Robert G. Bridewell Attorney, PLC, 113 N. Court Street, Lake Village,

Arkansas 71653 by physical copy or electronic mail to William L. Spotswood, Esq. (spotswood@gentrylocke.com) and J. Cole Gayle, Esq. (CGayle@gentrylocke.com), or at such time and place as the attorneys for Delta Southern Railroad, Inc. and you agree.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA DUCES TECUM

Delta Southern Railroad, Inc. (“DSRR”) seeks to depose you in order to obtain relevant evidence to the Lake Providence Port Commission’s (“LPPC”) Amended Feeder Line Application to acquire the Line of DSRR located in East Carroll and Madison Parishes, Louisiana, STB Docket No. FD 36447 (the “proceeding”). Specifically, DSRR seeks testimony regarding the following topics:

1. All subject matter and facts asserted in Your verified statement submitted in this proceeding, including the factual basis for any such assertions.
2. Requests for rail service made by Livingston to DSRR.
3. Rail service provided to Livingston by DSRR.
4. Requests for rail service made by Livingston to North Louisiana & Arkansas Railroad, Inc. (“NLA”).
5. Rail service provided to Livingston by NLA.
6. Costs and effectiveness of transportation options for Livingston, as comparing trucking, rail, and other alternatives.
7. Current and anticipated demand for rail service by Livingston.
8. Drafts and communications regarding Your verified statement in this proceeding with LPPC (including its counsel) or any third party.
9. Documents produced by Livingston in response to a subpoena duces tecum in this proceeding.

ATTACHMENT B TO SUBPOENA DUCES TECUM

INSTRUCTIONS AND DEFINITIONS

1. “Document(s)” shall mean anything on or in which data or information is recorded or stored, including, but not limited to: writings or representations of every kind, correspondence, electronic mail and files, text messages, memoranda, notes, statements, paraphrases or summaries of statements, drawings, tabulations, charts, graphs, plans, maps, sketches, photographs, brochures, diaries, records, rules, regulations, summaries, reports, report forms, studies, papers, work papers, letters, books, notebooks, schedules, lists, worksheets, agreements, contracts, records of telephone calls or any other communications or conversations, telegrams, teletypes, radiograms, cables, discs, tapes or any other forms of mechanical recordings of all statements not reduced to writing, film, microfilm, computer printouts and computations potentially generated to summarize information stored in computer storage by whatever means. The word “Document(s)” also includes, but is not limited to, all handwritten, typed, printed and photocopied matter, including all marginal notations and drafts, duplicates, carbon copies and any other copies thereof, all electronically stored documents such as information stored on computer drives, hard discs, diskettes, floppy discs, DVD, CD, memory sticks, any other means of electronic storage, and all information posted online such as information posted on social media or a blog, even if such information was later edited or deleted.

2. The connectors “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests any information that might otherwise be construed to be outside the scope of the interrogatory or request.

3. The word “person” shall mean any individual, firm partnership, corporation, association, business or governmental entity or subdivision, agency, department, and any “person” acting by or through, directly or indirectly, and other “person” as well as any “person” by whom such “person” was controlled with respect to the matter in question.

4. The word “including” shall mean “including but not limited to.”

5. “Livingston,” “You,” and “Your” shall mean Livingston Pecan & Metal, Inc. and each of its agents, attorneys, accountants, consultants, officers, commissioners, employees, independent contractors, and any other individual or entity associated or affiliated with it or purporting to act on its behalf.

6. “DSRR” shall mean line-owner Delta Southern Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

7. “NLA” shall mean the North Louisiana and Arkansas Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

8. The “Line” means the portion from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana, which is the complete and only subject of the amended feeder line application filed on January 3, 2023.

9. The phrase “request for rail service” shall mean any request made by Livingston to DSRR or NLA that is specific to a commodity and date that DSRR was asked to provide said rail service.

10. “Proceeding” shall mean Surface Transportation Board Docket No. FD 36447.

11. “Verified Statement” means the Verified Statement of Blake Livingston dated December 20, 2022, and that was submitted in LPPC’s Amended Application in the Proceeding.

12. Responsive documents should be produced as they are kept in the usual course of business, or organized and labeled to correspond with the categories in these requests.

13. Procedure for production of ESI: All metadata is to be included on every document, email, etc. produced electronically. All E-mails are to be produced in PST format. All data and documents to be produced electronically shall be produced using a Concordance Load File. Documents produced in PDF format should be text searchable (OCR). All documents stored in electronic format should be produced in electronic format.

DOCUMENTS REQUESTED:

1. All Documents referenced or relied upon in the Verified Statement.
2. All Documents regarding rail service by DSRR, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
3. All Documents regarding rail service by NLA, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
4. Documents sufficient to show all Livingston rail shipments received or sent on the Line from January 1, 2000 to present, including the railroad that transported each shipment.

5. All documents regarding any “extra freight charges” incurred by Livingston “routing via NLA to McGehee and then UP to Monroe” for interchange with KCS, as referenced in paragraph 5 of the Verified Statement.
6. All documents regarding DSRR’s storage of railcars on the Line, including any alleged impact to Livingston as a result of such storage.
7. All documents regarding DSRR’s alleged attempt to “sell its stock,” as referenced in paragraph 7 of the Verified Statement.
8. All documents regarding DSRR’s refusal to work with shippers on the Line, as referenced in paragraph 7 of the Verified Statement.
9. All Documents regarding decisions to ship by rail or by truck, including cost analyses, price quotes, and other comparisons.
10. All Documents regarding any refusal by DSRR to take steps to maintain, rebuild, or improve the Line.
11. Any shipper surveys received or completed related to rail shipping.
12. All Documents regarding the proceeding, including any communications regarding, or drafts of, the Verified Statement.

Livingston Pecan and Metal

Before the
SURFACE TRANSPORTATION BOARD

STB Docket FD No. 36447

LAKE PROVIDENCE PORT COMMISSION—FEEDER LINE APPLICATION—
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA

VERIFIED STATEMENT OF BLAKE LIVINGSTON

1. My name is Blake Livingston. My address is 219 Commerce Street, Lake Village, Arkansas. I am the Vice-President of Livingston Pecan & Metal, Inc. ("Livingston Metal"). I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of Sondheimer.

2. For years, Livingston Metal has been financially harmed by the owners of the Lake Providence Line. In 1988, Livingston filed a protest against the Missouri Pacific Railroad's ("Mo-Pac") petition to abandon the Line. When the Interstate Commerce Commission granted Mo-Pac's petition, the line between McGehee, Arkansas and Tallulah, Louisiana was preserved. Although the Line was temporarily saved from abandonment, that did not save the Line, which, while it was owned by William Wainwright, was allowed to disintegrate once again.

3. It was only after the Southeast Arkansas Economic Development District ("SEAEDD"), North Louisiana & Arkansas Railroad ("NLA") and the

Lake Providence Port Commission ("LPCC") acquired the segment of the Lake Providence Line between milepost 408.9 and 471.0 that the first steps were taken to restore the tracks that William Wainwright nearly destroyed before he sold his shares to a third party in mid-June of 2015.

4. It was hoped that the later sale of the DSRR to yet another owner would have allowed the renewal of rail service for Livingston for all shipments moving to Columbus, Mississippi and to Jackson, Mississippi via KCS at Tallulah. After requesting rates from NLA and DSRR in 2019, it momentarily appeared that we would be able to plan for such movements. After Daniel Robbins prepared rates, we were advised that NLA could not follow through because DSRR would not upgrade the track to a point where it would be able to reopen interchange with NLA. In short, the latest sale did not result in any apparent improvement of the track between milepost 471.0 and 491.0 until late August of this year when DSRR finally decided to take some positive steps to repair that stretch of track.

5. As the Board is aware, a public announcement was made in 2019 that the United States Department of Transportation ("DOT") had granted the owners of the Lake Providence Branch a bit over \$10 million to rebuild the track. As I have learned, DSRR, after pushing for the grant money, suddenly refused to commit its share of the funds to upgrade the most crucial segment of the track that had to be rebuilt so that our traffic could be returned to rail service for movements that would be destined to points that are service by KCS. By way of comparison, during the spring and summer of 2022, I have

watched as NLA has rebuilt the track between McGehee and the Arkansas/Louisiana border. While this will open up movements of feed that would move over UP, without being able to acquire the track to Tallulah, NLA is unable to accommodate Livingston's repeated efforts to haul scrap to KSC over the Lake Providence Line. Although DSRR may suggest that a routing via NLA to McGehee and then UP to Monroe where it would be interchanged with KCS is available, that suggestion makes no sense due to the extra freight charges. The direct route from Lake Village to KCS at Tallulah via NLA is the only feasible routing that will allow Livingston to divert its scrap movements from trucking to rail.

6. Even if the track is upgraded at this point, it would still require an interchange movement with DSRR until this matter is concluded. As Livingston Metal knows from past experience, extra charges are involved with multiple interchanges. In addition, such movements are less efficient from an operational point of view. In addition, even if Livingston is able to obtain rates involving NLA, DSRR and KCS, it still faces the fact that the establishment of reliable service is improbable because DSRR's track is constantly clogged with stored railcars.

7. I have learned that DSRR's owners have been trying to sell its stock for several years. If the Board does not force the sale of the track to LPPC, it is questionable whether anything will change for the better. For this reason, Livingston supports LPPC's Feeder Line Application. Because the sale to LPPC will promote economic development in the regions, which I understand was one

of DOT's primary objectives in it awarded of the INFRA Grant, Livingston urges the Board to force the sale of the segment of the Lake Providence Line to LPPC. Having wasted more than 7 years to take action to rebuild the track to the point where rail service could be safely provided, DSRR's owners, who have no ties to this region and have no interest in promoting small businesses such as Livingston Metal, have harmed the public convenience and necessity. There is no reason to reward them for their refusal to work with the multiple shippers on the Lake Providence Line that unfortunately are not located inside of the Madison Parish Port.

8. The Lake Providence Branch Line was originally built to bring rail service to every shipper located between McGehee and Tallulah. If the concerns of shippers that are physically located to the north of milepost 471.0 are ignored, the public interest and the public convenience and necessity will be harmed. By authorizing LPPC to acquire the remainder of the original Lake Providence Branch Line, the Board will serve the public convenience and necessity by undoing the extreme damage that William Wainwright's neglect has visited on shippers that are located along the entire Line.

VERIFICATION

I, Blake Livingston, declare under penalty of perjury that the foregoing is based on my personal knowledge and is true and correct.

Executed on December 20, 2022.

A handwritten signature in cursive script, reading "Blake Livingston", is written over a horizontal line.

**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 ISSUANCE OF SUBPOENA TO WYLY GILFOIL**

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO WYLY GILFOIL**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Wyly Gilfoil, former Port Director of the Lake Providence Port Commission. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Gilfoil’s verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

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

Mr. Michael F. McBride
Van Ness Feldman
2000 Pennsylvania Ave, NW
Suite 6000
Washington, DC 20006
mfm@vnf.com

Noah P. Sullivan
919 East Main Street, Suite 1130
Richmond, VA 23219
Tel: 804-956-2069
nsullivan@gentrylocke.com

Thomas D. Crowley
1501 Duke Street, Ste. 200
Alexandria, VA 22314
tc@lepeabody.com

Mr. Ernesto Andre Silva Cruz
Terral RiverService, Inc.
112B Monument Place
Vicksburg, MS 39180
ernestoc@terralriverservice.com

Mr. Glover Alcorn "Russ" Russell, Jr.
Glover Russell, P.A.
The Plaza Building
120 N. Congress Street, Ste. 600
Jackson, MS 39201
Phone: (601) 709-7000
russ@gloverrussell.com

Mr. William L. Mencer
Law Office of William L. Mencer, LLC
P.O. Box 523
Lake Village, AR 71653
Phone: (870) 265-6737
William@mencerlaw.com

Mr. Jacob A. Brister
Brister Law Firm, PLC
318 Morgan Street
P.O. Box 266
Lake Providence, LA 71254
Phone: (318) 559-5800
jacob@bristerlaw.com

/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**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.**

SUBPOENA DUCES TECUM TO WYLY GILFOIL TO TESTIFY IN A DEPOSITION

To: Wyly Gilfoil
409 Port Road
Lake Providence, Louisiana 71254

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R. § 1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear at the Lake Providence Municipal Courtroom, 201 Sparrow Street, Lake Providence, Louisiana 71254 at 10:00 a.m. on February 24, 2026, to provide testimony by oral deposition at the request of Delta Southern Railroad, Inc., in the above-caption proceeding. Your testimony will be recorded stenographically, by an officer authorized to administer oaths, and may be used as evidence in this proceeding. The deposition is anticipated to be completed within six (6) hours, but may be continued from time to time until completed. Specific topics for which you will be expected to provide testimony are included in Attachment A to this subpoena.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA FOR DEPOSITION TESTIMONY

Delta Southern Railroad, Inc. (“DSRR”) seeks to depose you in order to obtain relevant evidence to the Lake Providence Port Commission’s (“LPPC”) Amended Feeder Line Application to acquire the Line of DSRR located in East Carroll and Madison Parishes, Louisiana, STB Docket No. FD 36447 (the “proceeding”). Specifically, DSRR seeks testimony regarding the following topics:

1. All subject matter and facts asserted in Your verified statements submitted in this proceeding, including the factual basis for any such assertions.
2. Rail service provided by DSRR.
3. Interchange of freight between DSRR and other railroads.
4. Communications with DSRR regarding rail service.
5. Current and anticipated demand for rail service on the portion of rail line from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana (the “Line”).
6. LPPC’s financial position from 2020 to present.
7. LPPC’s ability to purchase the Line.
8. LPPC’s plans to finance purchase of the Line and to operate the Line for three years.
9. LPPC’s plans for operating the Line.
10. Rail service provided by North Louisiana and Arkansas Railroad, Inc. (“NLA”).
11. NLA’s plans for operating the Line.
12. All contracts or agreements LPPC has entered into related to the Line.

13. Drafts and communications regarding Your verified statements in this proceeding with any third party (other than LPPC's attorneys).

14. Documents produced by LPPC in response to discovery requests propounded in this proceeding.

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF WYLY GILFOIL

1. My name is Wyly Gilfoil. I am the Port Director for the Lake Providence Port Commission (“LPPC”), the Applicant herein. My address is 409 Port Road, Lake Providence, LA 71254. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of LPPC. LPPC is a non-carrier, political subdivision of the State of Louisiana. Because LPPC is Louisiana’s largest inland waterway port and ships over 1.3 million tons of freight annually, it is clearly in the public interest to protect it, as well as the Madison Parish Port, from Delta Southern Railroad, Inc. (“DSRR”) and its owner’s predatory and unlawful efforts to interfere with the full realization of the rehabilitation of the *entire* Lake Providence Branch Line and the flow of interchange traffic over the Line.

2. LPPC has long recognized the importance of the rail corridor between McGehee, Arkansas and Tallulah, Louisiana, which historically was known as the Lake Providence Branch Line when it was operated by the Missouri Pacific Railroad Company (“MP”). Because of its importance to the

Louisiana inland ports located on the Mississippi River, and the overall economy of northeast Louisiana, LPPC, along with the Southeast Arkansas Economic Development District (“SEAEDD”), actively opposed MP’s application to abandon its 162.7-mile line of railroad between milepost 408.9 line near McGehee in Desha County, AR, and milepost 651.6 near Vidalia in Concordia Parish, LA. That application was docketed as Docket No. AB-3 (Sub-No. 72), *Missouri Pacific Railroad Company – Abandonment – In Desha and Chicot Counties AR, and East Carroll, Madison, Tensas and Concordia Parishes, LA*. By its decision served March 11, 1988, the Interstate Commerce Commission (“ICC”) required MP to supply traffic and financial data separately for the line segments running between milepost 408.9 and milepost 498.4 at Tallulah (Northern Segment) and milepost 498.4 and milepost 651.6 near Vidalia.¹ By its decision served July 11, 1988, the ICC found that the present and future public convenience and necessity permitted the abandonment of the line between milepost 408.9 and milepost 651.6.

3. Following publication in the Federal Register of the ICC’s notice that it had found that the public convenience and necessity permitted MP to abandon its line, LPPC timely filed an offer of financial assistance (“OFA”) to acquire that portion of the line between milepost 408.9 near McGehee and milepost 498.4 at Tallulah, Louisiana, a distance of 89.5 miles. By its decision served July 27, 1988, the ICC found that LPPC’s offer was *bona fide* and

¹ See Attachment 1 hereto.

reasonable to initiate negotiations between the parties. In its decision, the ICC rejected National Railway Equipment Co.'s ("NREC") OFA that sought to acquire portions of the line between: (1) milepost 409.07 near McGehee and milepost 557.2 near Clayton Junction, LA and (2) milepost 637.2 near Clayton Junction and milepost 651.6 at Vidalia, a distance of 162.53 miles.²

4. NREC timely filed an appeal in which it substantially modified its OFA and the mileage that it wished to acquire from MP. With LPPC's concurrence, NREC advised the Commission that, because LPPC's "only interest was to assure continued rail service to the Lake Providence Port,"³ LPPC, along with MP, supported NREC's revised offer. By letter dated August 9, 1988, Union Pacific Railroad Company ("UP"), which owned MP, also supported NREC's appeal. As UP explained, because it was aware of LPPC's preference that UP should negotiate with NREC, it had not yet negotiated with LPPC. By its decision, served August 22, 1988, the ICC granted NREC's appeal and found that NREC's offer was *bona fide*.

5. On September 30, 1988, the ICC "authorized NREC to acquire the 89.5-mile line between milepost 408.9 near McGehee and milepost 498.4 at Tallulah." Thereafter, by decision served October 13, 1988, Delta Southern Railroad Company ("DSRC"), which was a corporate affiliate of NREC, was substituted for NREC and "authorized to acquire and operate MP's 89.5-mile

² See Attachment 2 hereto.

³ See Attachment 3 hereto at p. 6.

line between milepost 408.9 near McGehee and milepost 498.4 at Tallulah.”⁴

The ICC’s consistent description of the line 89.5-mile line of railroad cannot be reconciled with DSRR’s current position that DSRC was authorized to acquire and operate between milepost 408.9 and milepost 498.44.

6. LPPC’s acknowledged effort in AB-3 (Sub-72) to assure continued rail service to the Lake Providence Port was supported by many of the same companies that supported the 2019-2020 INFRA Grant Application and LPPC’s original Feeder Line Application. They include Complex Chemicals Co., Inc., Livingston Pecan and Metal Co., E. Sondheimer Co., Riceland Foods, Inc., Hollybrook Warehouse, Inc., and Epstein Gin Company, along with numerous non-shipper protestants, area cotton producers, municipal governments, state and local officials and members of Congress that also protested MP’s application.

7. LPPC’s efforts to preserve rail service over the Lake Providence Branch Line did not stop in 1988. As the Surface Transportation Board’s (“STB” or “Board”) records reflect, LPPC, between 2004 and 2011, was compelled to engage in a series of abandonment proceedings filed by William Wainwright, the CEO of Delta Southern Railroad, Inc. (“DSRR”), who acquired DSRC’s assets in 1999. Because he had managed the track for DSRC for the previous ten years, he obviously was aware of the track’s condition. He was also aware of LPPC’s and SEAEDD’s interest in the preservation of the track

⁴ See Attachment 4 hereto.

and likely realized that he could achieve a quicker return by allowing the track to deteriorate and then look for the States of Louisiana and Arkansas to acquire it through offers of financial assistance. Beginning in 2004, shortly after the Board, at the request of Arkansas Midland Railroad Company (“AKMD”) and UP, had terminated DSRR’s leasehold interest in UP’s Warren Line, Wainwright began his effort to dismantle the segment of the Lake Providence Branch Line that was owned by DSRR.⁵ As Wainwright readily admitted in pleadings filed with the Board, the track had deteriorated to the point that DSRR had been forced to embargo segments of the line. Of course, by that time, DSRR had driven off all of its customers, except the shippers that had traffic moving to and from the Madison Parish Port.⁶ As described in DSRR’s Petition for Exemption, filed December 6, 2010:

Virtually every rail length in the Rail Line has excessive defective crossties in clusters and under joints, such that crosstie

⁵ See also STB Docket No. AB-384 (Sub-No. 1X), *Delta Southern Railroad, Inc.-Abandonment Exemption – Between Lake Village, Ark. and Shelburn, LA.*; STB Docket No. AB-384 (Sub-No. 2X), *Delta Southern Railroad, Inc.-Abandonment Exemption – In East Carroll Parish, LA*; STB Docket No. AB-384 (Sub-No. 3X), *Delta Southern Railroad, Inc.-Abandonment Exemption –In Desha and Chicot Counties, AR*.

⁶ For a contemporaneous assessment of Wainwright’s maintenance program, see the Rebuttal Verified Statement of Abollah (Abe) Grazai, UP’s Track Planning Engineer in the Engineering Services Department, filed March 3, 2004, in FD No. 34479, *Arkansas Midland Railroad Company-Emergency Service Order-Line of Delta Southern Railroad, Inc.*, which is included hereto as Attachment 5. In his report, Mr. Grazai identified numerous track defects that he attributed to DSRR’s maintenance program or lack thereof. He also repudiated Wainwright’s sworn statements that he had undertaken a major track program to restore the line. While this matter involved the Warren, AR line over which DSRR was operating pursuant to the Board’s authorization in FD No. 33802, the identical problems were encountered on the tracks that LPPC acquired from DSRR.

conditions do not comply with Minimum FRA Class I track safety standards. Track alignment, cross-level and gage are also out of compliance with FRA Class I standards at numerous locations.⁷

8. The abandonment proceedings were designed to eliminate rail service over the Lake Providence Branch Line between mileposts 408.9 and 471.0. Beginning with AB-384 (Sub-No 1 X), *Delta Southern Railroad, Inc. – Abandonment Exemption – Between Lake Village, Ark. and Shelburn, LA.*, filed May 21, 2004, DSRR launched its campaign to rid itself of its obligations to provide rail service over two thirds of the Line. In the very first sentence of its Notice of Exemption, DSRR announced that it was seeking to abandon what it described as “an out of service line of railroad known as the Lake Providence Line between MP 433.0 near Lake Village, Arkansas, and MP 463.0 near Shelburn, Louisiana, a distance of 30 miles.”⁸ Because it was treated as an exemption, no investigation was made to determine DSRR’s culpability in the disappearance of active shippers. If the track was incapable of supporting rail operations, why did the Wainwrights bother to acquire it from DSRC only four (4) years earlier?

⁷ See Attachment 6 hereto at p. 6.

⁸ It is rather interesting that DSRR has resuscitated the phrase “long-out-of-service railroad line,” accompanied by “inactive rail line” and “long-dormant Line,” to describe the 20-mile segment between milepost 471.0 and 491.0 in this proceeding. Although it has successfully resisted requests for rail service over the past several years, DSRR has never obtained authority from the Board to cease any operations so that it could openly use the “out-of-service track” to concentrate on railcar storage as a source of revenues.

9. Because abandonment of this segment in 2004 would have terminated the ability to move between Arkansas and Louisiana over the Line, both LPPC and SEAEDD protested. After the Board authorized abandonment, LPPC and SEAEDD filed offers of financial assistance. When they could not reach an agreement with the Wainwrights, the Board established the compensation and conditions for financial assistance. On March 8, 2005, William Sippel advised the Board that SEAEDD did not accept the Board's terms and conditions and announced SEAEDD's intent to pursue acquisition of the line outside of the OFA process. On March 21, 2006, DSRR announced that the portion of the Line between milepost 433.0 at Lake Village, AR and 454.8 at the Arkansas/Louisiana State Line had been sold to SEAEDD for continued rail operation. In addition, DSRR requested an extension of time for providing consummation of the sale of the remaining 8.2-mile segment of the Line for continued rail operations. Those negotiations, which lasted until December 2010, were terminated when LPPC's attorney, Eric Hockey, accused DSRR of misrepresenting that it was interested in pursuing a sale for continued rail purposes. As Mr. Hockey explained,

It is clear now, from the two additional abandonments that have been filed, and from the purported notice of consummation in this proceeding, that DSR never intended or wanted to do a sale for continued rail service; rather it is seeking to force all of the traffic from the Port and the remaining shippers on the Lake Providence Line to move to and from the south, and to eliminate their shipping options.⁹

⁹ See Attachment 7 at p. 3.

Thereafter, the remaining 8.2-mile State Line-Shelburn segment was subsequently acquired by LPPC outside of the OFA process.

10. As the Board's records reflect, in November and December 2010, DSRR sought further authority to abandon two (2) other segments of the Lake Providence Branch. In AB-384 (Sub-No 2X), *Delta Southern Railroad, Inc. – Abandonment Exemption – In East Carroll Parish, LA*, sought to abandon 8.0 miles of track between Milepost 463.0 and Milepost 471.0. According to the Notice of Exemption, no local or overhead traffic had moved for the prior two (2) years. This proceeding was concluded when DSRR agreed to accept LPPC's OFA, which included the grant of trackage rights over the 1.25± miles connecting the line and the private tracks owned by LPPC. While DSRR retained ownership of the Line between milepost 471.0 and 498.4 and entered into a trackage rights agreement with LPPC to provide limited service within the Lake Providence Port, DSRR made no effort to hold out interchange service after LPPC's operator, namely North Louisiana & Arkansas Railroad, Inc. ("NL&A"), was able to reopen the track for interline service in 2016.

11. On December 6, 2010, DSRR filed its third Petition for Exemption, which was docketed as AB-384 (Sub-No. 3X), *Delta Southern Railroad, Inc. – Abandonment Exemption – In Desha and Chicot Counties, AR*. By this petition, DSRR sought approval to abandon the 24.1-mile segment of the Lake Providence Branch between MP 408.9 at or near McGehee and MP 433.0 at or near Lake Village. This matter was resolved when LPPC and Arkansas Shortline

Railroads, Inc., as guarantor for its wholly owned subsidiary NL&A, acquired the track through a joint offer of financial assistance. By Decision, late released May 19, 2011, the Offerors were authorized to acquire the line, and NL&A was authorized to operate the line. It cost LPPC \$1,123,500 to acquire the 8.0 segment between milepost 463.0 and milepost 471.0 along with the 24.1 miles of track between milepost 408.9 and milepost 433.0. Moreover, to acquire the 8.2 miles of rail and other track materials between 454.8 to milepost 463.0, LPPC had to pay National Salvage and Service Corporation \$303,400.

12. I must emphasize that the delay in reopening the Line for interchange service was due to the unquestioned need to rehabilitate the entire Line between milepost 408.9 and milepost 471.0. In fact, service was so bad that in November 2006, before LPPC/SEAEDD acquired the Line, it took DSRR six (6) weeks to move some carloads of cottonseed 64 miles from Lake Providence to McGehee. Needless to say, that was the last train that DSRR operated from Lake Providence. Given that level of service, the demand for rail service over the Line completely vanished. In the Port's Notice of Exemption, filed June 10, 2011, which was docketed as FD 35531, *Lake Providence Port Commission – Trackage Rights Exemption – Delta Southern Railroad, Inc.*, I specifically informed the Board that "[t]he Port Commission does not intend to commence operations under the trackage rights until after the OFA line and adjacent lines to the north are rehabilitated. This will not occur until well after this notice becomes effective on July 10, 2011." That it required LPPC,

SEAEDD and NL&A to expend in excess of \$10 million to get the Line into good enough shape to hold out interchange service in 2016 speaks for itself.

13. The Trackage Rights Agreement that the Wainwrights offered, which was approved by the Board, allowed LPPC to operate over DSRR's tracks between Milepost Nos. 471 and 472.25 ("the Joint Trackage"), "overhead rather than local basis, for the purpose of accessing sidetrack and lead track."¹⁰ The Agreement also provided that "DSR shall continue to have the right to use the sidetrack and/or the lead track to place loaded cars and to pick up empty cars at the Port's warehouses." As a result of the limitation on LPPC's operating rights, which was composed by the Wainwrights, LPPC cannot offer service to all of the shippers who are located within the Port.

14. Section 4 of the Trackage Rights Agreement imposes the requirement that the Port "shall provide DSR with a notice of its intent to use the Joint Trackage not later than ninety (90) [days] prior to its intended date of use (the 'Notice of Intent to Use Joint Trackage')."¹¹ It further provides that:

Upon receipt thereof, DSR shall then, at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track condition. Thereafter, DSR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs.

It is my understanding, based on Daniel Robbins' testimony in this proceeding, that because DSRR never used the revenues that it received from the series of

¹⁰ See Exhibit J, V.S. Robbins at Attachment 1.

¹¹ *Id.*

sales to LPPC, SEAEDD and NL&A to maintain the Joint Trackage in FRA Class 1 track condition, the Section 3 provisions concerning allocation of costs has never been applied.

15. As Mr. Robbins will confirm, on March 29, 2022, NL&A's track inspector spent most of the day inspecting the track. His Track Inspection Report is attached to Mr. Robbins Verified Statement that is filed herewith. As the inspector discovered, DSRR had recently taken some steps to address the tracks condition, however, he still identified 45 defects that include tie defects, gauge defects, cross level defects, joint bar discounts, broken rail defects, joint bar defects and even a vegetation defect involving a tree down across the track.¹²

16. It is my further understanding that DSRR recently spent several days repairing its track so that it could safely move one empty flat car between milepost 491.0 and 471.0. The question the Board must ask is why it took DSRR one year and ten months after LPPC filed its original Feeder Line Application to act in response to allegations that the track was virtually impassable? Such action should have been taken in 2016 when interchange was opened following the completion of a flood mitigation project in Lake Providence. DSRR did not do so. Instead, as Mr. Robbins and Mr. Huff confirm, DSRR abruptly closed interchange without prior notice to NL&A on August 24,

¹² A copy of that report is attached to Mr. Robbins' Verified Statement (Exhibit J) at Attachment 2.

2017, due the deplorable condition of DSRR's tracks and the stored rail cars. DSRR's actions unquestionably inflicted economic harm on shippers who were forced to route traffic over two (2) Class I rail carriers at an additional expense.

17. Since 2016, LPPC has partnered with SEAEDD, Madison Parish Port Commission ("MPPC"), NL&A and DSRR ("the Partners") in the "Southeast Arkansas and Northeast Louisiana Multimodal Freight Improvement Project" ("the Project"). The Project was and is devoted to the restoration of the *entire* rail corridor that exists between McGehee, Arkansas and Tallulah, Louisiana.¹³ The Board's attention is invited to Exhibit B, *Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project, FY 19-20 INFRA*, Appendix C, Table ES-1: *Summary of Infrastructure Improvements and Associated Benefits* of the INFRA Grant Application. As summarized therein, "[u]pgrades to rail infrastructure in the McGehee-Tallulah Railroad Corridor and connections to the local Ports will improve railroad connectivity, access, capacity, efficiency, and safety."¹⁴

18. In addition to diverting shipments from trucks, the ability to use rail service to Lake Providence Port ("LPP") and the Madison Parish Port ("MPP"), will benefit the many farmers and processors that seek to use rail to deliver their agricultural products to the ports where they can be transloaded

¹³ See Stephen Steed, *Where Arkansas and Louisiana meet, economy trumps rivalries. Rail line venture offers taste of what area could become*, Arkansas Democrat-Gazette, May 21, 2017, included as Attachment 8 hereto.

¹⁴ See Feeder Line Application, Exhibit B.

on barges. Such movements will also result in the diversion of trucks from the highways and improve the environment by avoiding emissions while simultaneously achieving energy efficiencies and improving highway safety.¹⁵ As the Partners recognized, these benefits cannot be fully achieved unless the *entire Lake Providence Branch Line is rehabilitated consistent with the goals of INFRA Grant Application*. As has been the case for the past 30 years, the ultimate goal of the States of Louisiana and Arkansas is to promote the redevelopment of the Lake Providence Branch Line so that rail service will be safely and efficiently operated by a railroad that is committed to the economic development of the region.

19. For over 40 years, rail operations over much of the line have not been safely, reliably, and efficiently conducted due to years of deferred maintenance by prior owners that precipitated the near abandonment of the line in 1988 and again in 2011. In some respects, the current condition of the line resulted from the inability to obtain Railroad Rehabilitation & Improvement Financing (“RRIF”) and Small Business Administration loan guarantees. For a detailed understanding of the Project, the Board’s attention is invited to the “FY

¹⁵ As a recent study entitled *Recovery of the Columbus & Greenville Railroad*, conducted by the Mississippi State University, Department of Political Science and Public Administration and Industrial Outreach Service, demonstrates that agricultural interests are harmed by the lack of cost-effective logistics services, especially when they must rely on trucking. A copy of this study is included hereto as Attachment 9.

19-20 INFRA Application” that SEAEDD, on behalf of the partnership, filed with the United States Department of Transportation in March 2019.¹⁶

20. On July 10, 2019, Patrecia Hargrove, SEAEDD’s Executive Director, who as the Grant Administrator oversees the management of the Project and is the contact person for the Project with the United States Department of Transportation (“DOT”) and the Federal Railroad Administration (“FRA”) received an email from DOT advising her that they were offering an INFRA Grant at the reduced amount of \$10,516,259. The email also established an immediate response date that required all parties to accept the reduced amount. As a result, the five (5) Partners were required to commit that they would come up with additional private and public funds to cover the deficit needed to restore the entire track from milepost 408.9 to the point of interchange with the Kansas City Southern (“KCS”) at Tallulah, LA to FRA Class 2 status or to revise the scope of the project. The process of refining the process and deciding how the partnership would make up the difference between its request and the award amount was started on July 11, 2019, with a conference call. The call involved all of the stakeholders and HDR, which was the engineering firm that prepared the INFRA Grant Applications. During the call, John Marino, Jr., speaking on behalf of DSRR, strongly advocated for the acceptance of the reduced grant noting that it would be foolish to turn it down.

¹⁶ See Feeder Line Application, Exhibit B.

After the other stakeholders agreed with him, Ms. Hargrove notified DOT that the reduced grant would be accepted.

21. On July 15, 2019, Hargrove and I had a conference call with DOT concerning the need to reduce the project scope of work because of the reduced award. We were advised that any reduced scope of work would have to be submitted to DOT for approval. DOT emphasized that the primary goal of the Project, the rebuilding of the entire rail corridor between McGehee, AR and Tallulah, LA, could not be compromised.

22. On July 18, 2019, we received notice that the reduced grant was funded. Thereafter, an intense process of shrinking the Project by delaying some components and by eliminating others was undertaken by Ms. Hargrove with input from all participants. That process did not involve any steps to reduce the key component of the Project, namely the track that had to be rehabilitated to FRA Class 2 status. However, on November 26, 2019, Jon Ryan, who acted as Continental Rail's Vice President of Finance in a consulting role for DSRR, forwarded a "DSR SEAEDD Infra Grant Budget," that he had prepared, to Doree Magiera, who was our primary contact at HDR. His proposed budget would have used all of the grant funds that would have been allocated to DSRR to the building of a new interchange connection with KCS in Tallulah between milepost 500.0 and milepost 496.0. Because HDR employees recognized that the proposed new work that DSRR was proposing conflicted

with the grant request for rail rehab only, they forwarded his proposed budget to me and Ms. Hargrove for review.¹⁷

23. On December 4, 2019, Ms. Magiera forwarded an email to Ryan that set out that “the intended rail rehabilitation scope of work that has been discussed the past two years and presented to the FRA as part of the grant application.”¹⁸ In his response, Ryan stated that “I am not privy to what was discussed the past two years so I can not speak to that. See my comments below in red.”¹⁹

24. On December 10, 2019, Ryan forwarded a slightly different proposal that introduced a list of:

updated uses for the SEAEDD grant money that has been allocated to the DSR to rehabilitate (sic) our portion of the corridor. We believe the plan laid out below will accomplish the overall goal for this section of track leading to Madison Parish Port.²⁰

The new proposal reflected DSRR’s intent to use the grant funds to rehabilitate its track between milepost 500 and milepost 491.0 but did not address the need to rehabilitate the critical track between mileposts 491.0 and 471.0. In response to DSRR’s proposal, I worked with Ms. Hargrove in preparing the SEAEDD Infra Budget by reducing funds that had originally been intended to be used for a project in the Madison Parish Port, removing the UP interchange

¹⁷ See Exhibit I, V.S. Hargrove, at Attachment 3.

¹⁸ *Id.* at Attachment 4.

¹⁹ *Id.*

²⁰ See Attachment 10 hereto.

in Arkansas and adding some rehab money to DSRR to replace the reduced MPP draw. DSRR did not voice any objections to the proposed allocations.

25. On March 17, 2020, SEAEDD forwarded a detailed letter to FRA that explained all of the adjustments that had been made to the original SEAEDD Infra Grant Budget.²¹ SEAEDD's adjusted budget reflects an allocation of \$3,207,789 to cover the Rail Infrastructure Rehabilitation to Class II standards for the 29.2 miles that are owned by DSRR. As noted at the bottom of the chart, "*Only 21 miles of work remain as DSR has completed 7 miles of rehab. Work*" (emphasis in original). In addition, it allocated DSRR an additional \$666,076 for project development.

26. On June 1, 2020, SEAEDD received a letter from Marc R. Dixon, FRA's Project Manager for the South Central Region, announcing that SEAEDD's request to modify the Project's scope and budget had been determined to be "sufficient and will therefore advance the Project, as revised."²² A required component of the effort was the drafting of a Consortium Agreement between the five (5) partners who are stakeholders. On July 30, 2020, Ms. Hargrove emailed the initial draft of the Consortium Agreement to the stakeholders for their review and comments. As stated in her July 30 email, "[t]he goal is to have an agreement in place prior to the signing of the grant

²¹ See Exhibit I, V.S. Hargrove, at Attachment 6.

²² *Id.* at Attachment 7.

agreement, which is expected to be completed and submitted to SEAEDD for execution by the end of August.”²³ Unfortunately, that goal was not achieved.

27. On August 14, Jon Ryan responded to Ms. Hargrove by emailing “an updated draft with our comment so our scope matches the grant.” That “comment” proposed a reduction in the number of miles on DSRR’s tracks to be upgraded by striking “20” miles and replacing it with “10” miles. As I and Ms. Hargrove realized, Ryan’s proposed change did not and could not match the specific “Scope and Budget Modification Request” that was outlined in SEAEDD’s letter, dated March 17, 2020.²⁴ Those changes did not include any reduction of the 20 miles that were to be upgraded. No further explanation was provided. Because Ms. Hargrove was concerned that DSRR’s unilateral reduction in mileage openly conflicted with the terms that FRA and DOT had established, she asked for my assistance. The revised statement of work for the DSRR segment explicitly requires the Grantees to “[r]ehabilitate approx. 20 miles of rail which includes replacing the existing Excepted track with Class 2 track.” To confirm her conclusion, Ms. Hargrove requested me to review Mr. Ryan’s response, which I did. Because I agreed with her assessment, I agreed to speak with John Marino, Jr., who was Continental Rail’s CEO. Continental Rail, which was physically located in Florida, was the management team that West Branch Intermediate Holdings, LLC (“West Branch”) hired to manage

²³ *Id.* at Attachment 8.

²⁴ *Id.* at Attachment 6.

DSRR's operations. West Branch, which is in California, is a subsidiary of Golden Gate Capital, a private investment company.

28. The following Monday afternoon, August 17, 2020, I spoke with Mr. Marino. During that conversation, I told him that Ms. Hargrove and I viewed Mr. Ryan's proposed change to be very troubling as it could jeopardize the INFRA Grant. I also informed him that I would push for reallocation of the \$3.2 million plus Engineering if he refused to agree to upgrade the 20 miles to Class 2 status consistent with the underlying goal of the Project. He said he would get with Jon and consider it. In response I indicated that we would apply in the future for funds to use on the Madison Port to Tallulah track.

29. Realizing the need to clear all modifications of the Scope of Work with FRA, the other partners had a telephone call to discuss possible responses to FRA if DSRR refused to agree to upgrade the twenty miles and sign the Consortium Agreement. On August 18, Ms. Hargrove sent an email to Marino advising him that she needed to have an answer in writing by 12 noon CDT, August 21, 2020:

describing Delta Southern Railroad's intentions as far as the Consortium Agreement and the Grant Agreement to repair the track between Talla Bena, Louisiana and Lake Providence, Louisiana to a minimum of FRA Class I standards and provide service as described in the narrative of the INFRA application and INFRA award.²⁵

²⁵ See Exhibit I, V.S. Hargrove, at Attachment 9.

As is evident, by reducing the target from FRA Class 2 to Class 1, SEAEDD, in effect, would reduce the amount of Grant funds that DSRR would be required to expend *if USDOT and FRA would approve the requested modification*. I had no idea whether they would do so.

30. On the morning of August 20, 2020, Bryant Killen, LPPC's Deputy Director, and I had a speaker phone conversation with Mr. Marino to urge him again to comply with the intent of the INFRA Grant Application by upgrading the 20 miles of track south of Lake Providence. During that conversation, Mr. Marino suggested that LPPC buy the track owned by DSRR in East Carroll Parish to below Tallulah. He stated a price tag of around a million dollars a mile estimating the cost would be between \$13 and \$16 million. He then said this would be the best option and, while he hated to use the cliché "win-win," would be the only way in this instance that the line would be cleared of stored cars. Unprompted, he then said he "would move the cars somewhere else, no problem." I informed Mr. Marino that because LPPC is a government agency, I was required to obtain an appraisal before I could make a commitment.

31. Following our conversation, I received an email from Mr. Marino thanking me for the call. He also included the following sentences:

In an effort to work with you and the port I think we can come up with a creative solution to sell a portion of the right of way to the port. This could be beneficial for a port customer for many reasons – one most important being access to two class one railroads.

Let me know the next steps needed to get this to a term sheet?

Because I could not proceed without an appraisal to determine the NLV of the Line, I did not reply. I did, however, agree with the benefit to port customers that Mr. Marino identified.

32. On August 21, 2020, I learned that SEAEDD had received a responsive email from Mr. Marino confirming DSRR's lack of intent to rehabilitate the segment of its track between MP 471 and MP 491 to even FRA Class 1 status. As was made clear, the INFRA GRANT funds would be applied only to DSRR's "Priority Miles." These are the miles between MP 500.0 and MP 491.0 that allow DSRR to provide service to the MPP. As I have subsequently learned, DSRR does not appear to be authorized to operate over some of the "priority miles" that DSRR intended to upgrade with INFRA funds that were sought to upgrade the Lake Providence Branch Line between McGehee and Tallulah. That matter is presently pending before the Board.

33. Because this would leave the twenty miles of track in their current excepted status, which is contrary to the goal of reopening the entire Corridor, I was concerned that the failure to upgrade the tracks could jeopardize the INFRA Grant fund. Those concerns have been somewhat alleviated by the passage of time. However, after learning in 2021 that DSRR had concluded that the track between milepost 471.0 and milepost 491.0 was long-dormant and that track renovations required by FRA were unjustified and unwarranted, I realized that DSRR's goals clashed with LPPC's goal of rehabilitating the track to promote economic development of the region.

34. That statement removed any doubt in my mind that DSRR, while being content to use grant funds to rebuild some of the track between its interchange point with KCS and Madison Parish Port, would not invest sufficient funds to give shippers the confidence to resume shipping over the 20-mile segment. Instead, they would set up LPPC and the taxpayers of Louisiana to do the dirty work to cover the cost of rehabilitating DSRR's Line to FRA Class 2 standards consistent with the Statement of Work that had been approved by DOT and FRA, while DSRR would reap the benefits. In fact, that process had started years ago when LPPC agreed to pay DSRR's share of HDR's Final Invoice, which was only \$19,092. LPPC's payment was made after Matt Prince, Continental Rail's Director of Operations, on September 21, 2017, sent an email to Danny Robbins informing him that "[w]e bowed out of the grant application for the time being as we simply cannot afford to spend the cash right now."²⁶ Rather ironically, 26 days later, Mr. Prince sent a letter to Elaine Chao, Secretary of Transportation, that detailed the unquestioned need to "modernize and improve rail safety infrastructure along an important freight corridor and improve the regional connectivity to three inland waterway ports."²⁷

35. My decision to acquire the remainder of the Lake Providence Branch was also based on new information that was discovered months after

²⁶ See Attachment 11, Email from Matt Prince, Director of Operations, Continental Rail to Danny Robbins, dated September 21, 2017 3:33 PM.

²⁷ See Attachment 12 hereto.

the original Feeder Line Application was filed. This evidence includes the sworn statement that was offered by Craig Huff, DSRR's former General Manager, in March of 2022, after the Board had suspended the procedural schedule. As he explained in his Verified Statement that is being refiled in accordance with the Board's order as Attachment 13 hereto, he was upset by statements made in DSRR's pleadings in this proceeding and wanted to help set the record straight. In particular, he explained that John Marino, Jr. and Jon Ryan discouraged him from working with Danny Robbins to develop new interchange business because DSRR could make more money by using the track to store rail cars. Given that the new information, which was not available when the original Feeder Line Application was filed in November 2020, I realized that it would be in the public interest to amend the pending Feeder Line Application to force the sale of the track between milepost 471.0 and the end of the Line in Tallulah.

36. My decision to acquire the remainder of the Lake Providence Branch Line is also based on my understanding, gained from my long involvement in the transportation industry, that shippers prefer single-line service that eliminates the need to negotiate with multiple rail carriers to establish rates and extra switching that delays the delivery of cars to their destinations. Because of DSRR's decision to focus on storage, rather than provide interchange service, various shippers were unable to receive rates from DSRR that would involve interchange with NL&A. A prime example of DSRR's unwillingness to cease car storage to promote interchange traffic is its treatment of Bayou Bioenergy ("BBE"). As Mr. Bush has explained in his

Verified Statement,²⁸ because DSRR refused to accept the loaded cars from NL&A at the interchange point, BBE was compelled to truck its product to Madison Parish Port where the product was transloaded to DSRR. Mr. Bush's testimony is confirmed by Mr. Huff. As Mr. Huff has explained, BBE's:

goal at that time was to ship about 78 cars per year. Even if the track between MP 491 and MP 471 had been rehabilitated, given the number of cars that were being stored, clearing the track more than once a week would have created an operational nightmare. Although DSRR wanted the traffic, it refused to accept the loaded cars from NL&A at the interchange point. Instead, DSRR demanded that BBE truck its product to Tallulah to be transloaded into railcars for further movement by rail.²⁹

As Mr. Huff has testified, although he and Mr. Robbins had promised to provide shippers with rates, they could not rely on Mr. Huff's assurances that DSRR would agree to any rates involving interchange with NL&A.³⁰ As he has also testified, he was told to focus on storage and to stop his efforts to attract traffic that would involve interchange movements over the track between mileposts 471.0 and 491.0.³¹ Plainly, the foregoing demonstrates that DSRR and its owners deliberately refused to hold out interchange service over that segment of its track so that it could store empty rail cars.

37. DSRR's practice is also condemned by DSRR's largest shipper, Complex Chemical, which is in the Madison Parish Port. As Jerry Melton, the President of Complex Chemical has stated:

²⁸ See Exhibit K, V.S. Bush.

²⁹ See Exhibit H, V.S. Huff at ¶8.

³⁰ *Id.*

³¹ *Id.* at ¶5.

having to pay the higher rates that are charged for the current routing that has been created by DSRR's refusal to maintain its rail line imposes a penalty on Complex Chemical. As a result, I view DSRR's owner's self-imposed refusal to maintain its own line as a restraint on trade and contrary to the public convenience and necessity and the public interest. That restraint also causes its service to be inadequate from an economic standpoint. While it may be financially rewarding for DSRR to exact higher rates while collecting rental payments for storing railcars on its mainline, that action is, in my mind, a violation of its statutory rail common carrier obligation.³²

No one can estimate the number cars that could have been handled in interchange service had DSRR complied with the ICC statutory provisions governing interchange that were enacted in 1887.

38. In reaching my decision, which has the full support of the other Partners, I was aware that we could not expect DSRR to rehabilitate the tracks. I also knew that rehabilitation of the tracks, if they were owned by LPPC, would enable industries located in both the Madison Parish Port and the Lake Providence Port to reach both UP and KCS. That, of course, was one of the reasons that the Partners had supported the INFRA Grant Application. In fact, both Matt Prince, in his letter to Secretary of Transportation, Elaine Chao, and John Marino, Jr., in his offer to sell some of the Line to LPPC, recognized the benefits to shippers that flow from the ability to reach both KCS and UP without having to interchange. I also focused on DSRR's repeated refusals, of which I was personally aware, to provide interchange service with NL&A at MP 471 since 2017. I also considered the fact that while DSRR was not using the

³² See Exhibit L, V.S. Melton at p. 3.

tracks north of MP 491 to provide any rail common-carrier service, it was using about ten miles of the track to store idle railcars for third parties. That storage provided no benefits to the industries located at either of the Louisiana Ports. Because the continued storage of rail cars effectively interferes with and prevents reliable and timely service over the entire Corridor, the stored cars would have to be removed.

39. I respectfully request the Board to carefully reconsider the benefits that shippers realize by having to work with and depend upon a single short line rail carrier. By allowing Patriot Rail to assume ownership of DSRR, the Board has not protected the public interest. As is demonstrated by the record and discussed at length in this expanded Feeder Line Application, having to negotiate with multiple short line railroads for rate quotations, tracking and claims is inefficient at best. Furthermore, as the Board has recognized, having multiple short line carries involved in situations such as this prevents shippers from having a direct interchange of traffic with KCS and UP, necessitates costly and inefficient short movements and additional interchanges. Those results in higher costs to shippers and their customers, which is not in the public interest.

40. Furthermore, I am concerned that DSRR intends to shut down interchange with NL&A and afterwards compel all of the captive shippers located in the Madison Parish Port to reach UP at Monroe, LA, rather than at McGehee, AR. In a press release, dated September 16, 2022, DSRR announced

“the opening of a rail transload terminal on its Tallulah/Lake Providence branch in Sondheimer, LA slated for Fall 2022.” In its announcement, Frank Prentiss, DSRR’s VP Sales & Marketing, while mentioning that KCS and UP are DSRR’s interchange partners, never mentioned that DSRR has an open interchange with NL&A that would be less expensive and more efficient than having to interchange with UP at Monroe, Louisiana.

41. In addition, while Golden Gate is unquestionably seeking to milk as much as it can out of the sale of DSRR, what is to be gained by rewarding Golden Gate for its abuse of the Board’s procedures when DSRR has selfishly interfered with and undermined LPPC’s and SEAEDD’s prolonged efforts to restore the entire Lake Providence Line. Moreover, it even refused to commit any funds to supplement DOT’s INFRA Grant. Viewed in slightly different terms, while LPPC and SEAEDD have spent over 30 years trying to preserve the track for the movement of freight traffic to assist shippers in the region, Golden Gate has spent seven (7) years resisting the movement of freight so that it could sustain a steady stream of revenues from the use of the “Tallulah/Lake Providence Branch” to store railcars.

42. The evidence is indisputable that DSRR’s initial owners deliberately allowed most of the Line to deteriorate before they sold the most profitable segment to West Branch. The evidence that is being submitted with this application proves that after it acquired ownership of DSRR, West Branch undermined Continental Rail’s efforts to restore the critical 20-mile segment of

track that is needed to allow all shippers in the region to reach both KCS and UP. Although West Branch's goal is to maximize its profit from the sale of DSRR, that has nothing to do with continued rail service. Finally, because NL&A stands ready, willing and able to provide direct, efficient and less expensive service than any other rail carrier that will only increase the cost of transportation for shippers who are located along the entire Lake Providence Branch between McGehee and Tallulah, I urge the Board to grant this Feeder Line Application and deny any competitive application that may be filed on the grounds that it will not be able to guarantee direct access to both UP, in McGehee, Arkansas, and KCS, in Tallulah.

VERIFICATION

I, Wyly Gilfoil, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 3rd day of January 2023.


Wyly Gilfoil

Attachment 1

March 11, 1988 ICC Decision in
Docket No. AB-3 (Sub-No. 72), *Missouri Pacific
Railroad Company – Abandonment – In Desha and
Chicot Counties AR, and East Carroll, Madison,
Tensas and Concordia Parishes, LA*

SERVICE DATE

MAR 11 1988

INTERSTATE COMMERCE COMMISSION

DECISION

Docket No. AB-3 (Sub-No. 72)

MISSOURI PACIFIC RAILROAD COMPANY - ABANDONMENT - IN DESHA AND
CHICOT COUNTIES, AK, AND EAST CARROL, MADISON, TENSAS AND
CONCORDIA PARISHES, LA

Decided: March 8, 1988

By application filed January 29, 1988, Missouri Pacific Railroad Company (MP) seeks to abandon 162.7 miles of railroad between milepost 408.9 near McGehee, AK and milepost 651.6 near Vidalia, LA. Protests were filed by Cobra Resources, Riceland Foods, Farmers Grain Terminal and Farmers Cottonseed Company (Farmers), Livingston Pecan & Metal Co., Louisiana Railcar, Inc. (LRC) and the Louisiana Public Service Commission. Comments were filed by U.S. Senators David Pryor, John Breaux, and J. Bennett Johnston; U.S. Representatives John P. Hammerschmidt, Jerry Huckaby, and Beryl Anthony, Jr.; Louisiana State Representatives Archie A. Crosby and Jess Smith, and Arkansas State Representative Charlotte L. Schexnayder.

Comments were also filed by numerous non-shipper protestants, area cotton producers, municipal governments, local officials, and residents of the communities served by the rail line.^{1/} Applicant did not reply to the protests.

Most of the protestants oppose the abandonment of the 90-mile segment of the line between McGehee, AK and Tallulah, LA which is the northern portion of the rail line. Several of the protestants (located on the McGehee-Tallulah portion of the line) request that the Commission: (1) bifurcate the abandonment proceeding at Tallulah; and (2) require the railroad to submit revenue and avoidable cost data separately for the 90-mile McGehee-Tallulah segment and for the 73-mile Tallulah-Vadalia segment. The protestants claim that, because the line south of Tallulah (Tallulah-Vadalia) has been embargoed for a year, aggregating it with the line north of Tallulah burdens the shippers and communities on the upper segment with costs that are inappropriate to that segment. This group of protestants does not oppose the abandonment of the southern segment of the line.

(LRC), a protestant located on the southern Tallulah-Vadalia segment of the rail line, also requests that the applicant produce evidence of traffic, revenues, operating costs and opportunity costs for the separate segments of the rail line. However, LRC requests that the investigation encompass both segments of the line and that the abandonment be considered as a whole. LRC, alleging that MP intentionally downgraded service on the line and effected *de facto* abandonment, also requests that a full investigation and oral hearing be held. LRC claims that an oral hearing with cross-examination is needed to resolve questions of fact regarding the alleged intentional downgrading of service on the entire line, even prior to the embargo of the Tallulah-Vadalia segment.

Based on the protests and comments, an investigation will be instituted with regard to abandonment of the entire line as well

^{1/} Some of these individuals did not serve copies of their statements on the railroad, therefore we will not consider them to be protestants. However we will place them on the service list and they will receive copies of all decisions. If any of these individuals desire to be considered protestants they must serve their statements on the railroad and abide by all other requirements of 49 CFR 1152.25.

as of the component two segments. While LCR seeks an oral hearing, an oral hearing with cross-examination of witnesses is not necessary to have a complete and accurate record in this proceeding. It has not been shown that cross-examination is required to resolve the disputed issues. Nor has witness demeanor been shown to be a matter requiring oral hearing in this proceeding. The request for oral hearing will, therefore, be denied. A written record, accompanied by discovery, if necessary, can address all disputed issues of fact.

As noted above, most of the protestants only oppose the abandonment of the 90-mile segment of the line between McGehee and Tallulah. (Most of the shippers are located on this segment.) I note, for their information, that proponents of partial abandonments bear the ultimate burden of establishing the viability of a suggested alternative to complete abandonments. State of ME Dept. of Transp. v. I.C.C., 587 F.2d 546 (1st Cir. 1978).

However, in this instance, the southern segment of the line has been embargoed, and statements received from protestants LRC and Farmers indicate that, even before the embargo, the north and south segments of the rail line were operated separately. Therefore, I will direct that separate traffic and financial information for the northern and southern segments be presented.

The environmental and energy impacts of this action have been examined and found not to be significant. Areas of consideration included, but were not limited to, energy consumption, air and water quality, noise levels, and public safety. It was determined that the right-of-way would be suitable for alternative public use following abandonment.

The environmental document supporting these conclusions is available upon request to: Section of Energy and Environment, Room 4143, Interstate Commerce Commission, 12th and Constitution, N.W., Washington, DC 20423. Telephone: (202) 275-6874. Interested persons may comment on this matter by filing their statements in writing on or before the 40th day after the service date of this decision. Environmental documentation may be cross-examined only if good cause is shown. Good cause contemplates, among other things, that the normal written commenting process is inadequate. See 49 CFR 1108.10(h).

Applicant must publish the above finding and notice of availability in the local newspaper of the affected area and inform (by letter) the Section of Energy and Environment that publication has been accomplished within 3 weeks of the date of service of this decision.

The parties may appeal this decision under the provisions of 49 CFR 1011.2(a)(8). An appeal must be filed within 10 days of the service date of this decision, and will be heard by the entire Commission.

It is ordered:

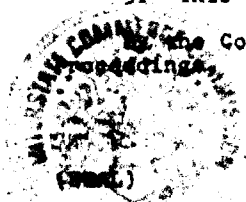
1. An investigation into the proposed abandonment is instituted under modified procedure. The parties must comply with the applicable provisions of 49 C.F.R. 1112.1 through 10.
2. The request for oral hearing is denied.
3. The schedule for filing verified statements is as follows:

2) For the northern segment, the requested information should cover both 1986 and 1987. Since the southern segment was not operated after January 1987, the requested information for the southern segment should cover 1986.

Applicant's initial statements (including the
additional date requested) - March 28, 1988.
Protestants' statements - April 20, 1988.
Applicant's reply statements - May 2, 1988.

4. Except when good cause has been shown, preliminary motions and requests for other relief will not be acted on prior to the date that all verified statements are required to be filed.

5. This decision is effective on the date served.



The Commission, Jane F. Mackall, Director, Office of

Noreta R. McGee

Noreta R. McGee
Secretary

Attachment 2

July 27, 1988 ICC Decision in
Docket No. AB-3 (Sub-No. 72)

DO

INTERSTATE COMMERCE COMMISSION

DECISION

SERVICE DATE

JUL 27 1988

Docket No. AB-3 (Sub-No. 72)

MISSOURI PACIFIC RAILROAD COMPANY - ABANDONMENT - IN
DESHA AND CHICOT COUNTIES, AR, AND EAST CARROLL, MADISON,
TENNESSEE AND CONCORDIA PARISHES, LA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: July 25, 1988

By decision served July 11, 1988, the Commission found that the public convenience and necessity permit the abandonment by Missouri Pacific Railroad Company (MP) over its 162.7-mile line of railroad between milepost 408.9 near McGehee in Desha County, AR, and milepost 691.6 near Vidalia in Concordia Parish, LA. Notice of this decision was published in the Federal Register on July 11, 1988.

On July 20, 1988, National Railway Equipment Co. (NREC) timely filed an offer of financial assistance to acquire those portions of the line between: (1) milepost 409.07 near McGehee and milepost 557.2 near Clayton Junction, LA, and (2) milepost 637.2 near Clayton Junction and milepost 691.6 at Vidalia, a distance of 162.53 miles. NREC offers \$500,000.

On July 21, 1988, the Lake Providence Port Commission (PortCom) of Lake Providence, LA, timely filed an offer of financial assistance to acquire that portion of the line between milepost 408.9 near McGehee and milepost 498.4 at Tallulah, LA, a distance of 89.5 miles. PortCom offers \$1,116,000.

The Commission has determined that offers of financial assistance need not be detailed, but an offeror must show that it is financially responsible and that its offer is reasonable. See General Abandonments Under NRECA, 365 I.C.C. 472 (1981).

NREC does show that it is financially responsible. NREC submits financial statements showing total assets of \$2,477,747, current assets of \$1,729,738, shareholder equity of \$668,590 and a net income of \$71,407 for the 12-month period ending April 30, 1988.

PortCom is a government entity and as such is financially responsible. 49 U.S.C. 10905(d)(1).

NREC, however, has made no attempt to explain the disparity between its offer and MP's estimated valuation of the line as required by 49 U.S.C. 10905(c) and 49 CFR 1152.27(c)(2)(iii). Accordingly, NREC has not shown that its \$500,000 purchase price, which is only about 12.5 percent of MP's estimated NLV,¹ constitutes a bona fide offer. The NREC offer of financial assistance is therefore rejected.

A different conclusion is warranted for PortCom's offer. PortCom's offer is based upon independent valuation of the track, materials and real estate. MP estimated a NLV of \$2,035,335² or \$22,615 a mile. PortCom's offer of \$12,400 a mile is considerably less than MP's NLV estimate. However, because PortCom has explained the disparity between its offer and MP's valuation and explained the manner in which its offer was calculated, as required by section 10905(c), I find PortCom's offer to be bona fide and reasonable to initiate negotiations between the parties. It is likely that the financial assistance that could result from these negotiations would equal the acquisition cost of the line between McGehee and Tallulah. Therefore, I will postpone issuance of the certificate for that

1/ See page 5 of the July 11 decision.

2/ Id.

portion of the line between McGhee and Tallulah.

Appeals to this decision are governed by 49 CFR 1021.8(a)(8). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Commission.

This action will not significantly affect the quality of the human environment or energy conservation.

It is ordered:

1. National Railway Equipment Co.'s offer of financial assistance is rejected.
2. Issuance of a certificate and decision authorizing abandonment of the 89.5-mile portion of the line between milepost 498.9 near McGhee and milepost 498.4 at Tallulah is postponed.
3. Either Lake Providence Port Commission or Missouri Pacific Railroad Company may request the Commission to set the terms and condition of purchase on or before August 25, 1988. If no agreement is reached and no request submitted by that date, a certificate authorizing abandonment of the segment between milepost 498.9 and milepost 498.4 will be issued, unless otherwise ordered by the Commission.
4. This decision is effective on the date served.

By the Commission, Jane P. Mackall, Director, Office of Proceedings.

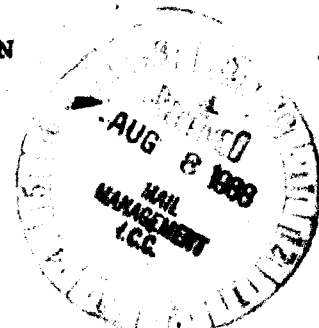


Noreta R. McGee
Noreta R. McGee
Secretary

Attachment 3
1988 NREC Letter

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423

Docket No. AB-3 (Sub-No. 72)



MISSOURI PACIFIC RAILROAD COMPANY - ABANDONMENT - IN DESHA
AND CHICOT COUNTIES, AR, AND EAST CARROLL, MADISON,
TENSAS, AND CONCORDIA PARISHES, LA

IN THE MATTER OF AN OFFER OF
FINANCIAL ASSISTANCE

APPEAL

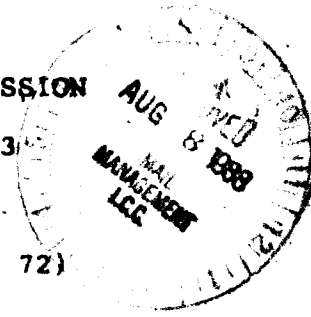
AUG 8 1988 50
243

NATIONAL RAILWAY EQUIPMENT CO.

KARL MORELL
HERON, BURCHETTE, RUCKERT
& ROTHWELL
1025 THOMAS JEFFERSON ST., N.W.
EAST LOBBY - SUITE 700
WASHINGTON, D.C. 20007
ITS ATTORNEYS

AUGUST 8, 1988

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423



Docket No. AB-3 (Sub-No. 72)

MISSOURI PACIFIC RAILROAD COMPANY - ABANDONMENT - IN DESHA
AND CHICOT COUNTIES, AR, AND EAST CARROLL, MADISON,
TENSAS, AND CONCORDIA PARISHES, LA

IN THE MATTER OF AN OFFER OF
FINANCIAL ASSISTANCE

APPEAL

NATIONAL RAILWAY EQUIPMENT COMPANY ("NREC") hereby
submits its appeal to the initial decision of Director Mackall,
served July 27, 1988, in this matter. In that decision, the
Director rejected NREC's offer of financial assistance on the
grounds that NREC had failed to establish that its offer was
bona fide. NREC urges the Commission to reverse the July 27th

decision, to the extent that the decision rejected NREC's offer of financial assistance, and to permit NREC to continue its negotiations with the Missouri Pacific Railroad Company ("MP") for the preservation of rail service over a portion of the MP lines to be abandoned.

On July 11, 1988, the Commission gave notice in the Federal Register of its decision permitting MP to abandon 162.7 miles of rail line between McGehee, AR and Vidalia, LA. On July 20, 1988, NREC timely filed an offer of financial assistance to acquire 162.53 miles of the line for a cash price of \$500,000.^{1/} On July 21, 1988, the Lake Providence Port Commission ("PortCom") also filed an offer of financial assistance to acquire 89.5 miles of the line for \$1,116,000.^{2/}

In the July 27th decision, the Director found that NREC was financially responsible. However, because NREC did not explain the difference between its offer and MP's estimated valuation of the line, the Director determined that NREC had

^{1/} NREC proposed to acquire the portions of the line between (1) milepost 409.07 near McGehee and milepost 557.2 near Clayton Junction, LA and (2) milepost 637.2 near Clayton Junction and milepost 651.6 at Vidalia, LA.

^{2/} PortCom proposed to acquire that portion of the line between milepost 408.9 near McGehee and milepost 498.4 at Tallelah, LA.

failed to establish that NREC's offer was bona fide, and therefore, rejected that offer. The Director went on to find PortCom's offer as bona fide, and accordingly, postponed the issuance of a certificate authorizing the abandonment of the line between McGehee and Tallulah.

Although NREC now recognizes that it should have explained its offer of financial assistance in greater detail, NREC felt that such an explanation was unnecessary since its offer was based on negotiations with MP and it was NREC's understanding that MP would file a letter with the Commission supporting the offer.^{3/} Prior to filing its offer with the Commission, NREC had negotiated with MP over the acquisition of the lines involved in this abandonment proceeding as well as certain other lines in the same geographic area. As pertinent here, these negotiations generally centered around a compensation package whereby MP would receive an up-front cash payment, plus certain additional remuneration during the term of the agreement. In submitting its offer of financial assistance to the Commission, NREC simply computed, on an average per-mile basis, the up-front cash payment NREC had offered to MP. Since the additional

^{3/} By letter dated July 20, 1988, MP notified the Commission that MP viewed NREC's offer "to be bona fide and adequate to begin negotiations."

-4-

remuneration to be provided to MP was still being negotiated, NREC was unable to provide any specifics regarding its current monetary value.^{4/} Nevertheless, at the time NREC filed its offer of financial assistance, it was fully aware that the overall compensation package would have to be generally equal to the line's net liquidation value in order for MP to accept its offer.

Pursuant to the provisions of 49 CFR 1152.27(c)(2)(iii), an offeror is required to explain the disparity between its purchase price or subsidy if it is less than the carrier's estimate under (Section 1152.27(a)(1)). Since NREC's offer was based on direct negotiations with MP, rather than on information provided by the carrier under Section 1152.27(a)(1), NREC felt that it was unnecessary to comply with the requirements of Section 1152.27(c)(2)(iii). In fact, NREC has never specifically requested nor has it ever received an estimate of the minimum purchase price. Moreover, NREC felt that its offer was reasonable since the offer had been the basis of extensive and generally fruitful negotiations with MP and MP had agreed to support the offer before the Commission.

^{4/} In addition, both NREC and MP consider the specifics of the additional remuneration under negotiation to be proprietary information. Therefore, should the Commission require that information for purposes of this appeal, NREC requests that the parties be permitted to file that information under seal.

NREC urges the Commission to reverse the July 27th decision so that continued rail service can be maintained on the involved line. NREC realizes that all but the McGehee to Tallulah portion of the line may already have been abandoned by the time the Commission considers this appeal. Accordingly, NREC requests that the Commission consider its prior offer, as more fully explained in this appeal, to be for the remaining 89.5 mile portion of the line between mile post 408.9 near McGehee and milepost 498.4 at Tallulah.^{5/}

Since the July 27th decision was issued, NREC has continued to negotiate with MP for the acquisition of the McGehee to Tallulah portion of the line. On the basis of those negotiations, NREC offers to make an up-front cash payment of approximately \$500,000 plus provide MP with certain additional cash and/or non-cash benefits during the term of the agreement for the McGehee to Tallulah line. Although all the specifics have not yet been worked out, the parties are close to reaching an agreement on an overall compensation package that is close to the line's net liquidation value. It is NREC's understanding that MP intends to support this appeal and

^{5/} If NREC is successful in acquiring the 89.5 mile portion of the line, it intends to negotiate separately with MP for a post-abandonment acquisition of the remainder of the line.

verify that NREC and MP are close to reaching a mutually satisfactory agreement.

NREC has also been authorized to state that PortCom is cooperating with NREC in NREC's efforts to acquire the involved line and that PortCom intends to file a pleading supporting this appeal. PortCom has no desire to own and operate the involved line and would prefer that NREC purchase the line. In fact, there are still some unresolved questions as to PortCom's ability to acquire the line under the relatively short time constraints provided for in a Section 10905 transaction. At the time it filed its offer of financial assistance, PortCom was unaware that NREC would also be filing an offer of assistance and its only interest in this proceeding is to assure continued rail service to the Lake Providence Port.

In summary, NREC's offer of financial assistance was and continues to be based on direct negotiations with MP. Although a final agreement has not yet been reached, NREC and MP are close to reaching a mutually satisfactory agreement on an overall compensation package that will equal the line's net liquidation value. Moreover both MP, the selling carrier, and PortCom, the only other offeror, fully support NREC's appeal and proposed acquisition of the involved line. Accordingly, NREC respectfully requests that the Commission reverse the July 27th decision, to the extent that it rejected NREC's offer of financial assistance, and provide such other relief as may be

necessary to enable NREC and MP to reach a voluntary agreement for the acquisition of the involved line. 6/

Respectfully submitted,

NATIONAL RAILWAY EQUIPMENT
CO.

By: Karl Morell
Karl Morell
Heron, Burchette, Ruckert
& Rothwell
1025 Thomas Jefferson
St., N.W.
East Lobby - Suite 700
Washington, D.C. 20007
Its Attorneys

August 8, 1988

6/ NREC further requests that the Commission decide this appeal as expeditiously as possible. MP and PortCom must either reach an agreement or request the Commission to set the terms and conditions of purchase by August 25, 1988. NREC is confident that, if its appeal is expeditiously granted, it will be able to reach a voluntary agreement with MP prior to the August 25th deadline and ensure continued rail service over the line without further Commission involvement..

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing document upon the following parties of record in this proceeding, by First Class Mail, postage prepaid:

Joseph D. Anthofer
General Attorney
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Randy Walters
Port Director
Lake Providence Port Commission
Highway 65 South
P.O. Box 348
Lake Providence, Louisiana 71254

Dated this 8th day of August, 1988.


Karl Morell

Attachment 4

ICC Decision in Docket No. AB-3 (Sub-No. 72)
Served October 13, 1988

INVESTMENT AND FINANCIAL ASSISTANCE

DECISION

Document No. AB-3 (Sub-AB-12)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT-- IN DESHA AND
CHICOT COUNTIES, AR, AND EAST CANNON, MADISON, TENNESSEE AND
CONCORDIA PARISHES, LA.

IN THE MATTER OF FINANCIAL ASSISTANCE

Decided: October 11, 1988

By decision served September 30, 1988, in this proceeding, National Railway Equipment Co. (NREC) was authorized pursuant to 49 U.S.C. 10905 to acquire and operate an 89.5-mile line of the Missouri Pacific Railroad Company (MP) between milepost 408.9 near McGhee in Desha County, AR and milepost 498.4 at Tallulah in Madison Parish, LA. In that decision, this Commission stated that MP's application to abandon the line would be dismissed effective on the consummation date of the sale. By petition filed October 4, 1988, NREC states that the transaction has not been consummated.

In the October 4 petition, NREC, Delta Southern Railroad Company (DSRC) and Mr. Lawrence J. Beal request approval to substitute DSRC, a corporate affiliate of NREC, as the purchaser of the 89.5-mile line in lieu of NREC. DSRC is a newly-formed Louisiana Corporation. Both companies are wholly owned by Mr. Beal. Mr. Beal will contribute to DSRC about \$150,000 to \$200,000 for working capital. Also NREC is guaranteeing the bank loan to be made to DSRC for the entire purchase price of the line. Mr. Beal and NREC will guarantee the financial responsibility of DSRC. Mr. Beal also submitted a personal financial statement indicating he has adequate financial resources.

Prior to the consummation of a purchase under the financial assistance procedures, an offeror may substitute its corporate affiliate as the purchaser under an agreement, provided the original offeror has guaranteed the financial responsibility of its affiliate. 49 CFR 1152.27 (2)(1). Because NREC, the original offeror, has guaranteed the financial responsibility of its corporate affiliate, DSRC, the substitution of DSRC as the purchaser of the 89.5-mile line will be authorized.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. DSRC is substituted for its affiliate, NREC, and is authorized to acquire and operate MP's 89.5-mile line between milepost 408.9 near McGhee and milepost 498.4 at Tallulah.
2. The application to abandon this 89.5-mile line is dismissed effective on the date of consummation of the sale to Delta Southern Railroad Company.
3. This decision is effective on the date of service.

By the Commission, Jane P. Mackall, Director, Office of Proceedings.

(SEAL)

Norata R. McGee
Secretary

Attachment 5

Rebuttal Verified Statement of Abollah (Abe) Grazai,
UP's Track Planning Engineer,
filed March 3, 2004, in FD No. 34479,
*Arkansas Midland Railroad Company-Emergency
Service Order-Line of Delta Southern Railroad, Inc.*

FINANCE DOCKET NO. 34479
REBUTTAL VERIFIED STATEMENT
OF
ABDOLLAH (ABE) GHAZAI

My name is Abdollah (Abe) Ghazai. I have been employed by Union Pacific Railroad Company ("UP") and its predecessors since 1978 and currently hold a position as Track Planning Engineer in the Engineering Services Department. My office address is 1416 Dodge Street, Omaha, Nebraska 68179.

I have a total of 25 years of experience in railroad engineering matters, and I have held various railroad maintenance-of-way positions. As a Trackman I have inspected and performed overall track maintenance activities and have maintained track and railroad right-of-way in accordance with UP and FRA guidelines. I have also worked as a Supply System Analyst, as a Data Analyst, as a Manager of Vegetation Control, and most recently as a Track Planning Engineer. In my current position, I have responsibility throughout the UP system for evaluating track conditions, and estimating the cost of maintenance and rehabilitation projects on various types of track structures and projects.

I am very familiar with the Warren, AR line which UP leases to the Delta Southern Railroad ("DSR"). The line runs approximately 39.42 miles from Dermott, AR (MP 422.32) to Warren, AR (MP 461.74). I have inspected this line on two occasions in the past three years. The first inspection was on July 24,

2001. My second inspection was conducted on Thursday, February 26, 2004 with Sam Wiersma, UP Manager Track Maintenance - Central Region, and John Taylor, UP Manager-Special Projects. We were accompanied by Don Avis of DSR. The purpose of the latest inspection was to evaluate the current condition on the line.¹

RESULTS OF FEBRUARY 26 INSPECTION

Attached to this statement are inspection notes of the February 26 inspection. A summary of our conclusions is as follows:

1. Overall, the line has been poorly maintained, particularly the portion with jointed rail (MP 422.32-440.6). It appears that DSR's maintenance strategy for some time has been to do the minimum necessary for short-term operation. Unfortunately, the "short term" has nearly run out.

2. Alignment and surfacing are particularly bad and are not in compliance with FRA Class 1 requirements. There are numerous strategic locations with serious problems that are derailments waiting to happen (for example, reverse super-elevation of over 3" in a curve). Tie conditions are marginal, at best, for FRA Class 1 track, with numerous locations of joint tie violations in the 18 miles of jointed track.

3. DSR obviously does not have an effective maintenance program for dealing with alignment and surfacing. From what we saw, its solution for these conditions is simply to dump ballast on top of the track structure, without raising and aligning the track or tamping the ballast under the ties. This approach does

¹ I understand that FRA recently conducted its own inspection of a 20-mile segment of the line between MP 422 and MP 442, and wrote up 79 defects for this segment.

nothing to correct the existing alignment and surface conditions. DSR follows the same ineffective approach in repairing derailment damage to its track. Dumping ballast on top of the track structure and leaving it there also makes it impossible to determine the condition of the ties buried under the ballast and, by holding moisture against the ties, hastens tie deterioration.

4. DSR similarly does not have an effective tie replacement program. Based on what we saw, DSR's general practice has been to replace the minimum number of defective ties necessary to comply with tie spacing requirements of FRA Class 1 track standards (although, as noted above, there are numerous locations where they have not complied with these requirements). Particularly given the light weight of the rail (90 lbs.), this approach will often not provide sufficient track support for keeping the track structure within FRA geometry standards for Class 1 rail under load. We observed evidence on the track structure of excessive movement under load at a number of locations, which is consistent with insufficient tie support. Another problem is that a single non-defective tie in a large cluster of ties that aren't doing their jobs creates a short, relatively rigid area under the rail at that location, which increases the possibility of a break. Finally, this practice makes correction of alignment and surfacing defects more difficult. When the track structure is raised, as it must be in the surfacing process, the defective ties will pull loose from the rail and remain buried under the new ballast.

5. I understand that Bill Wainwright, DSR's President, said in a recent affidavit that DSR had undertaken a major track program to restore the line to

FRA Class 1 condition which was about two-thirds complete. During our February 26 inspection, we observed no maintenance or rehabilitation work in progress anywhere on the line. In fact, we observed no maintenance personnel on the entire line, except for the DSR employee who accompanied us. There were also no stockpiles of materials that would indicate that work was to be undertaken in the near future.

6. We did encounter two track machines on the line near MP 434, a ballast regulator and a tamper/liner. These machines were unmanned and appeared to be inoperational (particularly the tamper/liner, which was missing its vibrator motors). Suspecting that the machines may have been placed at MP 434 to prevent us from inspecting some of the track beyond this point, we ran around the machines, set back on the track near MP 439, and ran back toward MP 434. At MP 437.5, we discovered two derailed cars (one of which was on its side), and a crane, which had apparently been brought there for rerailing. The crane was unmanned and there were no personnel in the area.

7. We observed no rail operations during our entire inspection on February 26.

VERIFICATION

Abdollah (Abe) Ghazai, states on penalty of perjury that he has read the above document, knows the facts asserted therein, and that the same are true as stated.

March 2, 2004


Abdollah Ghazai



John E. Taylor
03/02/04 11:57 AM

To: Abe Ghazai@UP
cc: Bob Opal@UP
Subject: Warren Branch

Mr. Ghazai

This is the report of our February 26 track inspection of the Warren Branch that you requested.

On February 26 the Union Pacific Railroad performed a track assessment of the Warren Branch which is currently leased to the Delta Southern Railroad. The inspection was performed by hy-rail and the following were present Sam Wiersma UPRR, Abe Ghazai UPRR, John Taylor UPRR and Don Avis DSRR. Following is a summary with attachments of our findings.

The inspection was from MP 422.32 to MP 461.74 a total of 39.42 miles, of this 18.23 miles is 90lb jointed rail (422.32 to 440.6) the remainder is 90lb CWR (440.60 to 461.74). Overall the jointed rail is in poor condition with many bent rails and dutchman installed to repair pull-apart joints. The CWR is in good condition. There is evidence that ties were installed across the entire branch to break up clusters and at rail joint locations. Tie spacing is 22 inch or 2880 per mile. We performed a walking inspection of 100 consecutive ties per mile, where ties were visible. Based on these sample areas, the defective tie counts per mile would range from a low of 576 per mile to a high of 2016 per mile. There were four miles of no tie count account of ballast. The tie condition is marginal for class one. Although there is ballast placed for surfacing (MP422 through MP452) there was no evidence of any surface or lining activity.

The Public road crossings are poorly maintained, although the crossing surfaces are good in most cases, the vegetation is not cut back for sight distance and there are numerous locations of missing signage.

There are three areas of derailed rail cars and indications of several past derailments, in these derailment areas repairs were made by installing ties and spiking back down the existing rail which in many cases was severely bent causing alignment problems, no surfacing was done. There were three areas that we could not inspect MP434.03 to MP437.5 - 3.47 miles account track machines on main, MP445.2 to MP447.5 - 2.3 miles account switch engines on main and MP460 to MP461.74 - 1.74 miles account cars on main. We were on the property for approximately eight hours but did not see any personal performing maintenance or switching operations.

- | | | |
|---|---------------|---|
| • | MP422 - MP430 | Surface and line condition is poor |
| • | MP432 - MP442 | Surface and line condition is good |
| • | MP423 - MP440 | Numerous locations of joint tie defects |
| • | MP423 - MP440 | Numerous locations of joint defects |
| • | MP450 - MP460 | Numerous locations of tie clusters |
| • | MP422 - MP452 | Ballast placed for surfacing |
| • | MP429 - MP455 | Vegetation is close to or hitting rolling stock |
| • | MP448.25 | No effective tie in 39ft. |
| • | MP425.05 | X-level 3 1/2 inch |
| • | MP426.5 | X-level 4 1/2 inch |
| • | MP449.8 | X-level 6 1/4 inch |
| • | MP458.95 | X-level 3 1/2 inch |
| • | MP459.7 | X-level 3 1/4 inch reverse in curve |
| • | MP437.50 | Derailed area (LW73049 & MP592746) |
| • | MP446.70 | Derailed area (MP377319) |
| • | MP461.60 | Derailed area (CN625943) |

Pictures

- | | | |
|----|-------|---------------------------------------|
| 1. | MP424 | Poor alignment |
| 2. | MP425 | Poor alignment and 3 1/2 inch x-level |

3. MP431.7 Poor surface and alignment derailment area that I feel is unsafe to operate on.
4. MP431.7 Same
5. MP433.15 Derailment area



001.jpg



002.jpg



003.jpg



004.jpg



005.jpg



Warren Branch summary.

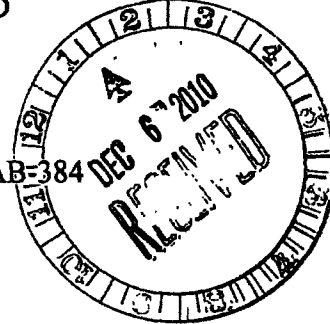
Thanks
John E. Taylor
Co. (817) 878-4557
Cell (469) 387-6098

Attachment 6

DSRR Petition for Exemption
Filed December 6, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

DELTA SOUTHERN RAILROAD, INC. --)
ABANDONMENT EXEMPTION -- IN) DOCKET NO. AB-384
DESHA AND CHICOT COUNTIES, AR) (SUB-NO. 3X)



PETITION FOR EXEMPTION

FILED

DEC. 6, - 2010

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

DEC 6 - 2010

Part of
Public Record

DELTA SOUTHERN RAILROAD, INC.
P.O. Box 1709
Tallulah, LA 71284

Petitioner

FEE RECEIVED
DEC 6 - 2010
**SURFACE
TRANSPORTATION BOARD**

THOMAS F. McFARLAND
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Attorney for Petitioner

DATE FILED: December 6, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

DELTA SOUTHERN RAILROAD, INC. --	)	
ABANDONMENT EXEMPTION -- IN	)	DOCKET NO. AB-384
DESHA AND CHICOT COUNTIES, AR	)	(SUB-NO. 3X)
	)	

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502(a), 49 C.F.R. § 1152.60, and 49 C.F.R. § 1121.1, *et seq.*, DELTA SOUTHERN RAILROAD, INC. (DSR) hereby petitions for an exemption from the requirements of 49 U.S.C. § 10903 for abandonment of a 24.1-mile rail line between Milepost 408.9 at or near McGehee and Milepost 433.0 at or near Lake Village, in Desha and Chicot Counties, Arkansas ("the Rail Line").

The facts asserted in the Petition are verified by DSR's President, Mr. William Wainright, whose verification is attached to this Petition as Appendix 1.

THE SUBJECT RAIL LINE

The subject Rail Line extends between a point of connection with Union Pacific Railroad Company (UP) at or near McGehee (Milepost 408.9) and a point of connection with Southeast Arkansas Economic Development District (SAEDD) at or near Lake Village (Milepost 433.0), a distance of 24.1 miles in Desha and Chicot Counties, Arkansas. Attached to this Petition as Appendix 2 is a map on which the Rail Line has been shaded in yellow.

The Rail Line was constructed by UP predecessor Missouri Pacific Railroad Company (MP) between 1907 and 1915. DSR acquired the Rail Line as part of a purchase of rail lines from UP in 1989.

SAEDD acquired a connecting 21.8-mile segment of rail line between Lake Village and the Arkansas-Louisiana State Line from DSR in 2005 following a class exemption for abandonment of that segment in *Delta Southern Railroad, Inc. -- Aband. Exempt. -- between Lake Village, AR and Shelburn, LA*, 2005 WL 778772 (Docket No. AB-384 [Sub-No. 1X], decision served April 7, 2005), but before consummation of that abandonment.

REASONS FOR ABANDONMENT

An exemption is sought for abandonment of the Rail Line because (1) operation of the Rail Line is unprofitable; (2) there is no reasonable prospect for profitable operations; (3) the Rail Line requires substantial rehabilitation, the cost of which cannot be recovered from operating profits; (4) continued operation of the Rail Line would result in substantial opportunity costs; and (5) shippers on the line have feasible transportation alternatives.

1. Unprofitability

The only company to have made use of the Rail Line in the past 10 years is Epstein Gin (Epstein), 537 Reynolds Street, Lake Village, AR 71653. Epstein has shipped cottonseeds by rail over the Rail Line. Epstein's shipping facility is located at Lake Village at approximately Milepost 431.3, about 2.7 miles north of the southern terminus of the proposed abandonment.

Epstein's use of the Rail Line in recent years has declined radically. Epstein shipped 451 carloads over the Line in 2008, but shipped only 81 carloads in 2009, a decline of more than 82

percent. Epstein's rail shipments have remained low in 2010, i.e., 20 carloads during the first ten months of 2010.

The Rail Line was embargoed due to unsafe track conditions, effective November 2, 2010. Epstein has stated that it would have shipped 40 additional carloads but for that embargo. That would have brought its rail shipments for 2010 to a total of 60. That traffic level reflects an additional decline of 26 percent from Epstein's already reduced traffic level in 2009, and a decline of 87 percent from Epstein's 2008 rail traffic.

Based on Epstein's likely 2010 rail traffic volume had the Rail Line not been embargoed, DSR has estimated that Epstein's use of the Rail Line in a forecast year (i.e., 2011) would be 60 carloads. Based on Epstein's actual use of the Rail Line in 2009 and its projected use of the Line in 2010, there is no credible evidence to show that Epstein's future use of the Rail Line would be anywhere near its use of the Rail Line in 2008. Any projection of forecast year traffic in excess of 60 carloads would be unduly speculative.

Any contention that a shipper other than Epstein will locate on the Rail Line and ship by rail would also be contrary to the evidence. As noted above, Epstein has been the only rail shipper on the Line for more than 10 years in the past. There is nothing to suggest that any other rail shipper will locate on the Line. The area surrounding the Rail Line is rural, making it highly unlikely that a rail-served industry will locate on the Line in the future.

As demonstrated below, there would be a very substantial operating loss in a forecast year at a 60-car traffic level.

DSR currently derives \$341.59 per car for transportation of Epstein's traffic. Assuming a 3-percent increase in per-car revenue in 2011, DSR would derive \$351.84 per car for

transportation of Epstein's traffic in a forecast year. At that revenue level, DSR would derive total revenue of \$21,110 from transportation of 60 carloads for Epstein in a forecast year.

That revenue would fall far short of enabling DSR to operate the Rail Line at a profit in a forecast year. The cost for DSR to maintain the track and bridges on the Rail Line alone would amount to approximately \$144,600 in the forecast year, based on an average maintenance cost of \$6,000 per mile per year that the Board has recognized as a reasonable estimate of such cost in other abandonment cases. (\$6,000 per mile x 24.1 miles = \$144,600). *See, e.g., Conrail - Aban. - bet. Warsaw & Valp. Counties, IN*, 9 I.C.C. 2d 1299, 1304 (1993). Thus, considering only maintenance costs, DSR would suffer a forecast year operating loss of \$123,490.

Rail service to Epstein is provided by a two-person train crew operating a 1,500-horsepower locomotive originating at McGehee, AR, and operating round-trip approximately 50 miles between that point and Lake Village, AR. The substantial avoidable costs of the train crew, locomotive, and freight cars associated with provision of that service would add appreciably to the forecast year loss from operating the Rail Line.

There would be a serious adverse effect on DSR and on DSR's ability to provide quality rail service to its other shippers if DSR were to be required to bear operating losses in excess of \$123,000 per year on a continuing basis. Consistently with Constitutional provisions, a rail carrier cannot be required to operate a rail line at a loss for an extended period of time. *See Brooks-Scanlon v. Railroad Com. of Louisiana*, 251 U.S. 396, 399 (1920).

2. Rehabilitation

DSR has been forced to defer track and bridge maintenance on the Rail Line in order to economize in an effort to minimize operating losses and opportunity costs. As a result, the

physical condition of the Rail Line has seriously deteriorated. Virtually every rail length in the Rail Line has excessive defective crossties in clusters and under joints, such that crosstie conditions do not comply with minimum FRA Class I track safety standards. Track alignment, cross-level and gage are also out of compliance with FRA Class I standards at numerous locations. Eight bridges on the Rail Line are in serious need of extensive repair. There are numerous defective rails. The cumulative effect of these conditions has been to seriously compromise safety of operations over the Line. As a result, DSR has embargoed rail operations over the Line due to track conditions, effective November 2, 2010. A copy of that embargo is attached to this Petition as Appendix 3.

Appendix 4 attached to this Petition consists of a series of photographs of track and bridge conditions on the Rail Line at milepost locations noted adjacent to the photographs. The photographs were taken by Mr. William Wainright during a hi-rail inspection trip over the Rail Line on November 29, 2010. The photographs depict the seriously defective rail, crosstie, and bridge conditions on the Rail Line. The photographs are representative of rail, crosstie, and bridge conditions that exist throughout the Rail Line.

Mr. Wainright was accompanied on the November 29, 2010 hi-rail inspection trip over the Rail Line by Mr. William Vanderberry of McHann Railroad Services, Inc., Edwards, MS. That company is a leading consultant on railroad track and bridge construction and maintenance. Appendix 5 attached to this Petition is a copy of Mr. Vanderberry's Report of the results of his inspection of the Rail Line, dated December 1, 2010. Having carefully inspected the Line, Mr. Vanderberry stated that "(t)he complete track and bridges needs (sic) to be completely removed and new track and bridges reconstructed." (Appdx. 5, p.1). The estimated cost of that activity is

\$792,000 per mile for track work, or more than \$19 million for the 24.1-mile Rail Line, and \$1,368,779 for bridge replacement (*id.* at pp. 1-2).

DSR recognizes that in rail abandonment cases, rehabilitation costs are to be limited to those necessary to achieve FRA Class I track safety standards. Based on that standard, it would cost more than \$4 million to rehabilitate the track and bridges on the Rail Line to Class I standards. The components of that rehabilitation are shown in the table below.

Item of Rehabilitation	Cost Basis	Cost
1. Crosstie Replacement	Five non-defective ties per 39-foot rail length plus one non-defective tie under each joint at \$100 per tie installed (6 ties x 3,263 rail lengths x \$100)	\$1,957,800
2. Ballast Rock	\$3,363 per carload, eight carloads per mile, 24.1 miles	648,386
3. Rail Replacement	240 defective rails at \$400 per rail installed	96,000
4. Bridge Replacement	Per McHann Report	1,368,779
TOTAL		\$4,070,965

DSR would be unable to recover that cost from profit from operating the Rail Line because operation of the Rail Line will result in a substantial operating loss, not a profit. It would be a serious burden on DSR and on interstate commerce if a requirement of continued operation of the Rail Line were to force DSR to incur an unrecoverable cost in excess of \$4 million for required track and bridge rehabilitation.

3. Opportunity Cost

Opportunity costs are measured by the extent to which profit from operating a rail line falls short of providing a cost-of-capital return on the net liquidation value of the assets of the rail line. In addition to suffering operating losses and unrecoverable rehabilitation costs if required to

continue to operate the Rail Line, DSR would also be burdened as a result of incurring significant opportunity costs.

In 2005, DSR sold a 21.8-mile segment of rail line immediately to the south of the subject Rail Line to SAEDD. The assets in that segment are substantially similar to the assets in the subject Rail Line (e.g., weight and physical condition of rail and other track material, quality of title to land in the right-of-way, primarily rural use of adjacent land, etc.). Consequently, the unit value for liquidation of that rail line provides convincing evidence of the net liquidation value of the subject Rail Line. Application of that unit value of \$32,315 per mile to the 24.1 miles of the subject Rail Line results in a net liquidation value of \$778,791 for the Rail Line.^{1/}

The most recent cost of capital of the rail industry is 10.43 percent per year. *See Railroad Cost of Capital - 2009 Determination*, _____ STB _____ (Ex Parte No. 559 [Sub-No. 13], decision served October 29, 2010).

Application of that cost of capital to the net liquidation value of \$778,791 determined above results in a cost of capital return of \$81,228 per year on that value. Inasmuch as there would be no operating profit in a forecast year, continued operation of the Rail Line would result in an opportunity cost of \$81,228 per year. That would constitute an additional undue burden on DSR and interstate commerce.

^{1/} DSR reserves the right to perform an independent study of the net liquidation value of the Rail Line assets if an Offer of Financial Assistance were to be filed in this proceeding.

Attachment 7

December 23, 2010 Petition of LPPC to
Strike Notice of Consummation
and to Reopen and Reconsider

228529



Eric M. Hocky
Direct Dial 215 640 8523
Email: ehocky@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

December 23, 2010

Re: Delta Southern Railroad, Inc. – Abandonment Exemption –
Between Lake Village, Ark., and Shelburn, LA
STB Docket No. AB-384 (Sub-No. 1 X)
*Petition of Lake Providence Port Commission to Strike Notice of
Consummation and to Reopen and Reconsider*

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is the Petition of Lake Providence Port Commission to Strike Notice of Confirmation and to Reopen and Reconsider.

As set forth in the Petition, the Port Commission is a "government entity". Therefore any filing fee that would apply should be waived in accordance with the Board's policy as set forth in 49 CFR 1002.2(e)(1).

Please let me know if there are any questions regarding this filing.

Respectfully,


Eric M. Hocky

*Counsel for Lake Providence Port
Commission*

ENTERED
Office of Proceedings

DEC 23 2010

Part of
Public Record

EMH/e
Enclosure
cc (via email):

Thomas F. McFarland, Esq.
Wyly Gilfoil

Pittsburgh

Philadelphia

Princeton

Wheeling

Thorpe Reed & Armstrong, LLP
One Commerce Square
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215 640 8501 Fax

(P0110762) (STB filing)

FILING FEE WAIVED

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 384 (Sub-No. 1X)

**DELTA SOUTHERN RAILROAD, INC.
- ABANDONMENT EXEMPTION -
BETWEEN LAKE VILLAGE, ARK., AND SHELburn, LA**

**PETITION OF LAKE PROVIDENCE PORT COMMISSION
TO STRIKE NOTICE OF CONSUMMATION
AND TO REOPEN AND RECONSIDER**

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Attorneys for Lake Providence Port
Commission

Dated: December 23, 2010

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 384 (Sub-No. 1X)

**DELTA SOUTHERN RAILROAD, INC.
- ABANDONMENT EXEMPTION -
BETWEEN LAKE VILLAGE, ARK., AND SHELburn, LA**

**PETITION OF LAKE PROVIDENCE PORT COMMISSION
TO STRIKE NOTICE OF CONSUMMATION
AND TO REOPEN AND RECONSIDER**

On December 8, 2010, Delta Southern Railroad, Inc. ("DSR") filed a notice of consummation with respect to the abandonment of an 8.2 mile segment of rail line between milepost 454.8 at the Arkansas-Louisiana state line, and milepost 463.0 at or near Shelburn, Louisiana. The notice purports to have consummated the abandonment as of December 6, 2010.

Background

As is relevant here, DSR at one time operated a line of railroad (the "Lake Providence Line") that ran between a connection with Union Pacific Railroad ("UP") at McGehee, Arkansas, and a connection with Kansas City Southern ("KCS") at Tallulah, Louisiana. Lake Providence Port Commission (the "Port Commission") is a governmental agency created by Act 450 (R.S. 1501 et seq.) of the 1958 regular session of the Louisiana Legislature. It operates an inland port facility in Lake Providence served by DRS. In the past, traffic could move north or south from the Port.

In 2004, DSR commenced this proceeding by filing for authority to abandon a 30-mile segment in the middle of the line between McGehee and Tallulah. The Port Commission and other

shippers in the area sought to save the northbound shipping option through the offer of financial assistance (“OFA”) process. Although the OFA process did not lead to a sale, a 22-mile portion of the line between Lake Village, Arkansas and the Arkansas-Louisiana state line was sold to Southeast Arkansas Economic Development District (“SEAEDD”) for continued rail service. Since that time, there were periodic talks between the Port Commission and DRS about service to the Port, possible new business and the Port Commission’s interest in acquiring the remaining 8.2 miles subject to abandonment. DRS sought and received a series of extensions to the consummation deadline.

In October, 2010, DSR obtained its most recent extension of the time to consummate the abandonment of the remaining 8.2-mile segment on the grounds that it was trying to sell the line for continued rail service. At the time of the request, the time for consummation had expired. On the basis of the representation the extension was granted. *See Delta Southern Railroad, Inc. – Abandonment Exemption – Between Lake Village, Ark. and Shelburn, LA*, STB Docket No. AB 384 (Sub-No. 1X) (served October 22, 2010) (the “October 22 Decision”).

Shortly, thereafter, on November 9, 2010, DSR filed to abandon a second segment of the line – approximately 8 miles from Shelburn, LA, south to East Carroll Parish, LA (approximately 2 miles north of the Port in Lake Providence). *Delta Southern Railroad, Inc. – Abandonment Exemption – In East Carroll Parish, LA*, STB Docket No. AB 384 (Sub-No. 2X). As soon as the Port Commission on December 7, 2010, expressed interest in making an OFA for this additional segment of the line to be able to preserve service options to the north (by sending a request for information) second abandonment, DSR filed its notice of consummation.¹ The Port Commission remains interested in

¹ DSR has also filed a petition to abandon the remaining northern segment of the Lake

preserving the line between the Port and McGehee, Arkansas for future rail service. It has already indicated that it will make an offer of financial assistance to acquire the line in the Sub-No. 2X abandonment proceeding, and intends to participate likewise in the Sub-No. 3X proceeding.

Discussion

The Port Commission is requesting that the Board strike the notice of consummation, and reopen and reconsider the October 22 Decision extending the time for consummation. Under 49 CFR 1115.3 and 1115.4, the Board has the power to reopen and reconsider based on new evidence or material error. In this instance, when DSR obtained its latest extension it misrepresented to the Board that it was interested in pursuing a sale for continued rail purposes. It is clear now, from the two additional abandonments that have been filed, and from the purported notice of consummation in this proceeding, that DSR never intended or wanted to do a sale for continued rail service; rather it is seeking to force all of the traffic from the Port and the remaining shippers on the Lake Providence Line to move to and from the south, and to eliminate their shipping options. This evidence of DSR's true intent not to make the line available for continued rail service has only been made clear now with its recent filings, and was not available at the time of its request for an extension.²

Additionally, the Board should find that the granting of the extension after the consummation deadline had already passed, was material error. The Board's regulations provide that if the consummation notice has not been timely filed, then the abandonment authority "automatically"

Providence Line in Arkansas between Lake Village and McGehee. *Delta Southern Railroad, Inc. – Abandonment Exemption – In Desha and Chicot Counties, AR, LA*, STB Docket No. AB 384 (Sub-No. 3X).

² It should also be noted that DSR did not give notice of its request for an extension to any other parties to the abandonment proceeding.

expires, and “[i]n that event, a new proceeding would have to be instituted if the railroad wants to abandon the line.” 49 CFR 1152.29(e)(2). In this instance, since DSR did not timely file its notice of consummation, or timely request an extension, the abandonment authority expired, and an extension should not have been granted.³

Usually the Board loses jurisdiction when a notice of consummation has been filed. However, the Board has in exceptional circumstances acted to reopen proceedings to protect its jurisdiction. *See CSX Transportation Inc. – Abandonment – Between Bloomingdale and Montezuma, In Parke County, IN*, ICC Docket AB-55 (Sub-No. 486). 2002 STB LEXIS 535, *11 (“There are rare cases, such as instances of fraud, where we may assert jurisdiction over property after abandonment authority has been exercised.”). *Cf. Missouri-Kansas-Texas Railroad Company – Abandonment – In St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis Counties, MO*, STB Docket No. AB 102 (Sub-No. 13), served July 12, 2010, slip op. at 4 (“The Board retains jurisdiction over rail property until abandonment authority has been *lawfully* consummated.” Emphasis added.). Here Board should act.

The Board has established a general requirement that a notice of consummation be filed within one year. *See* 49 CFR 1152.29(e)(2). The reason for the establishment of the consummation notice requirement and the one-year period was to establish certainty in the process. *See Abandonment and Discontinuance of Rail Lines and Transportation Under 49 U.S.C. §10903*, 2 STB 311, 315-317 (1997); *Abandonment and Discontinuance of Rail Lines and Transportation Under 49 U.S.C. §10903*, 1 STB 904-906 (1996). In keeping with this goal, the regulations provide

³ If DSR’s true purpose were to sell the line for continued rail service it would not have been

that requests for extensions of the consummation date are to be filed in advance of the consummation deadline. 49 CFR 1152.29(e)(2). As discussed above, the failure to file a notice of consummation, or to request an extension, by the deadline means that the authority to abandon automatically expires, and a new proceeding is necessary if abandonment is still desired.

In a decision served May 17, 2010, the Board extended the consummation date in this proceeding until October 2, 2010. DSR, however, did not file an extension to extend the consummation date until October 4, 2010. Rather than dismiss the late-filed extension and allow the abandonment authority to expire, the Board, through the Office of Proceedings, accepted DSR's justification for the extension "that the line segment can be sold for continued rail service, and that additional time will be necessary to complete the sale." Decision served October 22, 2010.⁴ In and of itself, the failure to follow the regulations that provide for automatic expiration of the abandonment authority was material error.

Further, based on DSR's subsequent actions, it is clear that DSR never intended to sell the remaining 8.2 mile segment for continued rail service. There were no additional discussions and within weeks DSR had filed to abandon a second segment of the line, and a month later, a third segment. It is now clear that the time for consummation had passed, and the only reason that DSR said it wanted to sell the line for continued rail service was to get the time for consummation extended. This new evidence demonstrates that DSR obtained its latest extension to consummate in

prejudiced by the expiration of the abandonment authority.

⁴ As noted in the May 17 Decision, DSR's request for extension of the previous April 5 deadline was also filed after the expiration of the consummation period. DSR also justified that extension on the grounds that it needed time "in order to permit DSR to negotiate to convey the rail line for continued rail use, which would be consistent with the national rail policy."

this proceeding by misrepresenting its intentions to the Board. Since the extension was obtained by false representations, the notice of consummation should be stricken and extension request should be reopened and reconsidered. In doing so the Board should then deny the extension and find that the abandonment authority expired when the time for consummation passed.

CONCLUSION

For all of the foregoing reasons, the Port Commission requests that the Board strike the notice of consummation filed by DSR on December 8, 2010, and reopen and reconsider the decision to grant DSR an extension to consummate the abandonment. Instead the Board should find that the authority for abandonment expired, and that if DSR wants to abandon the line, it needs to start a new proceeding.⁵

Respectfully submitted,



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Attorneys for Lake Providence Port
Commission

Dated: December 23, 2010

⁵ If DSR, as it has represented to the Board, truly wants to sell the line for continued rail use, then the Port Commission would still be willing to discuss such a purchase. Such a purchase would not be impeded by a finding that DSR's abandonment authority expired.

VERIFICATION

I, William W. Gilfoil, Port Director of the Lake Providence Port Commission, verify under penalty of perjury that statements contained in the foregoing Petition are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

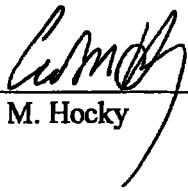
Executed on December 23, 2010.

William W Gilfoil
Name

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following person by e-mail:

Thomas F. McFarland
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1112
mcfarland@aol.com



Eric M. Hocky

Dated: December 23, 2010

Attachment 8

Arkansas Democrat-Gazette, May 21, 2017
*Where Arkansas and Louisiana Meet,
Economy Trumps Rivalries. Rail Line Venture
Offers Taste of What Area Could Become*
Stephen Steed

From: Stephen Steed [<mailto:ssteed@arkansasonline.com>]
Sent: Monday, May 22, 2017 12:06 PM
To: dan@drailroad.com
Subject: Sunday's story

Hello, Dan ...

Wanted to send this to you in case you didn't see Sunday's paper.

ss

Where Arkansas and Louisiana meet, economy trumps rivalries
Rail line venture offers taste of what area could become

By [Stephen Steed](#)

This article was published May 21, 2017 at 2:12 a.m.



PHOTOS BY STEPHEN STEED/ARKANSAS DEMOCRAT GAZETTE

Map showing the location of The Arkansas-Louisiana Transportation Corridor



 Crooked tracks mar the short-line Northern Louisiana & Arkansas Railroad where it meets Arkansas 4 in McGehee in Desha County. The line runs from McGehee to Lake Providence, La.



 Progress on rehabilitating the Northern Louisiana & Arkansas Railroad line is touted on a sign in Lake Village.

MONTICELLO -- A rail line of only 90 miles would seem to be an apt metaphor for the tough times experienced over the past several decades by those in southeast Arkansas and northeast Louisiana.

The line is crooked in spots, where 5 mph is the norm, along the Northern Louisiana & Arkansas Railroad's 62-mile run from McGehee to Lake Providence, La. Tree limbs and brush scrape the sides of train cars traveling along the rails. The typical crew of two has plenty of time to gaze at abandoned grain bins covered in vines and pass through towns long past their glory days.

From 2007-16, parts of tracks for the short-line railroad with roots going back to 1878 were broken and all but unusable.

Improvements along the entire line -- itself a cooperative venture involving both states and several private ventures -- could be a sign of better things to come.

Any rivalries between the two areas must be cast aside for either one to grow, according to leaders of the latest economic-development effort there.

Bolstered this year by two grants totaling \$1 million, including matching funds, the initiative is aimed at what the region has in common.

Five Arkansas counties and five Louisiana parishes make up the alphabet soup known as the ArkLaMEC, or Arkansas-Louisiana Multimodal Economic Corridor. The five counties in Arkansas are Ashley, Bradley, Chicot, Desha and Drew. The five parishes are East Carroll, West Carroll, Madison, Morehouse and Richland.

"None of these communities have really tried to address strategies on a regional basis, and that's not their fault," Jim Youngquist, executive director of the Institute of Economic Advancement at the University of Arkansas at Little Rock, said recently. "States tend to think the world ends at the state line."

The UALR institute and a similar entity at Louisiana Tech University in Ruston have taken leadership roles in getting the effort organized.

"We can't be the driver of this," Youngquist told some area leaders May 12 in Monticello. "Local leaders need to drive this."

THE STATISTICS

But the commonalities can be depressing.

The areas are among the poorest in their respective states, in jobs and in per-capita income.

The average unemployment rate in the five Arkansas counties is 5.6 percent, compared with the state average of 3.6 percent.

The five parishes in Louisiana average 9.7 percent unemployment, compared with the state average of 5.7 percent.

The areas in both states have lost population at roughly the same rates, largely as agriculture became more mechanized over the past several decades, requiring fewer workers.

The population in the five Arkansas counties combined hit a high of about 121,500 in 1940 but is now at about 74,000. The five Louisiana parishes also hit their population highs in the 1940s, with 120,350 residents. The total now is about 77,000 residents.

"Together, the region is obviously the Delta and primarily it's in agri-business," Youngquist told a reporter before the meeting. "Over the years, they've lost a lot of population. They've lost a lot of jobs. But, despite all that, they have a tremendous intermodal system of highways, rivers, ports and railroads."

The high points are:

- The Port of Crossett on the Ouachita River and the Yellow Bend Port near Arkansas City on the Mississippi River; and the Port of Lake Providence and Port of Madison Parish near Tallulah, on the Mississippi River in Louisiana.
- U.S. 65, 165 and 425, running from southeast Arkansas into northeast Louisiana where they tie into Interstate 20, which helps connect the eastern and western United States coasts; U.S. 82, which runs across southern Arkansas.
- Union Pacific and Kansas City Southern railroads, along with the Northern Louisiana & Arkansas short line. Two other short lines operate in the region: the Arkansas Midland, which runs for 51 miles between Warren and McGehee, primarily hauling timber; and the Delta Southern, which runs for 30 miles from Lake Providence to Tallulah.

GETTING TOGETHER

The Monticello meeting attended by Youngquist and two UALR colleagues also attracted representatives from Louisiana Tech's Innovation Center, the Southeast Arkansas Economic Development District in Pine Bluff, the Delta Regional Authority, the Arkansas Economic Development Commission, and the Port of Madison Parish and the Port of Lake Providence. Louisiana state economic development leaders listened by phone and watched by webcast. The Monticello Economic Development Corp. played host to the gathering.

"We started having small meetings of the rails and ports and economic leaders in Arkansas and in Louisiana about how to market ourselves regionally," Youngquist said. "Singularly, we don't stand a good fighting chance of getting jobs in there. But our ports, highways and rail all lead, one way or another, to Mexico and to the Pacific and Atlantic oceans."

While the most obvious and direct beneficiaries of any success will be farmers and others in agri-business, any progress also could provide "value-added" or related industry to benefit more people, Youngquist said. The western portions of Ashley and Bradley counties and Morehouse Parish are still heavy in timber, an industry that also could benefit from the two-state tag-team effort, he said.

A \$100,000 grant awarded recently by the federal-state Delta Regional Authority will be used for a marketing campaign and startup money for the ArkLaMEC council, whose membership hasn't yet been fully lined out. The UALR and Louisiana Tech entities provided matching funds of \$135,000.

An arm of the federal Department of Commerce also recently approved a \$400,000 grant to the UALR and Louisiana Tech entities to develop a disaster response-and-recovery plan for the area. The two universities matched the federal money with another \$400,000. Floods in late 2015 and early 2016 cut off the region's supply line for some 45 days.

State and federal money in 2014 helped extend rail service at the Lake Providence Port, providing better access to a bio-refinery operated by Myriant Corp. and to grain terminals operated by Bunge, and Big River Rice and Grain.

"The two states worked really well together on the (Northern Louisiana & Arkansas) rail, and I think that bodes well for what we're working on now," said Wyly Gilfoil, director of the Lake Providence Port.

SAVING THE LINE

Glenn Bell recently retired from the Southeast Arkansas Economic Development District after 45 years, including the past 30 years as director. With his retirement, Bell, who is widely credited for starting the ArkLaMEC effort, won't have an official role with whatever governing body is developed.

In 2005, Bell steered the development district into buying 22 miles of dilapidated rail, from Arkansas' Lake Village to the state line, that had been abandoned. It took years to raise the money to fix the rails and reopen the line, he said.

"We had to look beyond just a railroad and see it now as a 90-mile-long industrial park," Bell said recently by telephone while tending to his tomato garden. "Otherwise, all we're doing is stopping traffic in Lake Village."

When asked what could boost economic development in the region, he was quick to point to Mississippi County in northeast Arkansas, where steel mills line the river on land once heavily planted in cotton and soybeans.

"Steel didn't grow there," Bell said. "Steel is there because of the river."

Like Mississippi County, southeast Arkansas and northeast Louisiana have the acreage and the rivers for a steel plant. "I guarantee you that if a steel mill got put in, no matter what state it's in, it's going to draw workers from both states," Bell said.

Dan Robbins, vice president of the Russellville-based North Louisiana & Arkansas Railroad, said of Bell, "He saved that rail line."

Once rails and crossties are pulled up for scrap, "it's very difficult to put a railroad back in," Robbins said. "Glenn's move protected that entire line."

The North Louisiana & Arkansas Railroad owns 24 miles of the line from McGehee to Lake Village. It began operations in August 2011 and primarily hauls agricultural goods but also some petrol-chemical products.

"The two states got together," Robbins said. "We took over 24 miles that had been put up for abandonment. We got together with the port and the regional economic development districts, and took out lease agreements the rest of the way down."

Short-line railroads are Class 3 operations, meaning they have less than \$20 million in annual operating income. "And believe me, the NLA is under \$20 million," he said with a laugh.

The track is in "accepted" condition -- the lowest standard for a line to continue -- but progress keeps being made, Robbins said. The best section probably is from Lake Village to the Arkansas-Louisiana border and likely will be upgraded by federal regulators soon, he said.

A long-range plan is to build another short-line rail from McGehee to the Yellow Bend Port, but that will be expensive, Robbins said.

Robbins estimated that \$14 million has been spent upgrading the entire 90-mile line, split equally between public and private interests. "That's still less than the cost of building a rail just 9 miles to Yellow Bend," he said.

Robbins said he has been impressed with the cooperation among the varied interests in the region and noted the distance from their respective state capitals. "It's a long ways up there from Baton

Rouge, and it's a long ways down there from Little Rock," he said. "Working together, they stand a better chance [at success] than standing separately."

SundayMonday Business on 05/21/2017

Attachment 9

Columbus & Greenville Railroad Studies

R E C O V E R Y
of the Columbus & Greenville Railroad

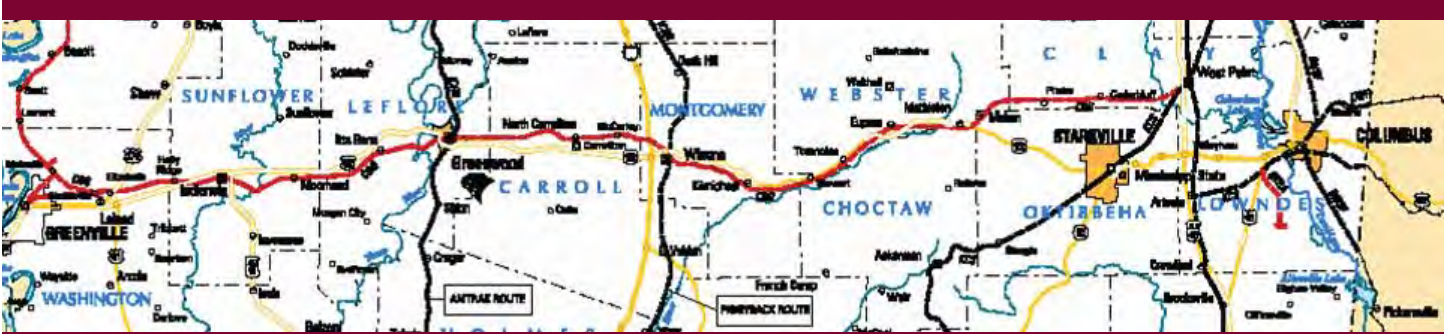


MISSISSIPPI STATE UNIVERSITY

Department of Political Science and Public Administration
and
Industrial Outreach Service



I N T R O D U C T I O N



Today's Columbus & Greenville Railway (C&G) began operation in 1975 to transport freight between Columbus and Greenville, Mississippi. However, the railroad itself has played a major role in Mississippi's agricultural economy since the 1800s, when it was first built to transport cotton and other products from the Mississippi Delta to the Southeastern United States as part of the Southern Railway. The C&G provides feeder traffic for interchange with other railroads as well as local freight service. The majority of C&G business is through interchange. C&G maintains interchange connections with the Burlington Northern Santa Fe Railroad, Luxapalila Valley Railroad, Norfolk Southern, Golden Triangle Railroad, and Kansas City Southern (KSC) at Columbus; with the KCS at West Point and Artesia; with the Canadian National at Winona and Greenwood; and the CSX Transportation Company at Birmingham, Alabama through a car haul agreement with the KSC. C&G also has an interchange with the Great River Railroad at Metcalfe, Mississippi, which serves the Port of Rosedale on the Mississippi River. The railroad's current owner and holding group, CAGY Industries also owns and operates two other short lines, the Luxapalila Valley Railway in Columbus, MS and the Chattooga and Chickmauga Railway in Georgia.

Currently, the C&G offers services from the port at Greenville to Greenwood, Mississippi, and predominately is the carrier of the feed grain products for Heathman Catfish Feed. It also carries cotton oil and cotton mill by-products for Pyco Industries. Additionally, the C&G provides service between West Point and Columbus predominantly for Prestage Farms and Columbus Brick, two local commodity producers.



The company owns 207 miles of mainline track and 104 miles of sidings and passing track between Columbus and Greenville. The lines contiguous east-west operations were closed in March 2001 due to bridge failure and deteriorating track conditions. The 93 miles between Greenwood and West Point are out of service at this date. If the entire line is restored, the C&G could provide attractive new capacity and efficiencies for long distance Class 1 carriers such as the Union Pacific (UP) and Norfolk Southern and CSX Burlington Northern Santa Fe (BNSF), as well as offering improved shipping efficiencies for local Mississippi firms.

Closure of the C&G Railway corridor between Greenwood and West Point severely affected economic development efforts, limited industrial growth, created unemployment, and increased logistic cost for industry in the contiguous counties. The trends in interstate commerce show that its continued closure will continue to do so. If local communities along the C&G want to take advantage of the recent economic development occurring in central Mississippi and future economic development opportunities, it is imperative that they take action to remedy the lack of rail access. If Mississippi wants to continue to attract new industry, particularly to northern and central parts of the state, improvements to rail infrastructure will be necessary. This restoration would mean upgrading the track that would allow 286 thousand pound rail car capacity and is estimated to cost between \$32 million and \$56 million (CAGY and DMJM Harris/MDOT estimates).

I N D U S T R Y R E C R U I T M E N T



Seventy-five percent of industries interested in locating at megasite locations require either rail or want access to rail service. More than twenty-five percent of non-megasite industries desire close proximity to rail access.

Mississippi has enjoyed a surge of economic development in the last couple of years, focused mainly in North Mississippi. Companies such as Severcorr, Eurocopter and Paccar, Inc in Lowndes County and Toyota in Union County are examples of increased interest in Mississippi's economic development model. One should note that these counties have access to either Class 1 or short-line rail service or both.

TVA, in conjunction with MDA, is an economic development engine for the region. TVA serves three counties on the east end of the C&G rail line: Lowndes, Clay, and Webster. To develop rural areas, TVA establishes specific criteria for those who wish to establish Megasites to attract large manufacturers. The Megasite Initiative certifies large industrial properties, or "Megasites," for potential automotive manufacturing or assembly plants. According to Ed McCallum of McCallum Sweeney Consulting, "The demand for certified industrial sites is one of the fastest-growing trends in the site location business, because companies want sites that are ready to go and relatively risk-free." Of the nine certified megasites located in the TVA region, three are sold and all are located in North Central Mississippi with rail access to the property.

MAJOR CONCERN

Without an active rail system, the six counties contiguous to the closed portion of the C&G Railway will most likely never appear in megasite selection searches or searches for smaller industrial sites due to deficient rail access. Lack of rail service may not be the only deterrent to economic development in these counties, but it is an accretive factor.

INDUSTRY RETENTION

Prestage Farms ceased buying local grain due to transportation cost increases of \$2,500 per shipment. The company is now forced to buy its grain out of Iowa.

In 2007, Mississippi increased its corn crop acreage from 350,000 to over 1.2 million acres straining logistic infrastructure.

If the C&G rail line was operational from Greenville to Columbus, SeverCorr would generate logistic savings of approximately \$2.5 million per year.

Industries affected by rail closure or lack of cost effective rail access include agriculture, wood and wood products, and metal scrap. The largest impact resulted in the three western counties served by the C&G: Washington, Sunflower, and Leflore. These counties are located in the Mississippi Delta where the economy is historically based on agriculture and agricultural products. MDES data reveals that from 2004 to a rolling 12-month average of May 2007, these three counties had a 10.9 percent decrease in employment. While these counties currently have rail access, the lack of cost effective west to east logistics service for agricultural products have negatively affected business development. Companies must route products by rail north to Memphis for shipment to the east coast or utilize truck freight, which is more expensive on hauls over 300 miles.

RETENTION ASSESSMENTS

- The C&G would offer direct shipment to Columbus and into Birmingham, thus saving time and money for the customer.
- The current spike in corn production is the result of increased focus in bio-fuels and ethanol production. Interviews with the Mississippi Farm Bureau indicate that the increased corn production strained logistic infrastructure to the point where there are concerns on how this production volume will be stored and shipped in a timely manner to customers.
- Ethanol must ship by rail or truck. The lack of rail access limits job creation in this industry.
- Forestry ranks as Mississippi's number two agricultural commodity with over 61 percent of the state's total land devoted to this sector. When asked if transportation costs are hurting competitiveness, 80 percent of Mississippi companies surveyed responded "Yes."
- The metal scrap industry in Mississippi was negatively impacted due to lack of west-east rail service. Piper Industries, a steel slitting jobber in Greenville, closed operations due to the lack of cost effective freight options.
- C&G company records show missed opportunities amounted to 862 carloads or 12 percent increased volume in 2006 alone due to the rail closure. This volume would help sustain operations and would spawn economic development efforts in the contiguous counties.

TRANSPORTATION RELIEF



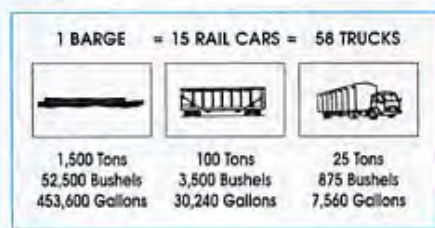
MAP 1: Vicksburg to Artesia

Green – Columbus and Greenville Railway

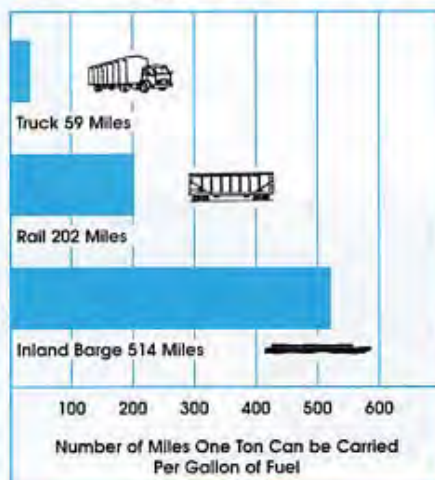
Red – Kansas City Southern Railway

Smaller industries that rely 100 percent on trucking present an unquantifiable potential for economic development in the region. Burdensome transportation costs significantly hinder the growth of smaller industries. Even though a number of smaller industries have located or grown in the region since the closure of the C&G, they are now faced with transportation costs not ever seen or imagined previously due to high fuel costs and truck driver shortages.

Cargo Capacities



Relative Energy Efficiencies



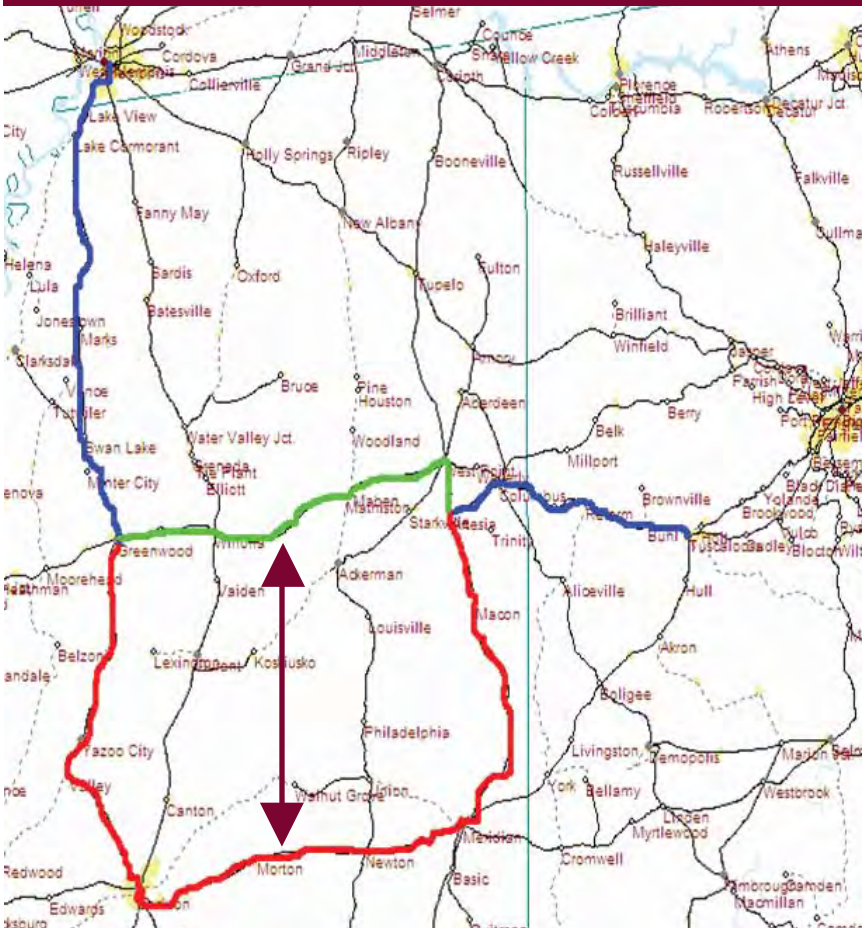
VICKSBURG TO ARTESIA

- The utilization of barge traffic from the Mississippi River for inbound raw material can be problematic for industries in North east Mississippi. Map 1 shows the rail routing for this opportunity. Today, the barge would be unloaded at Vicksburg and railed to Artesia by the Kansas City Southern as seen by the red highlight. Assuming the C&G Railway was operational, this product could ship to the Greenville Port and on to Artesia at approximately 50 percent of the quoted Vicksburg origination.

CONNECTING INDUSTRY & RAIL

- Burdensome transportation costs figured into the recent closure of the West Point meat processing facility of Sara Lee Corporation, which at one time employed as many as 1500 people. Higher feed production costs translated to higher meat costs. These higher costs made it problematic for Sara Lee to produce competitive priced products at the West Point facility.
- Smaller businesses are forced to rely on product traveling scurrilous routes to satisfy the financial objectives of the rail service. Assuming the C&G Railway was operational, anecdotal evidence indicate a cost savings to Lowndes County industry and would favorability impact economic efforts along the rain line.

FREIGHT LOGISTICS COST SAVINGS



**MAP 2: East– West
Shipment Routes**

Revitalization of C&G reduces
approximately 300 haulage miles

Rail traffic in the state of Mississippi will continue to grow and congestion at the major hubs and interchanges such as Memphis, Jackson and Meridian will become logistical challenges. As Class I carriers increase volume, the Canadian National (CN) North/South route and the Kansas City Southern (KCS) East/West routes will create infrastructure capacity issues at the Jackson interchange. Additional congestion will occur due to the Meridian Speedway, part of Norfolk Southern's Crescent Corridor project, passing through both Jackson and Meridian. If the 93 miles of the C&G were revitalized, the North/South traffic from Memphis to Columbus, Artesia and other points east could be routed over the C&G.

SAVINGS ASSESMENT

- Map 2 illustrates the C&G would reduce congestion in the Jackson, MS interchange, relieve capacity issues in Jackson and Meridian, and reduce haulage by approximately 300 miles, creating saving and enhancing delivery time for shipper.
- With the revitalization of the C&G, points in Eastern Mississippi and Alabama could ship to Greenwood and connect to the CN; thereby avoiding logistics issues regarding the KCS in Jackson. This would reduce shipper freight cost, enhance delivery schedules, and create volume that would help sustain the C&G Railway.
- The inability of industries to ship by direct east-west rail has caused business closure, increased transportation cost, and presented lost opportunities for business growth, not to mention the negative impact on economic development efforts in Central Mississippi.

MAP 3: Potential Winona Facility



LOCAL FREIGHT IMPLICATIONS

- SeverCorr will use the Port of Vicksburg to ship other raw material from the West. Routing will be Vicksburg-Jackson-Meridian-Artesia. The C&G's Greenville to Artesia routing could be used assuming the corridor was available. According to company representatives the C&G routing would save approximately \$6 per ton and would result in over \$2.5 million in annual logistics savings. This volume would create approximately 5,000 rail cars of product and according to C&G officials would be enough volume to sustain operations and cover some annual maintenance cost. SeverCorr officials are very interested in a revitalized C&G. (See Map 1)

NATIONAL FREIGHT IMPLICATIONS

- The construction of a Mississippi River bridge that would connect the C&G Railway to major railroads in the United States for use by a major automaker from the Columbus Megasite could positively impact freight cost. A bridge from Mississippi to Arkansas would significantly reduce the number of railway miles, the number of trucking miles, which will decrease the overall shipping costs, creating a significant financial advantage for a major industry to utilize the C&G and the bridge. In addition, the bridge would be an attraction for additional manufacturers to locate facilities in Mississippi along this main rail freight corridor, thus impacting the Mississippi economy.

REGIONAL FREIGHT IMPLICATIONS

- Over 400 Wal-Mart facilities are located throughout Mississippi, Alabama, Louisiana, and Tennessee. There are eight distribution centers servicing these stores. The current distribution centers must service Wal-Mart facilities within 100 miles. Much of Northwest Mississippi does not fall within the 100-mile range resulting in longer truck hauls and, thus, high transportation costs for Wal-Mart. Access to east-west and north-south rail lines and east-west and north-south highway facilities make Winona an ideal location for an intermodal facility. The potential for local traffic for the C&G would be great under this model. Map 3 illustrates how a distribution facility in Winona fills a gap in the Wal-Mart distribution system as indicated with a red circle.

Annual savings using C&G = \$39,348,059

Cost of the bridge = \$100,000,000

Interest rate = 10 percent

Number of years to pay off = 3.1

ECONOMIC DEVELOPMENT OF INFRASTRUCTURE INVESTMENT

Montgomery County, Webster County, and Clay County are Distressed Counties. They rank in the worst 10 percent of the nation's counties. Oktibbeha and Lowndes Counties are considered At-Risk Counties. They rank between the worst 10 percent and 25 percent of the nation's counties.

Staff members of Senator Lott and Cochran pledged to a "tell us what you want and when" commitment.

From the micro-level perspective of an economic developer dealing with specific business site location decisions, the need for adequate transportation access is clear. Essentially all businesses require some level of transportation access to labor, materials and/or customers in order to operate and survive. When transport system investments are made which reduce business operating costs, expand market size and/or improve the breadth of available labor and material inputs, then affected businesses can become more competitive and capture a greater share of the market for their products. This is why a variety of state and regional funding programs have been set up to provide needed access improvements to attract individual businesses to desired areas. (NCHRP Synthesis Report 290). It is vitally important that any opportunities for economic development through the suggested area are considered seriously. Investment in the revitalization of the C&G will result in an investment toward economic development opportunities in the six counties serviced by the rail.

INFRASTRUCTURE ASSESSMENTS

- Interstate commerce today is overly reliant on trucking and our highways and the country's infrastructure will not long sustain it. This crisis can be illustrated through three key points:
 - FUNDING:* Cumulative shortfall to maintain our current transportation system through 2015 is \$42 billion and to improve the system through 2015, the shortfall is \$91 billion.
 - INCREASE in DEMAND:* Trucking is projected to haul 13 billion tons of freight by 2016, compared with 9.8 billion tons in 2004; And in 2016, the American Trucking Association (ATA) projects 3.7 million Class 8 trucks will be operating on the nation's highways, up from 2.7 million in 2004 (Graves, 2006).
 - GLOBALISM and TRANSPORTATION:* Intermodal global supply chain relies on the containerization of freight (Levinson, 2006)."
- Investors the world over have begun to invest in American rail companies—a trend not seen in nearly a century. With rising fuel costs complementing this investment trend, the time is ripe, now more than ever before, to begin significant investment in our national rail service. Connecting the Atlantic and Pacific Coasts with a rail line that runs directly throughout the middle of North Mississippi accounts for a potential that is difficult to quantify but not difficult to imagine.
- In addition to economic growth, discussions of Homeland Security have emerged since the Vicksburg Mississippi River rail crossing is on the top 100 terrorist targets as determined by the Department of Homeland Security. Mississippi's influence in the U.S. Senate is of prime importance to the revitalization effort. Staff members of Senators Lott and Cochran pledged to a "tell us what you want and when" commitment. The State of Mississippi has also shown interest. Meetings with the Governor's staff found them amenable to the project.
- In addition to Congressional support, industry has embraced the revitalization effort. Businesses from Louisiana and Mississippi have verbally committed political and perhaps financial capital to revitalize the Greenville Port and the C&G Railway.

CONCLUSIONS



Closure of the C&G Railway corridor between Greenwood and West Point severely affected economic development efforts, limited industrial growth, created unemployment, and increased logistics cost for industry in the contiguous counties. This detrimental effect on economic development will be compounded as our highways become more burdened and fuel costs continue to rise.

Research indicates the counties with deficient rail service have little opportunity to attract new industry because they do not appear in searches for industry wanting rail; numerous companies along the rail have either closed or have been negatively impacted; new and existing industry at the East and West ends of the rail stand to gain large logistics cost savings; and new traffic generated by new industry could sustain operations of the C&G. Additionally, because Mississippi's logistics costs are 48 percent higher than the rest of the nation, these costs must be off set through the use of incentives. Mississippi's incentives package to Toyota totaled \$293.9 million. Nissan received \$295 million in incentives in 2000 and an additional \$68 million in 2002. Some of these incentives would be unnecessary if investments are made in the state's rail infrastructure, like the C&G, to bring down the logistics costs of doing business in MS.

If local communities along the C&G want to take advantage of the recent economic development occurring in central Mississippi and future economic development opportunities, it is imperative that they take action to remedy the lack of rail access. If Mississippi wants to continue to attract new industry, particularly to northern and central parts of the state, improvements to rail infrastructure will be necessary.

RECOMMENDATIONS



Several initiatives can be taken as a remedy:

SHORT TERM

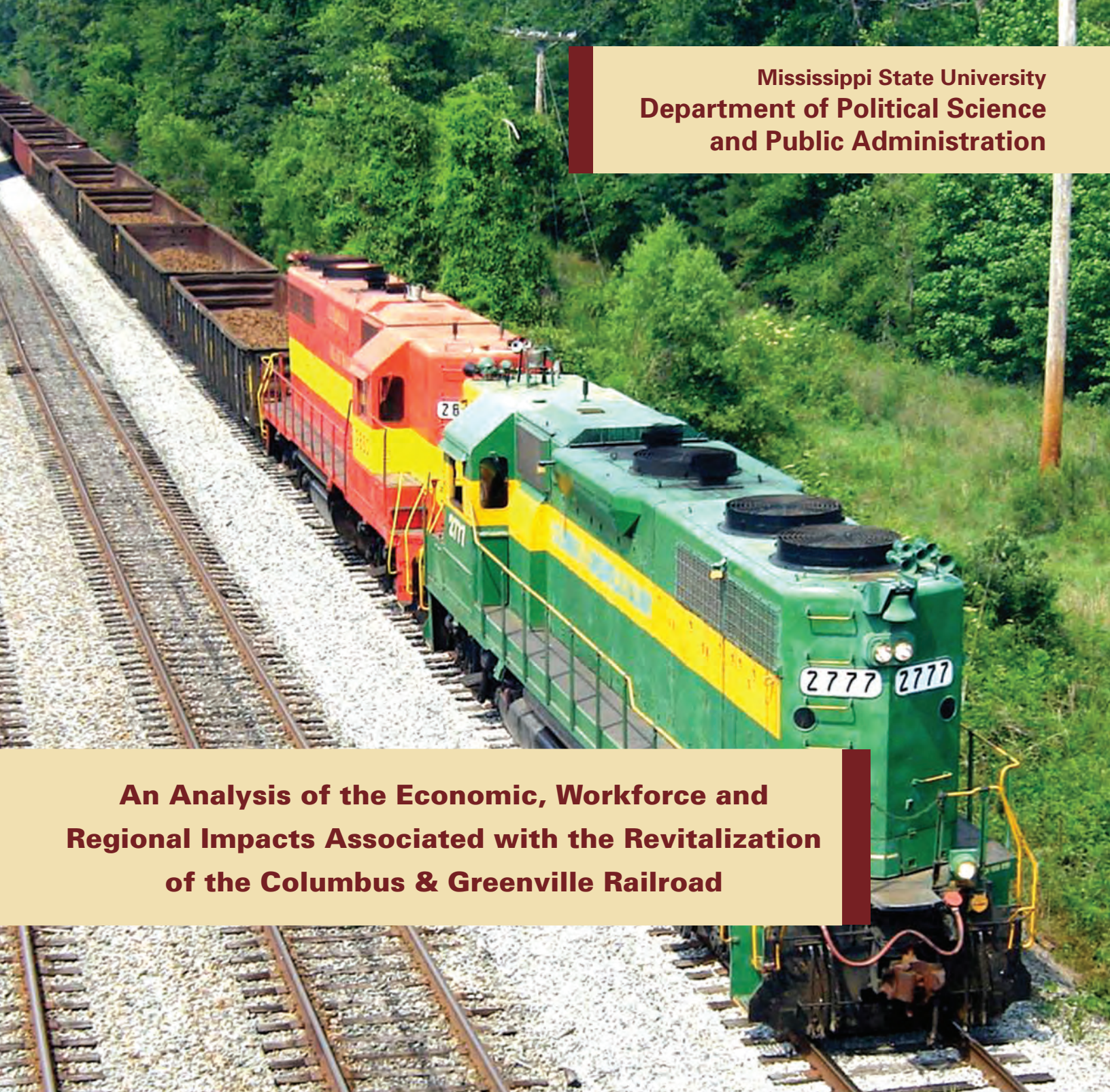
- Establish a rail authority.
- Large industry and interested parties should collaborate to present findings and recommendations to the Director of Mississippi's Development Authority.
- Secure additional revenue to conduct an economic feasibility study with ROI calculations.
- Contact interested parties, private and public, to secure political and financial capital for the revitalization effort.
- Focus energy on the existing local freight traffic and the realization of potential business and industry expansion and development in the area.
- Send a delegation to Washington D.C.
- Pursue possible revitalization funds through both public (federal, state and local) and private sources.

LONG TERM

- Work diligently with Mississippi and Louisiana political leaders for a rail bridge at the I-69 or US 82 Mississippi River crossing at Greenville, MS.
- Work diligently with Alabama and the NS to reestablish rail access in Fayette and Walker County Alabama to gain direct access from Greenville MS to Birmingham, AL.



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Mississippi State University
Department of Political Science
and Public Administration

**An Analysis of the Economic, Workforce and
Regional Impacts Associated with the Revitalization
of the Columbus & Greenville Railroad**

Prepared for:

Appalachian Regional Commission (ARC)

Delta Regional Authority (DRA)

Mississippi Department of Transportation (MDOT)



Acknowledgments

This project was made possible by funding and support from the Appalachian Regional Commission (ARC), Delta Regional Authority (DRA), Mississippi Department of Transportation (MDOT), Mississippi State Community Action Team (MSCAT), the Genesee & Wyoming Railroad (G&W), and several private industries interested in this rail revitalization project. The views, opinions, and statements contained in this article are solely those of the authors and do not represent the official policy or position of the aforementioned funders.

The authors wish to thank the following individuals:

Cynthia Wilson, Chair, NCMRRA
Dennis Daniels, Vice Chair, NCMRRA
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Clay County Board of Supervisors
Lowndes County Board of Supervisors
Montgomery County Board of Supervisors
Webster County Board of Supervisors
Oktibbeha County Board of Supervisors
Leflore County Board of Supervisors
Carroll County Board of Supervisors
Washington County Board of Supervisors
Sunflower County Board of Supervisors
Tommy Hart, Director Port of Greenville
John Hardy, Director Lowndes County Port
Indi Bell
Scott Petroleum
Delta Council



INTRODUCTION

In 2006, a team at Mississippi State University completed the Columbus & Greenville (C&G) Rail Recovery Exploratory Study. This initial study found the closure of the 93-mile section of the railroad between Greenwood and West Point Mississippi had limited economic development and increased both unemployment and logistical costs for industry in the area. In 2009, researchers from Mississippi State University and the University of Southern Mississippi completed nine tasks that examined

economic, transportation, workforce, and engineering data to determine the needs and impacts of the revitalization of this 93-mile rail corridor. The study area encompasses the northern part of Mississippi stretching from the Mississippi River in the west to the Tennessee-Tombigbee Waterway in the east. The counties included in the study are Washington, Sunflower, Leflore, Carroll, Montgomery, Webster, Oktibbeha, Clay, and Lowndes (Figure 1).



Figure 1: Map of the C&G Corridor

C&G REVITALIZATION COST AND ECONOMIC IMPACT

Rail Revitalization's Cost

Included in the scope of the revitalization cost analysis of upgrading the 93 miles of railroad between West Point and Greenwood, MS to 286,000 pounds railcar weight capacity and minimum of FRA Class 2 Track Standards were ROW clearing, rail ties, 115-pound rail, rebuilt public and private crossings, reconstructed bridge work, installation, and numerous other items required to upgrade the railroad. The engineering firm's estimated direct cost for this project was approximately \$87 million. To validate this estimated cost, existing rail lines on like-projects were polled and their estimate was within \$1.4 million of the study's engineering estimate. would be approximately \$99 million in 2009 dollars.



Total Economic Impact

The researchers examined the economic impacts associated with connecting the Port of Lowndes County and the Port of Greenville as well as impacts associated with future industries and businesses that may locate along the C&G corridor. Findings indicate revitalization of the C&G rail line will induce significant economic impact in the region. The following estimate depicts the total projected impact of reestablishing rail freight service between West Point and Greenwood, MS, including new industry opportunities and the construction impacts of these new industries.



TOTAL PROJECT EMPLOYMENT, INCOME AND TAX REVENUE IMPACTS

New Direct Jobs: 1,975

New Indirect Jobs: 3,210

New Personal Income: \$236.8 million annually

New State Tax Revenues: \$14.42 million annually

Connectivity Impacts

The researchers investigated the economic impacts associated with connecting the Port of Greenville and the Port of Columbus via the C&G rail line. According to port personnel, connecting the two ports would enhance current infrastructure investment and provide additional economic impacts.

- **Port of Greenville:** Over the past two years, the Port of Greenville has invested significantly in the infrastructure of the operation due to increased demands and capacity limitations. These investments have created job opportunities and increased personal income. In 2008, the Port invested \$677,000. In 2009, it invested \$100,000, and in 2010 the Port will invest a total of \$3.2 million. In 2011, the Port expansion project will continue investing an additional \$400,000. These investments have created 55 direct and 76 indirect job opportunities.
- **Port of Columbus:** Over the past few years, the Port of Columbus has invested significantly in the infrastructure of the operation. The investments are: 2005 - \$965,000; 2006 - \$247,000; 2007 - \$660,000; 2008 - \$703,000; and 2009 - \$1.39 million for a total investment of \$3.965 million. These investments have created 57 direct and 84 indirect job opportunities.

Furthermore, the revitalized C&G rail scenario could reduce transportation cost by approximately 35 percent over current highway transportation cost, especially when considering those counties that are not currently served by rail. Also, for counties that are within the State of Mississippi and currently being served by rail, the added connections will help to reduce transportation costs on average of approximately 23 percent.

Both the Network Appalachia Global Opportunity Report and the Delta Regional Authority's Multimodal Transportation Assets, Needs and Recommendations Report support the restoration of the C&G Railway Corridor. Respectively, they cite the need "to fully redevelop the cross-state Columbus and Greenville rail corridor, enhancing access to both domestic and intermodal markets for central Mississippi" and the "need to provide railroad service between the Port of Greenville on the Mississippi River and Columbus, MS on the Tennessee-Tombigbee Waterway." These Reports were certified by the agencies full commissions which include representatives from Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia.



The study evaluated biofuel, automotive, metal fabrication and steel, and food processing industries in the region. The following highlights the findings regarding long-term and short-term economic impacts:

Long-Term Economic Impacts

Feasible New Industrial Sites Dependent Upon Direct Rail Access

- Biofuels: A \$53 million biofuel investment on the closed portion of the railroad (Winona) would generate an increase of 25 direct jobs and 144 indirect jobs, increasing personal income by \$7.9 million and state tax collections by \$464,000 each year.
- Automotive: A new “Tier One” automotive supplier creating 240 direct jobs, 436 indirect jobs, would generate an annual total of \$32.9 million in personal income and \$1.9 million of additional annual tax collections.
- Steel Pipe Fabrication: A \$100 million investment would result in 180 direct and 388 indirect employees, producing \$25.7 million in new earnings and increasing state tax revenue by \$1.5 million annually.
- Steel Processing: A \$10 million investment would result in 67 direct and 190 indirect employees, resulting in \$12.9 million in new personal earnings and increasing state tax revenue by \$757,000 annually.
- Steel Processing: A \$6 million investment would result in 52 direct and 145 indirect employees, producing \$9.9 million in new personal earnings and increasing state tax revenue by \$582,000 annually.

Expansion of Existing Industries

- Delta Western (Indianola, MS)—one of the largest feed suppliers to the catfish industry—would likely expand operations, creating 13 direct jobs, 45 indirect jobs, an annual increase of \$2 million in personal income and \$115,000 in new annual state tax revenues.
- USG Interiors (Greenville, MS), a subsidiary of USG Corporation, would likely expand operations, creating 40 direct jobs, 56 indirect jobs, an annual increase of \$4.3 million in personal income and \$255,000 in new annual state tax revenues.
- Phase II of Severstal’s three-phase expansion plan consists of two stages, totaling \$500 million in new investment. In the first stage, \$300 million is invested in the operation. This activity is projected to create 95 direct jobs and 491 indirect jobs. In stage II of Phase II, \$200 million will be invested over a two-year period. This investment activity is projected to create 49 direct jobs and 256 indirect jobs. Together, these investments will generate \$46.1 million in personal

Delta Region corn production is restrained by inadequate transportation options for corn to reach the poultry consumption markets.

income and \$2.7 million in state tax revenue annually as well as 144 direct jobs and 745 indirect jobs.

- Delta Region corn production is restrained by inadequate transportation options for corn to reach the poultry consumption markets. Assuming that approximately 65 percent of this grain is shipped by rail, the renewed rail corridor through the Delta would provide approximately \$15.2 million in annual transportation cost savings to reach these markets, allowing Delta corn growers to expand their market reach and increase their production.

Short-Term Economic Impacts

- Reconstruction of the rail corridor between West Point and Greenwood will create 536 direct jobs, 324 indirect jobs, a total of \$39 million in personal income and increase state tax revenues by \$2.3 million annually over two years.
- Construction jobs associated with the new facilities and expansions outlined above could generate 1,140 direct and indirect jobs, a total of \$53.5 million in personal income and increase state tax revenues by \$3.7 million annually for two years.

TOTAL LONG-TERM EMPLOYMENT, INCOME AND TAX REVENUE IMPACTS

New Direct Jobs: **873**

New Indirect Jobs: **2,309**

New Personal Income: **\$144.3 million annually**

New State Tax Revenues: **\$8.42 million annually**

TOTAL SHORT-TERM CONSTRUCTION EMPLOYMENT, INCOME AND TAX REVENUE IMPACTS

New Direct Jobs: **1,102**

New Indirect Jobs: **901**

New Personal Income: **\$92.5 million annually**

New State Tax Revenues: **\$5.4 million annually**

- Revitalizing the C&G Railroad will result in improved economic development opportunities along the corridor, an additional workforce connection, improved public safety, new competitive routes for existing products, and the retention of existing industry.
- Grain mills, biofuel refineries, steel industries, and automotive suppliers are potential industries that would be attracted to the region,
- Existing companies located on the rail line (e.g., Delta Western, USG Interiors, Severstal, Master Kraft, and Scott's Bio-Fuels) can benefit from the rail line in terms of employment, increased freight choices for shippers, local tax revenues, increased competition, and an overall regional commitment to attract new businesses.
- The steel industry, as one of the major industries in Mississippi, continues to have a major economic impact on the state. Providing the steel industry with the requisite infrastructure is a federal, state and local government responsibility. With improved transportation options, the steel industry will contribute more direct and indirect economic benefits to the state of Mississippi.

ECONOMIC DISTRESS AND WORKFORCE SUMMARY

Table 1 lists the per capita income levels and the unemployment rates of the nine corridor counties and compares them to the national averages. As the information in the table indicates, all of the nine counties in the rail study corridor qualify as economically distressed using at least one of these two criteria for eligibility¹.

Table 1: Per Capita Income Levels and Unemployment Rates of Nine Corridor Counties

County	Unemployment Rate 2010	Unemployment Rate 2009	Per Capita Income 2008	Percent of National Average
National Average	9.7%	9.4%	\$40,166	NA
Clay	19.7	16.9	\$28,301	70.46
Lowndes	12.8	10.3*	\$31,196	77.67
Montgomery	14.6	14.2	\$26,355	65.62
Webster	16.0	13.0	\$23,648	58.88
Oktibbeha	10.7	8.1*	\$29,068	72.37
Leflore	14.7	12.3	\$26,943	67.08
Carroll	11.4	11.7	\$29,753	74.08
Washington	15.0	13.9	\$27,553	68.60
Sunflower	16.3	12.3	\$24,624	61.31

Note: * indicates that number does not reach threshold

¹ The two primary methods that are used to establish distressed status for a given area are 1) that area have a per capita income level 80 percent or less than that of the national average, 2) likewise, an area can qualify by having an unemployment rate at least 1 percent above the national average for the most recent 24-month period.

- All nine counties located within the C&G corridor are classified as distressed areas under the “Public Works and Economic Development Act of 1965, As Amended” (42 U.S.C.).
- Seven out of the ten largest declines in employment within the region from 2002 to 2009 can be seen in production occupations.
- Primary areas of workforce loss in production occupations can be replaced by potential new industry recruitment of steel, furniture, biofuels, and automobile suppliers.

The research team analyzed the workforce status and skills available in each of the nine counties included along the C&G rail corridor. As the workforce summary highlights, the need for the positive economic impact associated with the revitalization of the C&G rail line can not be overstated due to the high level of unemployment and economic distress in each of the nine counties.

Table 2: C&G Total Region: Employment Comparison by Sector

	Employment			
Sector	2002	2009	Change	Current EPW
Agriculture, forestry, fishing and hunting	7,622	7,035	-8.0%	\$28,274
Mining	188	199	6.0%	\$68,663
Utilities	622	471	-24.0%	\$59,270
Construction	6,301	7,238	15.0%	\$44,583
Manufacturing	18,678	11,617	-38.0%	\$50,074
Wholesale trade	4,019	3,822	-5.0%	\$55,156
Retail trade	16,849	14,898	-12.0%	\$26,624
Transportation and warehousing	5,047	5,285	5.0%	\$46,122
Information	1,429	1,432	0.0%	\$35,853
Finance and insurance	3,178	3,205	1.0%	\$35,148
Real estate and rental and leasing	2,867	3,931	37.0%	\$16,259
Professional and technical services	3,658	4,045	11.0%	\$42,393
Management of companies and enterprises	841	819	-3.0%	\$67,026
Administrative and waste services	5,251	6,238	19.0%	\$21,274
Educational services	1,884	1,781	-5.0%	\$17,100
Health care and social assistance	10,524	12,047	14.0%	\$35,391
Arts, entertainment, and recreation	1,755	1,692	-4.0%	\$15,224
Accommodation and food services	8,067	9,181	14.0%	\$14,443
Other services, except public administration	6,901	7,595	10.0%	\$21,934
Government	32,795	33,757	3.0%	\$48,605
Total	138,474	136,290	-2.0%	\$36,728

Source: EMSI Complete Employment - 4th Quarter 2009

EPW: Earnings per Worker

Employment in the region that encompasses the C&G corridor fell slightly from 2002 to 2009. Manufacturing was especially hard hit, losing over 7,000 jobs, a 38 percent decline. Retail trade also saw significant declines, losing over 1,000 jobs (12 percent of the total in 2002). There were some sectors which showed strong growth. For example, health care and social assistance, accommodation and food service, and real estate each added over 1,000 jobs. Table 2 displays this employment data for each sector in 2002 and 2009.



HOMELAND SECURITY BENEFITS

The research team determined possible homeland security benefits associated with improvements made to the C&G rail line. The objective was to investigate two C&G revitalization scenarios. In scenario 1, the research team investigated both the regional and national economic impacts and explored potential railroad traffic gains associated with restoration of the C&G Railway back to an operating condition. In scenario 2, the research team investigated both the regional and national economic impacts and explored potential railroad traffic associated with a new railroad connection from Union Pacific in Arkansas to Birmingham, Alabama. Under this scenario, a new bridge over the Mississippi River would provide a new rail corridor for the growing intermodal traffic between the Southwest and Southeast parts of the United States; it would also provide a rail alternative to highway delivery of commodities in Mississippi.

Another significance of adding a railroad crossing over the Mississippi River is to accommodate traffic in case of manmade or natural disasters on current rail corridors in the region.

- In addition to facilitating the highway trade flows between Canada and Mexico, the completion of I-69 Charles W. Dean Bridge can significantly impact the railroad freight flow in the United States. The Columbus & Greenville Railway can connect to Union Pacific Railroad at McGehee, Arkansas, to the west with less than 20 miles of new railroad track. To the east, the C&G Railway can connect to Birmingham, Alabama, via the Alabama Southern Railroad and CSXT. After Birmingham, the freight on the C&G Railway can be transferred and go to all major cities on the east coast. This new railroad route will bring competitive freight transportation rates to many railroad freight origin and destination metropolitan areas in the nation. Consequently, it could ensure a healthy railroad transportation industry in the future. There will be enormous primary, secondary, and tertiary impacts on our national economy from this new rail corridor.
- This new rail route will also have significant benefits for national security. The new rail corridor will add redundancies in the current railroad networks. Such redundancies could make the national railroad transportation network more resilient and less vulnerable.
- Another significance of adding a railroad crossing over the Mississippi River is to accommodate traffic in case of manmade or natural disasters on current rail corridors in the region. Specifically, a closure of the strained bridges at Memphis due to an earthquake on the New Madrid Fault or a bypass in case the Vicksburg Bridge is lost to a manmade disaster.



REGIONALISM AND THE NORTH CENTRAL MISSISSIPPI REGIONAL RAILROAD AUTHORITY (NCMRRA)

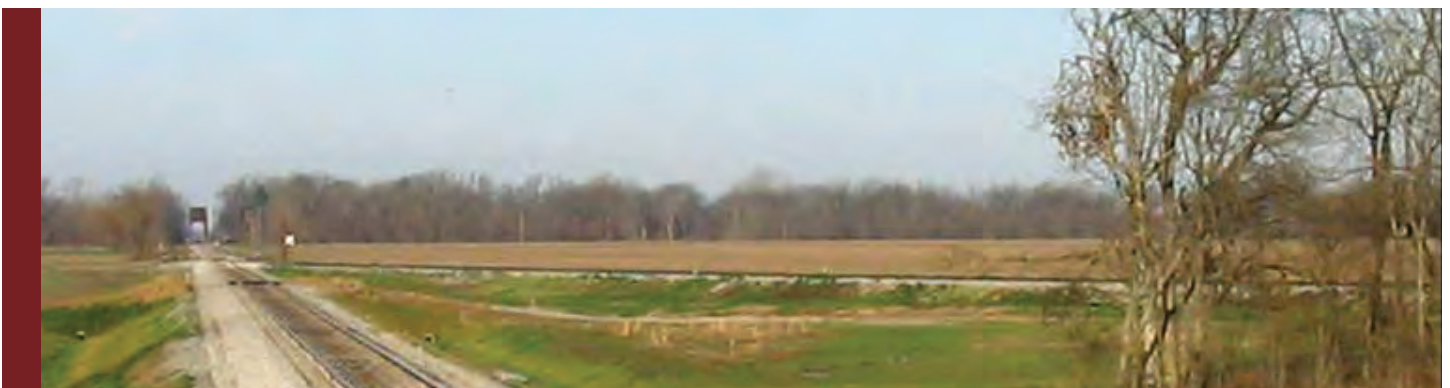
The team at Mississippi State University assisted the nine distressed counties within the region in the form and functionality of the then recently established, but not yet operational, North Central Mississippi Regional Railroad Authority. To facilitate and help implement NCMRRA, the MSU team was instrumental in creating a culture of regionalism across the nine counties and municipalities within those counties. The goal was to help this board's executive body become empowered as the lead organization through which revitalization options for the railroad project can proceed. MSU aided the authority in finding potential funding opportunities, including strategies for revitalization through multisource public-private partnerships.

The initial meeting of the newly formed North Central Mississippi Regional Railroad Authority Board was held in Eupora, MS, on January 29, 2009. The board has been active in helping to inform elected representatives about the economic viability and importance of the project. Efforts have included personal contacts and correspondence to members of the Mississippi legislation and to the MS Congressional delegation. In 2009, due to the efforts of the NCMRRA, \$14 million in funding was initially dedicated for the project through MS HB 1713. However, at the last minute these dedicated funds were moved into a general purpose category.

NCMRRA efforts in 2010 proved more successful. Senate Bill 3181 allocated \$15 million through the Mississippi Development Authority for the repair, reconstruction and improvement of the existing railroad line from the City of West Point to the City of Greenwood, Mississippi. This funding provides seed money for the revitalization project but is contingent upon obtaining an additional \$65 million for the project.

Other general grant funding opportunities are available for possible funding for this revitalization project. The most promising funding opportunities are found in the U.S. Department of Transportation's Transportation Investment Generating Economic Recovery (TIGER), which are discretionary grants for surface transportation projects. NCMRRA is currently in the application process for Tiger II grant funding.

- Participation by the authority in lobbying Mississippi legislators resulted in \$15 million in seed money funding for the rehabilitation project.
- Other funding opportunities exist with the most promising being the TIGER II program.
- Potential funding could be provided as part of the transportation reauthorization bill.
- Potential funding opportunities may exist with the Department of Homeland Security.





Authors

Bethany Stich, PhD

Bill Martin, MPPA

Chad Miller, PhD

Brian Richardson, PhD

Joseph (Jody) Holland, PhD

Bob Eskridge, Graduate Assistant

Kywaii Lawrence, Graduate Assistant

Di Miao, Graduate Assistant

Kenna Walsh, Graduate Assistant



Attachment 10
December 10, 2019
Jon Ryan Proposal

HDR Engineering, Inc.
D 504.218.1227 M 504.229.8317

hdrinc.com/follow-us

From: Magiera, Doree
Sent: Tuesday, December 10, 2019 11:05 AM
To: 'Jon Ryan' <Jon.Ryan@continentalrail.us>
Cc: John Marino <John.Marino@continentalrail.us>; Dino Trevino <Dino.Trevino@deltasouthernrr.com>
Subject: RE: SEAEDD Update - Priority Uses DSRR

Jon

Thank you for providing the list along with priority sections. Based on the project component spreadsheet that Wyly updated yesterday, might be able to do another mile or so based on your per mile estimate.

Regards

Doree Magiera
HDR Engineering, Inc.
D 504.218.1227 M 504.229.8317

hdrinc.com/follow-us

From: Jon Ryan [<mailto:Jon.Ryan@continentalrail.us>]
Sent: Tuesday, December 10, 2019 10:25 AM
To: Magiera, Doree <Doree.Magiera@hdrinc.com>
Cc: John Marino <John.Marino@continentalrail.us>; Dino Trevino <Dino.Trevino@deltasouthernrr.com>
Subject: SEAEDD Update - Priority Uses DSRR

Doree,

Please find the updated uses for the SEAEDD grant money that has been allocated to the DSRR to rehabilitate our portion of the corridor. We believe the plan laid out below will accomplish the overall goal for this section of track leading to Madison Parish Port.

Please let me know if this format is what you are seeking as far as detail, etc.

Priority - Miles

MP	40% Ties per mile	3,500 Tons Ballast per mile	Labor for		Total
			Tamping	Ballast / Miscellaneous	
500	\$ 120,680.00	108,500	6,000	15,180	\$ 250,360.00
499	\$ 120,680.00	108,500	6,000	15,180	\$ 250,360.00
498	\$ 120,680.00	108,500	6,000	15,180	\$ 250,360.00
497	\$ 120,680.00	108,500	6,000	15,180	\$ 250,360.00
496	\$ 120,680.00	108,500	6,000	15,180	\$ 250,360.00
495	\$ 120,680.00	108,500	6,000	15,180	\$ 250,360.00
494	\$ 120,680.00	108,500	6,000	15,179	\$ 250,359.00
493	\$ 120,680.00	108,500	6,000	15,179	\$ 250,359.00
492	\$ 120,680.00	108,500	6,000	15,179	\$ 250,359.00
491	\$ 120,680.00	108,500	6,000	15,179	\$ 250,359.00
	\$ 1,206,800	\$ 1,085,000	\$ 60,000	\$ 151,796	\$ 2,503,596

Don C. Ryan



2929 E. Commercial Boulevard, Suite PH-D
Fort Lauderdale, Florida 33308
904-553-7431

Attachment 11

September 21, 2017 Email from
Matt Prince to Danny Robbins

From: Matt Prince [<mailto:matt.prince@continentalrail.us>]
Sent: Thursday, September 21, 2017 3:33 PM
To: Danny Robbins
Subject: RE: NLA-DSRR corridor rebuild.xlsx

Danny,

We bowed out of the grant application for the time being as we simply cannot afford to spend the cash right now. I did not forward your spreadsheet to anyone so you may want to share that information with HDR. Thanks.

Matt Prince
Director of Operations
Continental Rail



2929 E. Commercial Boulevard, Suite PH-D
Fort Lauderdale, Florida 33308
Email: matt.prince@continentalrail.us
Mobile: (931)309-8721

Attachment 12

October 17, 2017 Letter from
Matt Prince to Elaine Chao,
Secretary of Transportation



October 17, 2017

The Honorable Elaine Chao, Secretary of Transportation
Office of the Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington D.C. 20590

Dear Ms. Secretary:

Please accept this letter as support for the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project that the Southeast Arkansas Economic Development District and its partners are requesting in their 2017-18 INFRA Grant application.

The Southeast Arkansas Economic Development District (SEAEDD), the Port of Lake Providence, LA and the Madison Parish Port, LA are located along an approximately 100-mile-long section of the Mississippi River (the designated M-55 Marine Highway) between McGehee in rural Southeast Arkansas and Tallulah in rural Northeast Louisiana. This section of the Mississippi River between McGehee and Tallulah is also served by a parallel 91.3-mile continuous short line railroad corridor of commerce that interfaces directly with the existing Port of Lake Providence and Madison Parish Port and a yet-to-be constructed rail connection to the separate Port of Yellow Bend near Arkansas City, Arkansas.

This grant will be used to modernize and improve rail safety infrastructure along an important freight corridor and improve the regional connectivity to three inland waterway ports. The infrastructure improvements described in the grant application are needed to provide the ports railroad customers access to the nation's rail network. The improvements will have a significant impact to the region's economic development efforts and will expand the effectiveness and cost savings to regional shippers.

The multimodal improvements described in the grant application will provide shippers in the region with new cost-effective alternatives for delivering their produce and manufactured goods to the nation and to the world, as well as providing a new economic development tool for the region, which is so desperately needed. This application for multimodal freight corridor improvements is a positive step for Arkansas and Louisiana, and a positive step for the region and the nation. Increased transportation of rail and river traffic is important to the growth of our region's and nation's economy.

I appreciate the opportunity to share with you the importance of this project to our firm, our states, and our region, and I urge your expeditious approval of SEAEDD's and its partners application for INFRA program funding.

Sincerely,

Matt Prince
Director of Operations

2929 E. Commercial Blvd., Suite PH-D – Fort Lauderdale, FL 33308
Toll free: 1-855-948-RAIL (7245) – www.ContinentalRail.us

Attachment 13

March 2022 Verified Statement of Craig Huff

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, LA.

Verified Statement of Craig Huff
in Support of
Feeder Line Application filed by
Lake Providence Port Commission

1. My name is Craig Huff. My address is 130 Cedar Street, Delhi, Louisiana, 71232. I am filing this Statement in support of the Feeder Line Application filed by Lake Providence Port Commission (LPPC). I am not, and never have been, an employee of LPPC, the Madison Parish Port Commission (MPPC), Southeast Arkansas Economic Development District (SEAEDD), or North Louisiana & Arkansas Railroad (NLA) or any of its affiliates. This Statement is based on facts of which I have personal knowledge and are true to the best of my knowledge.

2. I have been involved in the railroad industry for over eighteen years. Between June 6, 2015, and August 20, 2018, I was the General Manager of Delta Southern Railroad, Inc. (DSR). In my capacity as the General Manager, I managed DSR's daily short line rail operations over its two lines of railroad.

One line extends from MP 471.0 near the Lake Providence Port to Milepost 500.2 in Tallulah, Louisiana. DSR connects with Kansas City Southern Railway Company (KCS) at MP 498.6 in Tallulah, Louisiana. The other line extends between MP 566 at Monroe to MP 556.18 at Sterlington, LA. Because I was physically located at DSR's headquarters in Tallulah, I oversaw Customer Relations/Marketing.

3. It is my understanding that shortly before I was hired to be DSR's General Manager, the common shares of DSR were sold by its owners, William Wainwright and Linda Wainwright, to West Branch Intermediate Holdings, LLC (West Branch), whose headquarters were located in San Francisco, California. I was hired by J. D. Ventrcek, who was then employed by Continental Rail, LLC (Continental). It is my further understanding that Continental was a noncarrier that had been formed for the purpose of managing the short line railroads that were to be acquired by West Branch.

4. After Mr. Ventrcek left the company, I reported to John Marino, who was Continental's CEO. Because Continental was headquartered in Fort Lauderdale, Florida, Mr. Marino had minimal contact with the Ports and with shippers that sought rail service over DSR's line between Lake Providence and Tallulah. I also had extensive contacts with Jon Ryan, who approved or disapproved all expenditures on a weekly basis. Mr. Ryan, who was physically located in Florida, did not have an office in the State of Louisiana. To the best of my knowledge, he did not have any personal contact with DSR's customers or prospective customers. However, he and John Marino were aware of my

efforts to attract new business and strongly disapproved of such efforts because they interfered with the storage of railcars. In addition, they opposed using funds to rehabilitate the track that was used for storage.

5. In addition to my regular duties, I represented DSR at various meetings of the Consortium that initially joined together in September 2016 to discuss the possibility of jointly seeking INFRA Grants from the United States Department of Transportation (USDOT) to rebuild the entire rail corridor between McGehee and Tallulah . Members of the Consortium included SEAEDD, LPPC, MPPC, NLA and DSR. DSR initially supported the goal of rebuilding the entire corridor. As I learned in March 2021, after DSR refused to commit to the rehabilitation of the 20-mile-Segment of the Corridor between MP 471 and MP 491, LPPC filed its Feeder Application to acquire the 20-mile segment of DSR's track located between MP 471 and MP 491. I have recently learned that LPPC filed a motion to file a supplemental application to acquire the entire segment of the former Lake Providence Line between MP 471 and 498.4 at Tallulah. Because this would result in more efficient service of all shippers who wish to use rail services over the entire corridor between McGehee, Arkansas and Tallulah, Louisiana, I urge the Board to allow LPPC to supplement its original Feeder Application.

6. I have read several of DSR's pleadings, including its Motion to Dismiss Proceeding, filed March 2, 2021; its Motion to Strike the Reply to its Motion to Dismiss filed by LPPC, SEAEDD and NLA; and its Response to Lake Providence Port Commission's Motion to File a Supplemental Application to

acquire the Entire Lake Providence Line Between MP 471.0 and MP 498.6. Based on my personal knowledge, I will address certain comments made by counsel for DSR in opposition to LPPC's Feeder Line Application and by Jon Ryan in his Verified Statement, executed March 24, 2022, that I believe are misleading and erroneous.

7. At p. 3 of its Motion to Dismiss, DSR claimed as follows:

The entire 20-miles of the Line that is the subject of LPPC's Feeder Line Application has no active customers. Indeed, there have been none on the Line for more than three years. DSR is not aware of, and has not been approached by, any prospective customers seeking to originate or terminate traffic from any point along the Line.

8. I strongly disagree with DSR's unsworn comments at page 3 of its Motion to Dismiss that "DSR is not aware of, and has not been approached by, any prospective customers seeking to originate or terminate traffic from any point along the Line." That statement is misleading. While I was involved in Customer Relations and Marketing, I worked closely with Mr. Daniel Robbins, NLA's Vice President, in attempting to develop additional new business for both DSR and NLA. As a result, I was made aware of several prospective customers that wished to move traffic over the corridor to reach KCS or UP, which is the only meaningful way to view the situation.

9. In 2016, I worked for several months with Arkansas Midland Railroad and NLA to route paper commodities from points north of McGehee to Tallulah to be moved to multiple points in the southern part of the United States. The

effort did not result in any movements after DSR put out word in early April 2017 that it had ceased serving the NLA interchange.

10. Later in the year, Mr. Robbins and I traveled to Overland Park, Kansas to meet with Lansing Trade Group. Although Lansing had several potential moves from the Lake Providence area that would have involved DSR, Continental was unwilling to fund the repairs that were needed to provide safe and adequate rail service over the 20-mile-Segment to reach the point of interchange with NLA. The bottom line is that my efforts to attract new customers were actively discouraged by DSR's managers.

11. I must also take issue with Mr. Ryan's statement in his Verified Statement that he has "determined that the records of the Association of American Railroad show that the interchange between DSR and North Louisiana & Arkansas Railroad ("NLA") at Lake Providence, Louisiana has been open for customers to request interchange service since May 1, 2016, after DSR completed track work to restore its connection to NLA." DSR did not come anywhere near the track work that was required to provide safe and efficient rail service for active shippers.

12. Based on my experience as a locomotive engineer, and my knowledge of the track as it existed when I left DSR in 2018, I would not feel safe operating over that line until it is properly rebuilt, especially if the train consist included excessive height boxcars or tall gondola rail cars that are

typically used to transport cotton seed in this area. The same is true of cars that were loaded with hazardous materials.

13. Even if the tracks were not entirely impassible, they were in such poor condition in 2018 that a train could not be safely operated at speeds greater than 5 miles per hour. As noted above, I participated in the preparation of the initial FY 17-18 INFRA Grant Application that was denied by the US Department of Transportation. At that time, we determined that \$11,448,000 would be required to bring the track up to FRA Class 2 status from its excepted track status. At that time, problems with track gage, elevation, alignment, ballast, defective crossties, and rail needed to be addressed. Those problems remained when work began on the 19-20 INFRA Grant Application and could not possibly be addressed by inserting a limited number of used crossties. Until extensive repairs are made, the track will likely remain in FRA excepted status.

14. While we continued to interchange with NLA until August 2017 in order to serve Complex Chemical, which is DSR's largest customer, Matt Prince, another former employee of Continental Rail, and I were ultimately directed to advise NLA that interchange was closed in August 2017 due to track conditions on DSR's track, which was designated as excepted track pursuant to 49 CFR 213.4. As a result, NLA, which had placed multiple cars destined for Complex Chemical in interchange the previous day, had to retrieve the cars and reroute them around the horn to return them to Complex

Chemical. I am not aware that DSR has taken any steps to rehabilitate the 20-mile segment above FRA excepted track status since that time.

15. Another primary reason for the absence of current shippers is that several miles of the mainline track between MP 491 and MP 471 were clogged by hundreds of stored railcars. Because of the lack of sidetracks and the deteriorated condition of the mainline, it required up to four (4) days to clear the Line so that railcars originating at points beyond MP 471 that are destined to Madison Parish Port or to be placed in interchange service at Tallulah could be moved through to the point of interchange. The same is true of northbound trains that originate at the Madison Parish Port or that are received in interchange at Tallulah that are destined to move beyond MP 471 to reach sections of the Corridor that are served by NLA or to be interchanged by it with other railroads at McGehee.

16. When Continental Rail took over the management of DSR in 2015, a substantial percentage of DSR's monthly revenues was derived from the long-term storage of over 400 railcars on that portion of its mainline located between MP 491 and Lake Providence. The new management team, which included J.D. Ventrcek, John Marino and me, decided to cancel an existing storage contract and actively focus on the movement of freight northbound from Tallulah. During this period, DSR began the process of rehabilitating the bridges and some of the rail. However, after Mr. Ventrcek resigned, John Marino made it clear that we were to use the track to store railcars and actively discourage shipments of interchange rail traffic with NLA. That policy was based on the

conclusion that the cost of restoring the track north of MP 491 was greater than the revenues to be earned from interchanging traffic with NLA. In addition, the cost of constantly having to shuffle long strings of stored cars to allow individual freight cars to move over the Line would reduce profits.

17. As a result, when I brought prospective new business to Marino's attention, I was repeatedly told that the new business did not fit DSR's strategic objective, which was to maximize profits by once again focusing on storage of rail cars. The same message was conveyed by Jon Ryan. This put me in the uncomfortable position of having to tell shippers, to whom I had held out the possibility of moving their shipments by rail, that it would not be possible due to conditions beyond my control. This ultimately caused me to resign from DSR.

18. DSR actively sought to discourage interchange by other tactics. By way of example, in late 2016, Danny Robbins alerted me to Bayou Bioenergy (BBE), which was a new customer that had recently opened a facility in Lake Providence and wanted to move to rail service to expand its business. BBE was planning on transloading its product from tank trucks to rail cars at a spur located at MP 462.7, which was about a mile from its new facility. Its goal at that time was to ship about 78 cars per year. Even if the track between MP 491 and MP 471 had been rehabilitated, given the number of cars that were being stored, clearing the track more than once a week would have created an operational nightmare. Although DSR wanted the traffic, it refused to accept the loaded cars from NLA at the interchange point. Instead, DSR demanded

that BBE truck its product to Tallulah to be transloaded into railcars for further movement by rail. It is my understanding that the additional costs associated with trucking to DSR's transload facility in the Madison Parish Port forced BBE to raise the cost of its product, which put it at a substantial competitive disadvantage. This caused the owner of BBE to close the facility and layoff the entire workforce in December 2019.

19. When I resigned from DSR in August of 2018, nothing had been done to rehabilitate the track north of MP 491; interchange had not been reopened; and only the storage of railcars continued. Because I believe that the rebuilding of the entire 91.3-mile rail corridor between McGehee, Arkansas and Tallulah, Louisiana is essential to attracting new rail freight business and spur economic development and growth in this region, I support LPPC's acquisition of the entire line.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Craig Huff, declare under penalty of perjury that the foregoing is based on my personal knowledge and is true and correct to the best of my knowledge and belief.

Executed on March 28, 2022

A handwritten signature in black ink, appearing to read "C. Huff", is written over a horizontal line.

**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 ISSUANCE OF SUBPOENA TO DANIEL B. ROBBINS, ON BEHALF
OF NORTH LOUISIANA & ARKANSAS RAILROAD**

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Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO DANIEL B. ROBBINS, ON BEHALF
OF NORTH LOUISIANA & ARKANSAS RAILROAD**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Daniel B. Robbins, on behalf of North Louisiana & Arkansas Railroad. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Robbins’ verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 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/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**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.**

**SUBPOENA DUCES TECUM TO DANIEL B. ROBBINS, ON BEHALF OF NORTH
LOUISIANA & ARKANSAS RAILROAD, TO TESTIFY IN A DEPOSITION**

To: North Louisiana & Arkansas Railroad
Daniel B. Robbins, President
4416 S. Arkansas Ave
Russellville, AR 72802

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R. § 1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear at the Russellville City Hall, Upstairs Back Conference Room, 203 S. Commerce Avenue, Russellville, Arkansas 72801 at 10:00 a.m. on February 27, 2026, to provide testimony by oral deposition at the request of Delta Southern Railroad, Inc., in the above-caption proceeding. Your testimony will be recorded stenographically, by an officer authorized to administer oaths, and may be used as evidence in this proceeding. The deposition is anticipated to be completed within six (6) hours, but may be continued from time to time until completed. Specific topics for which you will be expected to provide testimony are included in Attachment A to this subpoena.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA DUCES TECUM

Delta Southern Railroad, Inc. (“DSRR”) seeks to depose you in order to obtain relevant evidence to the Lake Providence Port Commission’s (“LPPC”) Amended Feeder Line Application to acquire the Line of DSRR located in East Carroll and Madison Parishes, Louisiana, at issue in STB Docket No. FD 36447 (the “proceeding”). Specifically, DSRR seeks testimony regarding the following topics:

1. All subject matter and facts asserted in Your verified statement submitted in this proceeding, including the factual basis for any such assertions.
2. Rail service provided by NLA.
3. NLA’s safety record.
4. NLA’s route structure.
5. NLA’s financial position from 2020 to present.
6. NLA’s relationship with customers or shippers on the portion of rail line from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana (the “Line”).
7. NLA’s plans for operating the Line.
8. NLA’s financial ability to operate the Line.
9. Rail service provided by DSRR.
10. Interchange of freight between NLA and DSRR.
11. Communications with DSRR regarding rail service.
12. Current and anticipated demand for rail service on the Line.
13. Any contracts or agreements NLA has entered into related to the Line.

14. Drafts and communications regarding Your verified statement in this proceeding with any third party (other than NLA's attorneys).

15. Documents produced by NLA in response to discovery requests propounded in this proceeding.

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**Lake Providence Port Commission—Feeder Line Application--LINE OF
DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF DANIEL B. ROBBINS

1. My name is Daniel B. Robbins. I am the President, and head of Marketing of the North Louisiana & Arkansas Railroad (“NLA”). My address is 4416 S. Arkansas Ave., Russellville, AR 72802. I have personal knowledge of the facts stated herein and am duly authorized to present the Verified Statement on behalf of NLA. By way of personal background, I have been engaged in the railroad industry for 31 years and have 30 years of experience as a railroad engineer. During my career, I have worked as a conductor for the Union Pacific Railroad Company (“UP”) and in various positions, including engineer for the several short line railroads that are owned by Arkansas Short Line Railroad, Inc. (“ASL”), which is NLA’s parent corporation. In addition, I am a designated supervisor of locomotive engineers and a qualified track inspector.

2. NLA is one of the two (2) private short line railroads that partnered with the Southeast Arkansas Economic Development District (“SEAEDD”) and the Lake Providence Port Commission (“LPPC”) and the Madison Parish Port Commission (MPPC) in the public-private partnership (“PPP”) that is known as

the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project. Delta Southern Railroad, Inc. (“DSRR”) is the other short line railroad. In 2019, the PPP successfully obtained a FY 19-20 INFRA Grant from the U.S. Department of Transportation. The Grant funds are intended to be used to re-develop the entire McGehee-Tallulah Railroad Corridor (“the Corridor”), including the trackage between MP 408.9 and the point of interchange with the Kansas City Southern Railroad Company (“KCS”).

3. NLA currently owns, or by lease, operates sections of the Corridor between MP 408.9 and MP 471.0. If LPPC is authorized to acquire the track between MP 471 and the point of interchange with the KCS in Tallulah, Louisiana, NLA will enter into an extended lease with LPPC and, following the Board’s authorization, will operate over the entire Line, which has long been known as the Lake Providence Branch Line. NLA Railroad will operate the line from a point located in the middle of the line to be determined and provide tri weekly service to all stations on the line. This service will commence on the rehabilitation of Segment D, i.e., the DSRR line from Lake Providence, LA to the interchange location with KCS in Tallulah, LA. Until that time, NLA will provide tri weekly service from McGehee, AR to Lake Providence, LA and on demand service from Lake Providence, LA to Tallulah, LA.

4. The receipt of the Grant funds has enabled the owners to rehabilitate the track between McGehee and Lake Providence. Although work on the track continues, it is now possible to safely operate over it. By way of

background, in 2011, NLA began operating on the segment of the Corridor that LPPC and ASL had acquired from DSRR through an offer of financial assistance. The track was in a deplorable condition. As DSRR had admitted in its Petition for Exemption,¹ because of defective cross ties, and track alignment being out of compliance with FRA Class 1 standards at numerous locations, it had to embargo rail operations due to track conditions. DSRR also claimed that “operation of the Rail Line is unprofitable ... [and] there is no reasonable prospect for profitable operations”.² By that time, the shippers that had previously relied on rail service had disappeared and had, out of necessity, turned to trucks to move their traffic to UP in McGehee and KCS in Tallulah. Shippers located in the Madison Parish Port had no option but to use DSRR’s services if they were to continue shipping by rail.

5. To rehabilitate the tracks, NLA and its parent company invested over \$2.0 million of corporate funds. In addition, NLA, working with SEAEDD and LPPC, obtained funding for a portion of the needed repairs from the Arkansas Economic Developmental Commission GIF Funds. The Economic Development Department of the U.S. Department of Commerce also granted

¹ STB Docket No. AB-384 (Sub-No. 3X), *Delta Southern Railroad, Inc. – Abandonment Exemption – In Desha and Chicot Counties, Ark*, filed December 6, 2010, at p. 4 (“Petition”). See Exhibit D, V.S. Gilfoil at Attachment 6.

² Petition at p. 3. DSRR’s actions mirror Wainwright’s earlier comments in FD 34479, *Arkansas Midland Railroad Company-Emergency Service Order-Line of Delta Southern Railroad, Inc.*, dated February 27, 2004, that blamed DSRR’s inability to provide service and maintain and upgrade the Warren Line at the appropriate level for reliable service on the inadequacy of per car revenues. As he also acknowledged, this led to an excessive number of derailments. See Item 4 in Attachment 1 hereto.

SEAEDD and LPPC \$3.5 million to upgrade the track between Lake Village, Arkansas (MP 433.0) and Lake Providence, Louisiana (MP 471.0). NLA also sought Railroad Rehabilitation & Improvement Financing (“RRIF”) funding to rehabilitate portions of the line from McGehee Arkansas to the Arkansas/Louisiana State line. The RRIF loan was denied. Despite those efforts, there was much that remained to be done when the decision was made to establish the PPP and apply for a Grant from the United States Department of Transportation (“DOT”), which administers the Infrastructure for Rebuilding America (“INFRA”) Grants. As the photographs in the INFRA Grant Application demonstrate, in January and February 2019, NLA suffered major derailments due to track conditions that were exacerbated by DSRR’s previous owner and continue to impact safety and reliable rail service.³

6. In the Spring of 2015, I met with William Wainwright, who previously owned DSRR. I was aware at the time of an unmistakable decline in DSRR’s operations and facilities and was interested in acquiring DSRR’s tracks to be able to restore single-line service between McGehee and Tallulah that would link all shippers that are located on the corridor to UP and KCS. During our conversation, he told me that he had recently received an offer of \$3.5

³ See Feeder Line Application, Exhibit B, FY 19-20 INFRA Grant Application, Appendix A at A6 – A10. Prior to the filing with DOT, NLA sought an emergency loan guarantee from the Small Business Administration following these incidents, SBA declined that request. NLA’s inability to fully address the underlying track conditions has impacted multiple customers as NLA has had to embargo the use of the type of gondolas, which average 17 feet in height, that are normally used to transport cotton seeds and similar items.

million but would sell to me if I could match that offer within thirty days.

Before I could arrange my financing, Mr. Wainwright consummated the sale.

Even though I was disappointed, I was later delighted to learn that J.D.

Ventrcek was involved in the sale and would manage DSRR's operations. I first

met Mr. Ventrcek when he was President and Chief Operating Officer of

Weyerhaeuser's Arkansas and Oklahoma railroad operations. He later became

Senior Vice President Corporate Development with Patriot Rail. In addition, he

served as President of the Arkansas Short Line Association and the Chairman

of the Rail Advisory Committee for the State of Louisiana.

7. On August 12, 2015, I was invited to meet with DSRR's officers to discuss future joint efforts to expand and coordinate our rail operations. Mr. Ventrcek and I were joined in the meeting by John Marino. They told me that John Marino and his father had recently set up Continental Rail, LLC ("Continental Rail"). They also implied that Continental Rail's acquisition of DSRR's operations had been financed by a California-based private equity firm.⁴ They assured me that they were fully committed to the task of rebuilding DSRR and were going to improve DSRR's facilities and operations.

⁴ I did not learn that Continental Rail was not DSRR's owner until July 15, 2016. That was the date that Golden Gate reached out to me to acquire all four (4) short line railroads that are owned by ASL. During those negotiations, I learned that Golden Gate had insisted that Mr. Marino was not to reveal Golden Gate's involvement in West Bank Intermediate Holdings, LLC, which had been formed by Golden Gate to acquire DSRR's stock. After several sessions of negotiations with Golden Gate, its offer was declined.

Furthermore, they intended to expand the business by reestablishing DSRR's links to UP at McGehee.⁵

8. This was great news for NLA, which could look forward to substantially increased operations and revenues to be earned from interchange operations with DSRR. I assumed that Mr. Ventrcek would quickly act to reduce DSRR's inventory of stored cars to enable DSRR to reach NLA and satisfy its rail common-carrier obligations that were not served by the storage of railcars on DSRR's mainline, especially when car storage interfered with interchange operations. As a veteran short line operator, Mr. Ventrcek knew that if DSRR were to provide any interchange operations, it would first be necessary for DSRR to clear the entire corridor between MP 471 and MP 491 on every trip before dispatching its locomotive to MP 472.25 to pick up any cars that had been placed in interchange by NLA. As I can attest, the constant need to move several hundred stored railcars every time a single car was placed in interchange would raise logistical nightmares when DSRR does not have any tracks of its own where it can momentarily place the cars that will have to be pushed back into storage after interchanged cars have moved past the line of stored cars.⁶

⁵ As the record reflects, the Lake Providence Branch Line was owned by Missouri Pacific Railroad Company ("MP") until 1989. At that time, UP, which controlled MP, was in the process of selling numerous branch lines that were owned by MP to short line operators in the State of Arkansas.

⁶ It is my understanding that Terry Murphy, the Executive Director of the Madison Parish Port, has detailed the adverse impact on the Port and its

9. To illustrate the severity of the situation, on April 23, 2021, I counted at least 471 cars that DSRR had in storage on the mainline between MP 491.0 and 480.6. Assuming an average car length of 60 feet, the stored cars would create a train that is 28,260 feet (over 5.3 miles) long. That in itself raises questions as to where the cars would be temporarily stored while DSRR's locomotive travels to MP 472.5, where it would pick up cars that NLA would have placed in interchange. If the interchanged cars are to be interchanged with KCS, a further question is raised as to how DSRR expects to pass the stored cars that are temporarily stored on the mainline. Plainly, the storage of railcars on DSRR's mainline is not compatible with efficient interchange operations, which is why Wainwright disabled the track north of MP 471.0.

10. During the meeting, Mr. Ventrcek asked if I would do joint marketing initiatives with Craig Huff, who had worked with him at Patriot Rail. I quickly agreed to do so. Craig Huff and I immediately started looking for new business, which included joint marketing efforts that took us to Overland Park, Kansas, Kansas City, Missouri, Vicksburg, Mississippi, and other places. In fact, when Mr. Huff was asked by Mr. Marino to prepare estimates of shippers and revenues that he and I had identified for inclusion in DSRR's 2016 Budget, Mr. Huff, who was not familiar with NLA's contacts, called me to prepare an estimate of potential revenues that would be earned during the first six (6) months of operations that would follow the reopening of the entire Lake

tenants that is caused by DSRR's switching activities that regularly block road crossings leading to the Port and the Port's private tracks.

Providence Branch Line. As I recall, the estimated revenues exceeded \$600,000. It is my understanding that the estimate was used in DSRR's 2016 budget. A list of customers that indicated they would ship by rail once the tracks were restored is attached hereto as Attachment 4.

11. Consistent with the comments that were made in our June 2015 meeting, the needed repairs were begun. Initial repairs were concentrated on DSRR's bridges, and the track located between the Madison Parish Port (where they had relocated DSRR's headquarters) and the interchange with KCS. For a while, DSRR reduced the miles of stored cars that Wainwright had welcomed. Everything began to change when Mr. Ventrcek left Continental Rail.

12. Before he left, DSRR and NLA began interchange operations for Complex Chemical, which was and still is the largest rail shipper on DSRR's system. While some of Complex Chemical's cars were moved without incident, problems developed that are solely attributed to UP's EDI computer system's failure to recognize that Arkansas Midland Railroad ("AKMD") and NLA needed notification of car movements for DSRR interchange in Lake Providence, Louisiana. That caused UP to fail to alert AKMD and NLA when Complex Chemical's cars arrived in McGehee. That caused cars to be lost in AKMD's yard in McGehee and severely impacted NLA's ability to timely deliver cars to Complex Chemical. I will admit that this generated a series of irate emails from Complex Chemical and Jerry Melton, who is its CEO. Although those problems were finally resolved in early 2017, DSRR, without prior notice, abruptly closed

interchange on August 24, 2017. As I explained in an email that I sent to Gene Higginbotham at SEAEDD:⁷

The NLA interchanged cars on 8/23/17 to the DSRR at Lake Providence. We received word today from Inteletrans that the DSRR said the interchange was closed. After a call to DSRR (Craig Huff and Matt Prince) they confirmed the interchange was closed based upon track issues on the DSRR side. They are suppose[d] to be taking the steps to embargo the interchange. We notified DSRR on Tuesday we had cars for them but they made no mention of a closed interchange. The cars in question will have to be rerouted to DSRR via UP at someone's expense. We are awaiting the rebilling now. The 8 cars in question came in while the State of Louisiana had the NLA removed at Lake Providence for the flood mitigation project. Of the 8 cars in question 3 are Complex chemical cars that arrived on NLA on 4/20, 4/27 and 5/12. The other cars are assigned to Top Rail Solutions as storage cars.

I ended up having to take the Complex Chemical cars back to McGehee to interchange them with UP, which then took them to Monroe and interchanged them with KCS which, in turn, interchanged them with DSRR. After I reached an agreement with Mr. Huff, he drove to the point of interchange and hitched a ride on NLA's locomotive which slowly pushed the Top Rail Solutions' cars to a point on DSRR's track for storage. Most importantly, the fact that Complex Chemical was able to use the track to reach NLA as late as August 2017 belies DSRR's repeated arguments that it was not aware of any prospective customer that sought to make use of its "long-out-of-service" Line. Because Complex Chemical was, and still is, DSRR's largest

⁷ In August of 2017, NLA was working with SEAEDD and sharing information for use in the initial INFRA Application.

customer, how was it possible for Jon Ryan, DSRR's current CEO, to overlook it?

13. In Mr. Melton's Verified Statement, which is filed herewith as Exhibit L, he has provided the Board with estimates that reflect Complex Chemical's need to reach UP directly and avoid having to interchange with KCS and UP to be able to reach customers that are captive UP customers. In addition, he has faulted DSRR's refusal to maintain its rail that has imposed a penalty on Complex Chemical.

14. In addition, Mr. Melton has confirmed Mr. Murphy's testimony, as well as mine, that DSRR's storage activities create problems at the crossing as the entrance of the Port is blocked excessively when DSRR is switching storage cars. Given the above, Complex Chemical supports LPPC's acquisition and restoration of the entire Lake Providence Branch.⁸ Based on the adverse impact of DSRR's multi-year refusal to restore the track between MP 491.0 and MP 471.0, Complex Chemical views "DSRR's owner's self-imposed refusal to bear the cost of maintaining its own line as a restraint on trade and contrary to the public convenience and necessity and the public interest."⁹

15. Apart from the interchange movement, in September 2022, of the specialized Schnable car, no interchange occurred even though Mr. Huff and I unquestionably discovered a current need for service over the entire Lake

⁸ It is noted that Complex Chemical, recognizing the need to preserve rail service, protested MP's abandonment of the Line in 1988.

⁹ Exhibit L, V.S. Melton at p. 3, ¶6.

Providence Branch Line. This, of course, is proved by DSRR's very recent steps to improve the track so that it could showcase its new-found ability to move the Schnable car over the tracks that it finally worked on this past summer. NLA, pursuant to the Trackage Rights Agreement that NLA assumed from LPPC, NLA is permitted to inspect the interchange track between MP 471.0 and MP 472.25. In Section 4 of that Agreement, entitled "Maintenance" DSRR agreed that it shall "at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track conditions. Thereafter, DSRR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs." The term "Joint Trackage," was defined in the TRA as "DSRR's tracks entitled between Milepost Nos. 471 and 472.25." Because Mr. Wainwright never bothered to rehabilitate that little segment to FRA Class 1 status, the provisions of Section 3 have never been applied.¹⁰

16. On March 22, 2022, the day before I announced that the Line between McGehee and MP 471.0 was reopened for full service, I informed Jerry Melton, the CEO of Complex Chemical, that I had one of his cars and would place it in interchange with DSRR. In response, Mr. Melton told me that he had "no confidence that DSR can get to and from Lake Providence over their bad track no matter what they were saying." I have been authorized by Mr. Melton to state that he told me not to place the car in interchange at MP 471, but to

¹⁰ See Attachment 2 hereto, Relevant provisions of the Trackage Rights Agreement.

take it back to McGehee from Lake Providence. I thanked Mr. Melton and told him we would await billing instructions for his car to send it back to UP in McGehee, where it would be forwarded to Monroe, and then moved over KCS, then DSRR to his facility.

17. After my conversation with Mr. Melton, I instructed NLA's track inspector, who is duly qualified consistent with FRA regulations, to inspect the Joint Trackage track between MP 471.0 and 472.25. On March 29, 2022, NLA's track inspector spent most of the day inspecting the track.¹¹ As he discovered, DSRR has recently taken some steps to address the tracks condition, however, he still identified 45 defects between MP 471.0 and 472.2 that include tie defects, gauge defects, cross level defects, broken rail defects, joint bar defects and even a vegetation defect involving a tree down across the track. Given his findings, I must question whether all such defects could be cured in a couple of weeks. If the Joint Tracks had been classified as FRA Class 1, DSRR would potentially face several thousand dollars of fines following an FRA Track Inspector's visit. In fact, the potential of incurring huge fines is preventing NLA from upgrading its track to FRA Class 2 status until all work is completed. Until that is done, all operations will move at the highest speed possible. To the best of my knowledge, the DSRR track, also somewhat improved, will require further rehabilitation after it is acquired by LPPC.

¹¹ See Attachment 3, Track Inspection Report.

18. I, and NLA's other locomotive engineers, have now operated for more than eleven (11) years over the track that is located between MP 408.9 in McGehee and MP 472.25, including time before they were rebuilt with the INFRA Grant funds, there is no excuse for DSRR's prior refusal to take "baby steps" to address the track issues. Because I am aware that Mr. Ventrcek was trying to take those steps from the moment that he was placed in charge of new business development over the track, the failure to continue to take those steps must be attributed to DSRR's San Francisco-based owners who have no apparent railroad experience. Instead of focusing on the needs of shippers and their railroad's common carrier obligations, it is obvious that DSRR's owners did not want rail storage revenues to be diminished. Nor did they want to attract new interchange business that would require them to invest in upgrading their railroad's tracks. As I first learned from Craig Huff in 2021, after Mr. Ventrcek resigned, he was instructed by John Marino and Jon Ryan to stop working with me to develop new business that would require interchange with NLA and to focus on revenues earned from railcar storage.

19. Having spent several millions of dollars to repair the track between 2011 and 2017 when the first INFRA Grant was filed, I do not question DSRR's claim that it would require several million dollars to rehabilitate its track to FRA Class 2 status. However, if DSRR had continued Mr. Ventrcek's efforts to take a series of small steps to make the track passable, similar to the efforts that NLA, SEAEDD and LPPC took, the cost to DSRR's owners of bringing the track to FRA Class 2 status in one giant step would have been far less than the

\$11,448,000 that DSRR originally sought for Rail Infrastructure Rehabilitation to FRA Class 2 status.¹² Based on my long experience in the rail industry, if the track that NLA acquired is used as the basis of comparison, it is readily apparent to me that DSRR's track between MP 471.0 and MP 491.0 continued to deteriorate further after West Branch acquired DSRR in June 2015. As a result, it does not surprise me that if DSRR only spent \$2,300,00 between 2015 and November 2017 to upgrade the entire track between MP 471.0 and the KCS interchange that it might require more than double the amount that NLA needed to rehabilitate the 24.1 miles of track between MP 408.9 and MP 433.0.

20. In the attempt to scale down the project to meet DOT's offer, Jon Ryan, in December 2019, proposed spending \$2,503,596 to rehabilitate the ten (10) miles of track between MP 500 and MP 491 that he referred to as DSRR's "Priority Miles." In her letter, dated March 17, 2020, that requested FRA's approval of scope changes, Patrecia Hargrove requested an allocation of \$3,207,789 to rehabilitate the 20-mile segment to FRA Class 2 status. That proposal, which was accepted by DOT and FRA, would leave only \$704,193 to be spent on the segment between MP 471.0 and MP 491.0 if \$2,503,596 were to be spent to rehabilitate Ryan's "Priority Miles." Using DSRR's cost estimate, DSRR (or its successor) would need an additional \$8,200,211 to cover the cost

¹² See Feeder Line Application, Exhibit B, INFRA Application at Table 4: Future Eligible Costs by Segment.

of bringing the segment of track between MP 471.0 and MP 491.0 to FRA Class 2 status.

21. By way of comparison, the section of track that NLA acquired from DSRR is 24.1 miles in length as compared with DSRR's section, which is 27.6 miles in length. The highest bid to reconstruct NLA's track was \$5,308,297, while the lowest bid was \$4,163,507. DSRR's estimate, which covers 27.6 miles of track, is more than double the bids that NLA received for similar mileage. Either DSRR is exaggerating the costs required to rehabilitate its track or DSRR has done very little to repair its share of the Lake Providence Branch other than rehabilitate Mr. Ryan's 10 priority miles.

22. Because Matt Prince, Continental Rail's Director of Operations, in an email dated September 21, 2017, told me that "We bowed out of the grant application for the time being as we simply cannot afford to spend the cash right now," I was aware that DSRR was struggling. However, having worked with Craig Huff to develop new business that reflected several hundred thousand dollars of potential income in the first six (6) months after the track between MP 471.0 and MP 491.0 was repaired, I could not understand why none of our joint efforts had produced any new revenues. Nor could I understand the reasons for Mr. Huff's seeming indifference to look for other business development opportunities prior to his resignation from DSRR. In any event, no one at DSRR reached out to me to renew such activities after Mr. Huff resigned as DSRR's General Manager.

23. It was months after LPPC filed its original Feeder Line Application (November 12, 2020) that I finally learned what had happened. In March of 2021, I received a call from Mr. Huff who told me that he had been reading the pleadings in the proceeding and was troubled by comments in some of DSRR' pleadings. He suggested that we should try to contact Donald Bush who had been the manager of a small company named Bayou Bioenergy ("Bayou") He also provided Mr. Bush's cell phone number.

24. Mr. Huff's call caused me to recall that in December 2016, I had been contacted by Mr. Bush who advised me that Bayou had recently opened a facility in Lake Providence and was currently moving all of its product by truck. However, he was attempting to expand Bayou's business to include shipments by rail of glycerin product and wet methanol to some new customers. He also wanted to know whether his company could use a NLA spur line located in Lake Providence for purposes of transloading product from Bayou's facility that was located within a mile of the spur. We had several conversations about potential movements and the need to work jointly with DSRR to move product over the KCS, which offered lower rates to certain locations than UP, which could be reached directly from Lake Providence.

25. I explained that to reach KCS, NLA would spot tank cars on the spur at MP 469.0 for loading and then move them to the point of interchange that had been established with DSRR between MP 472.2 and 472.5 just to the south of Lake Providence, a distance of only 3.5 miles. DSRR would then move

the loaded tank cars directly to KCS at Tallulah. At that time, we were interchanging freight with one another at the above-mentioned location.

26. Mr. Bush and I then contacted Mr. Huff who, at the time, was DSRR's General Manager. During our conversations, Huff expressed a willingness to work with NLA and Bayou to handle the shipments consistent with the reestablished interchange between DSRR and NLA. After the initial conversations with Mr. Bush, I did not hear further from Bayou and assumed, based on occasional sightings of trucks entering and leaving Bayou's facility in Lake Providence, that it had not yet reached the point where rail service was needed.

27. As Mr. Huff explained in our conversation in March 2021, after we spoke about the Bayou project in 2016, he had been directed to refuse interchange with NLA and to tell Bayou that it would only work if it trucked its product to the Madison Parish Port. Thereafter, without speaking further with me, he had refused to interchange with NLA in Lake Providence and forced Bayou to truck its product to DSRR's transload facility at Madison Parish Port for placement in tank cars.¹³

28. A bit later in 2021, Mr. Huff further explained that after Mr. Ventrcek resigned from Continental Rail in late 2016, he had been informed by John Marino and Jon Ryan that because new business did not fit DSRR's

¹³ Mr. Bush's Verified Statement that confirms the foregoing is attached as Exhibit K.

strategic objectives, he was to stop working with me to develop new business and inform shippers that due to conditions beyond his control, it would not be possible to move traffic that involved an interchange with NLA.

29. The bottom line is that there are multiple customers on the NLA track that for several years could not receive any rail service over two thirds of the Lake Providence Branch Line because of Wainwright's attempts to abandon various segments of the Line. After the sale to West Branch, DSRR's repeated refusal to upgrade its track so that it could accept interchange at Lake Providence also interfered with shippers' efforts to receive adequate rail service. Such shippers include PotlatchDeltic, Clearwater Paper, as well as Livingston Pecan and Metal, Inc. Although they have repeatedly expressed an interest in gaining access to KCS, this has proved to be impossible due to DSRR's refusal to open its track between MP 471 and MP 491. As a result, these companies, and several other shippers in the area are still "waiting to see what happens" while continuing, in some instances to ship via truck at a greater expense to themselves, and to the detriment of the local community.

30. Since 2017, there have been several instances when DSRR, under its new ownership, declined to interchange traffic with NLA at MP 471. In addition to the incident that was previously discussed which involved Complex Chemical's cars, in 2019, Epstein Gin and Transload Co. tried to ship cottonseed out on NLA to be interchanged with KCS. DSRR refused to accept the cottonseed. In 2020, Complex Chemical had both loaded and empty cars on

the UP interchange in McGehee Arkansas bound for Madison Parish, Louisiana. Because DSRR advised UP and NLA that it would not come to Lake Providence to retrieve the cars, the cars had to be re-routed to the UP at McGehee, and then to the KCS at either Shreveport or Monroe, Louisiana and then to DSRR for delivery to the customer. This resulted in increased costs and delay to all parties.

31. The foregoing actions not only harmed the shippers, but they also harmed and interfered with the joint efforts of LPPC, SEAEDD, MPPC and NLA to improve rail operations and thereby benefit the rural region and help catalyze greater opportunities for economic development. That, of course, was recognized by the DOT when it provided financial assistance to the unique public-private partnership. In addition, the foregoing actions, which are contrary to the public convenience and necessity, have financially harmed NLA and adversely impacted its ongoing efforts to rehabilitate the entire Lake Providence Branch Line that DSRR's owners allowed to deteriorate and refused to rehabilitate so that they could collect the "easy money" earned from car storage and switching fees. As they recognized, storage of several hundred cars at a time, did not require them to upgrade the track between MP 471.0 and 491.0.

32. The prior owners, Wainwright and Golden Gate Financial and the holding company, West Branch Intermediate Holdings, LLC, that Golden Gate established in 2015 to acquire the DSRR stock, must be held accountable for

the condition of the track and the failure to take action to repair and provide their common carrier obligations. Because Wainwright is deceased, he cannot be held accountable. The same is not true of the current owners. After terminating Continental Rail in January 2021, they caused DSRR, which had previously recognized the need to rehabilitate the *entire* Line to reverse course and announce that it has “concluded that the desired track renovations as to the long-dormant Line are unjustified and unwarranted.”

33. Because DSRR did not provide any evidence to explain what it meant for “long-dormant,” I was asked to respond to that claim. As I explained at length in my Supplemental Response to Delta Southern Railroad Inc.’s First Set of Interrogatories Nos. 1 through 6:

In 2019, Richard Livingston, of Livingston Pecan & Metal Inc., which is located in Lake Village, Arkansas, requested me to run rates via KCS to Columbus, MS and Jackson, MS for scrap metal. I provided the rates but could not pursue the traffic because of the inactive interchange with DSR.

Epstein Gin and Transloading Company have had customers ask for rates over KCS to BNSF destinations. In May 2017, Morgan Wells with US Commodities (now “Ag Motion”) requested rates. Rates were supplied but again we did not pursue the business because of the inactive interchange with DSR. In 2019, Paul Scruggs with Lansing Trade Group, LLC attempted to send its 2019 crop south over DSR but Dino Trevino, a DSR employee, said in a phone call that DSR could not take the cars. The same information was also given to Epstein and Paul with Lansing Trade Group (now the Anderson group).

Lansing also expressed interest to both myself and Craig Huff, who was employed by DSR, when we were at the offices of Lansing in Overland Park, Kansas in 2016 about moving corn from the Lake Providence facility over KCS to southern Mississippi feeder markets. This meeting led to the inclusion of

funds in the INFRA Grant to partially cover the cost of rehabilitation of 700 feet of track and the planned installation of 1,000 feet of new track to the Lansing Grain facility in Lake Providence. See Statement of Work Segment C (MP 454.8 to MP 471.0) at p. 7.

Complex Chemical shipped until March 2017 cars in and out on NLA from DSR. Some of these shipments are still going on but would be more cost effective if routed over DSR to NLA instead of UP, KCS and DSR for pricing and transit time concerns.

Additionally, in 2019 Complex had cars arrive in McGehee bound for Madison Parish Port. Lauren Sullivan with UP asked NLA to take the cars to Lake Providence and we agreed to do so. However, she had to call the move off and reroute the cars after DSR informed her they were unwilling or unable to come and receive the traffic in Lake Providence.

Rail Vehicle Services (RVS) is a railcar shop that is in the process of locating in the Madison Parish Port. During personal meetings with DSR and a joint telephonic meeting with DSR and NLA in August 2017, RVS management informed me and Matt Prince, DSR's former Director of Operations, that RVS will have an absolute need for both a UP and a KCS connection.

In 2020, Neil Martin with Terral River Services inquired about resuming shipments of cottonseed from the Madison Parish port to UP for PNW destinations when the grant is complete and the track in good condition. Additionally, they have looked at inbound aggregate originating on UP points that would move to the port of Madison Parish.

In March 2019, Chris Whallon with PotlatchDeltic expressed a desire to use the Corridor for loading lumber at Epstein for shipment to KCS when the corridor is open. These moves would be primarily to markets located in Mexico.

Clearwater Paper, which has a major facility in Cyprus Bend, Arkansas, expressed an interest in making paper movements to certain KCS destination and has had a joint meeting with KCS, AKMD, NLA and DSR representatives regarding such movements.

Almost all of this information is in the INFRA grant application which DSR is privy to or was in emails between NLA and DSR employees Craig Huff, Matt Prince, and J D Ventreck.

During the course of preparing the INFRA Grant Application, I prepared information for HDR regarding NLA's anticipated movements following completion of the reconstruction of the entire line. At that time, I anticipated that NLA would move approximately 1000 cars over UP and 1000 cars of local traffic on NLA. These figures were joined with figures submitted by DSR to produce Table 4, which HDR included in in Table 4 of Appendix C, at p. 18, Section 5.3, Table 4: Demand Projections, Build case. Because DSR projected that it would move approximately 1200 railcars in 2024 following rehabilitation over KCS, this allowed me to realize that approximately 3048 railcars would likely move in interchange between DSR and NLA over the segment. Given DSR's active participation in preparing the projections, its employees were aware of these projections as far back as 2019.

34. Because DSRR could not contest any of the above, DSRR moved to strike my evidence. In the Board's Decision, dated June 1, 2021, the Board denied DSRR's motion to strike. Furthermore, I will note that DSRR has never produced a single sworn statement from anyone that has rebutted or disproved any of the foregoing remarks. Although Jon Ryan presented a Verified Statement earlier this year, it is noted that Mr. Ryan, who was based in Florida, was never, to best of my knowledge, extensively involved with shippers and prospective shippers while the INFRA Grant Applications were being prepared. In fact, as is discussed elsewhere in this Application, he freely admitted in an email, dated December 4, 2019, addressed to Doree Magiera, HDR's person who put together the statistics that appear in the INFRA Grant Application, that he was not privy to what was discussed during the past two years.

35. In closing, I respectfully note that everything that I have testified about in this Verified Statement that relates to actual and potential movements

of freight in interchange traffic between NLA and DSRR, can be and is corroborated by Craig Huff, who was DSRR's General Manager in Tallulah between 2015 and 2018, when he resigned.¹⁴

36. Consistent with the requirements of 49 CFR § 1151.3(a)(8), a copy of NLA's current liability insurance is attached hereto as Attachment 5.

I, Daniel B. Robbins, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 28th day of December 2022.



Daniel B. Robbins

¹⁴ See Exhibit H.

Page 2 from
Affidavit of William P. Wainright in
Docket No. 34479 dated February 27, 2004

1. DSR has “functionally” ceased operations on the Warren Line:

DSR response: Although I am not sure what AKMD means by the term “functionally,” DSR has not ceased operations. Rather UP’s Warren Wilson has advised DSR to suspend operations until it obtains derailment and bill of lading insurance. UP’s letter to the STB dated February 20, 2004, submitted with AKMD’s Petition as Exhibit 3 states that “to our knowledge there has been no service on the Warren Branch for approximately two weeks.” I am attaching an email from Potlatch’s Ben Garner which states that we were going to move some rail cars but suspended loading upon learning that DSR did not have derail insurance and which states Potlatch’s plans to shift transportation to truck for three weeks. As discussed below, DSR is in the process of repairing defective track and obtaining derailment and bill of lading insurance. It has locomotives and personnel in place and is ready to resume service as soon as the customers are ready to return to using rail.

2. No shipper on the line has received service for at least two weeks.

DSR response: As recently as February 9, 2004, Fulghum attempted to use DSR’s service. It stopped loading on February 9 at Potlatch’s direction because Potlatch had been informed by Joel Blalock of UP that DSR lacked derailment insurance. Moreover, on-line shippers have made other arrangements for moving traffic (by truck for transloading to UP). DSR is prepared to resume railroad operations as soon as customers are ready to tender freight.

3. Potlatch and Fulghum have been forced to divert their significant volumes of rail traffic to motor carriers.

DSR response: As per instructions from Potlatch’s Ben Garner and Rick Warner, Potlatch has elected to divert its traffic to truck for three weeks. Potlatch has also directed Fulghum (which operates a woodchip mill under contract to Potlatch) to move its product by truck to the UP. As discussed above, DSR is prepared to resume rail service when shippers are ready to ship by rail.

4. DSR is apparently facing significant financial difficulties.

DSR response: DSR is a profitable company. Unfortunately, as discussed below, the per car revenues derived from operating the Warren Branch have not been adequate to permit DSR to provide service and maintain the Line at the appropriate level of maintenance for reliable service, let alone upgrade the Line to permit it to handle 286,000 freight cars or earn DSR’s cost of capital. DSR’s loss of derailment and bill of lading insurance was due to an excessive number of derailments (9 between March 2, 2003 and January 28, 2004) rather than financial problems. See, the Affidavit of Louis Schillinger submitted with the Reply.

Trackage Rights Agreement

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT (TRA) is made and entered into as of this 26th day of , May, 2011, between DELTA SOUTHERN RAILROAD, INC. (DSR) and LAKE PROVIDENCE PORT COMMISSION (the Port).

WITNESSETH:

WHEREAS, DSR has agreed to sell to the Port DSR's rail lines between Milepost No. 471.0, at or near a certain highway barn in East Carroll Parish, Louisiana, and Milepost No. 454.8 at the Louisiana-Arkansas State Line, and between Milepost No. 433.0 at or near Lake Village, Arkansas, and Milepost No. 408.9 at or near McGehee, Arkansas, a total distance of approximately 40.3 miles ("the purchased rail line"); and

WHEREAS, a sidetrack and a lead track that are used to provide rail service to warehouses and a dock owned by the Port ("the sidetrack and lead track"), extend from DSR's rail line between Milepost Nos. 471 and 472.25, a short distance south of the purchased rail line; and

WHEREAS, the Port desires to operate over DSR's tracks between Milepost Nos. 471 and 472.25 ("the Joint Trackage"), for the purposes of accessing, switching and servicing the Port's sidetrack and lead track; and

WHEREAS, DSR is agreeable to permit the Port to operate over the Joint Trackage, but only in accordance with the terms and conditions of this TRA, including a condition that DSR be permitted to continue to operate over the sidetrack and lead track to place loaded cars and to pick up empty cars at the Port's warehouses.

NOW, THEREFORE, DSR and the Port agree as follows:

SECTION 1 - GRANT OF TRACKAGE RIGHTS

1.1 Subject to all terms and conditions of this TRA and subject to the Port obtaining any necessary regulatory authority or exemption, DSR hereby grants to the Port the non-exclusive right to operate over the Joint Trackage on an overhead rather than local basis, for the purpose of accessing the sidetrack and lead track to or from the purchased rail lines, and for no other purpose whatsoever.

1.2 The Joint Trackage is shaded in yellow, and the sidetrack and lead track are shaded in blue, on a drawing that is attached to this TRA as Appendix 1.

1.3 Under no circumstances may the Port permit any third party to use any or all of the Joint Trackage without DSR's permission, except as set forth in Section 18.

1.4 DSR shall continue to have the right to use the sidetrack and/or the lead track to place loaded cars and to pick up empty cars at the Port's warehouses-

SECTION 2 - TERM

2.1 This TRA shall become effective on the date when it has been signed by both parties and shall continue in effect for a term of 20 years from that date, provided, however, that DSR may elect to terminate this TRA if the Port has breached a material provision of this TRA and has failed to cure such breach within 60 days of receipt of a written request by DSR to cure such breach. So long as the Port is not in default, the Port may renew this TRA for an additional term of 20 years by giving written notice to DSR at least 90 days prior to the expiration of the initial term.

2.2 Upon termination of this TRA by means of expiration or as a result of an uncured breach, the Port agrees to discontinue operations over the Joint Trackage and to seek any necessary regulatory authority or exemption for such discontinuance.

SECTION 3 - COMPENSATION

3.1 In lieu of a trackage rights fee, the Port hereby agrees to pay to DSR a proportionate share of the actual, reasonable, verifiable costs incurred by DSR to maintain FRA Class I track standards on the Joint Trackage. DSR and the Port hereby agree that their respective proportionate share of maintenance costs will be based on relative usage of the Joint Trackage in each calendar year provided, however, the annual amount of maintenance shall be pro rated for the first and last year of this TRA. As an illustration, if in a calendar year the Port were to have transported 90 percent of the loaded and empty cars that were transported over the Joint Trackage, the Port would pay 90 percent of the actual maintenance costs incurred by DSR during such calendar year. DSR shall provide the Port a detailed schedule of the costs incurred, including the dates, descriptions of the work done, costs incurred and applicable back-up invoices by no later than each January 20 during the term of this TRA. The Port shall be entitled to audit the records of DSR related to the maintenance of the Joint Trackage within one year after the date that the schedule is provided to the Port.

3.2 By not later than each January 20 during the term of this TRA, DSR and Port shall each certify to the other the number of loaded and empty cars moved by each during the calendar year then ending. The Port shall make its payment of the proportionate share of maintenance cost to DSR on or before January 31st. DSR and the Port shall each be entitled to audit the records of the other within one year after the date of their respective certifications; any necessary payments or refunds after the audit shall be paid by the responsible party within 20 days after the results are provided.

3.3 Reserved.

3.4 Notwithstanding the foregoing, until DSR rehabilitates the Joint Trackage into Class 1 track condition as provided in Section 4.1 below, no compensation shall be due for use of the Joint Trackage by the Port.

SECTION 4 – MAINTENANCE

4.1 The Port shall provide DSR with a notice of its intent to use the Joint Trackage not later than ninety (90) prior to its intended date of use (the "Notice of Intent to Use Joint Trackage"). Upon receipt thereof, DSR shall then, at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track condition. Thereafter, DSR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs.

4.2 DSR shall maintain, repair and renew the Joint Trackage with its own supervision, labor and materials. DSR shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use reasonable efforts to avoid such interruptions.

4.3 If DSR does not rehabilitate or thereafter maintain the Joint Trackage in FRA Class 1 track condition, then Port may, at its option but without any obligation to do so, after giving DSR 30 days advance notice, perform work on the Joint Trackage to bring the Joint Trackage into FRA Class 1 track condition. Any costs incurred by Port in doing so may be deducted from future trackage rights payments.

SECTION 5 - TRAIN DISPATCHING

5.1 DSR shall have the right to dispatch trains over the Joint Trackage in a manner that ensures safe operations. If DSR does not have dispatchers available at the time that the Port wishes to operate over the Joint Trackage, then the Port may do so as permitted under the General Code of Operating Rules.

5.2 All rules, regulations, and orders for dispatching trains over the Joint Trackage shall be reasonable, fair, and just between DSR and the Port, and shall not unjustly discriminate against either of them.

5.3 With respect to the operation of trains, locomotives, and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations, and orders promulgated by any governmental body or agency having jurisdiction.

SECTION 6 - LIABILITY AND INDEMNIFICATION

6.1 General.

(a) The provision of this Section 6 shall apply only as between the parties hereto and their affiliated persons and entities, and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than such parties. It is the explicit intention of the parties hereto that no person or entity other than such parties is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, such parties hereto.

Track Inspection Report

Page: 1/4

**NORTH LOUISIANA & ARKANSAS RAILROAD
TRADING EDITIONS INCORPORATED**

DATE OF INSPECTION 3/29/22

THACKER INSPECTIVE: PAPER ABOVE PROPS MP 471.0 TID MP 472.25

OTHER THAN 1.100E

QUOTED INSTEAD Pet lead Switch

DEVIATIONS FROM REQUIREMENTS

LOCATION	DESCRIPTION	REMEDIAL ACTION TAKEN
	See Attached	

8:45 AM

THE Rock Inspector

MP 471.0

Joint Tie Defect- No effective tie within 24 in. 109B3

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B2

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B2

Cross level Defect- Greater than allowable 3 in. 3 1/4 in. 0063A3

Cross level Defect- Greater than allowable 3 in. 3 1/4 in. 0063A3

Joint Bar Defect- Insufficient number of bolts. Only one bolt present. 0121D2

Joint Tie Defect- No effective tie within 24 in. 109B3

Joint Bar Defect- Insufficient number of bolts. 0121D2

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 471.1

Gauge Defect- Gauge less than 56 in. 55 5/6 in. 0053B2

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B2

Joint Tie Defect- No effective tie within 24 in. 109B3

Joint Tie Defect- No effective tie within 24 in. 109B3

Joint Bar Defect- Center Cracked joint bar. 0121C1

Broken Rail Defect- Broken rail, ordinary break. Inside of Joint Bar 0113D12

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B3

MP 471.2

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B3

MP 471.3

Gauge Defect- Gauge less than 56 in. 55 5/8 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 3/8 in. 0053B3

Broken Rail Defect- Broken Rail, ordinary break. Inside of Joint Bar 0113D12

MP 471.3

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 471.4

Gauge Defect- Gauge less than 56 in. 55 7/8 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 5/8 in. 0053B3

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Cross level Defect- Cross level greater than 3 in. 3 1/4 in. 0063A3

Gauge Defect- Gauge less than 56 in. 55 1/2 in. 0053B3

MP 471.5

Cross level Defect- Cross level greater than 3 in. 3 1/8 in. 0063A3

Gauge Defect- Gauge less than 56 in. 55 3/4 in. 0053B3

Gauge Defect- Gauge less than 56 in. 55 5/8 in. 0053B3

MP 476.7

Cross level Defect- Cross level greater than 3 in. 3 1/8 in. 0063A3

Gauge Defect- Gauge less than 56 in. 55 11/16 in. 0053B3

Cross level Defect- Cross level greater than 3 in. 4 1/4 in. 0063A3

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

MP 471.9

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 472.0

Gauge Defect- Gauge less than 56 in. 55 7/8 in. 0053B3

MP 472.1

Broken Rail Defect- Broken Rail, ordinary break. Inside Joint Bar. 0113D12

Joint Bar Defect- Center Cracked joint bar. 0121C1

Joint Bar Defect- Insufficient number of bolts. 0121D2

Joint Bar Defect- Insufficient number of bolts. 0121D2

MP 472.2

Vegetation Defect- Tree down across the tracks. 0037C1

Gauge Defect- Gauge less than 56 in. 55 7/8 in. 0053B3

Client List

1. Stepan Company formerly Myriant Chemical	Lake Providence, LA
2. Clearwater Paper Corp	McGehee, AR
3. Livingston Pecan and Metal	Lake Village, AR
4. Epstein Gin & Transloading Company	Lake Village, AR
5. Hollybrook Gins & Warehouse	Hollybrook, LA
6. Riceland Foods	McGehee, AR
7. Sullivan Log Yard	Sondheimer, LA
8. Anderson Trade Group	Lake Providence, LA
9. Hensley Farms (Former Big River Grain)	Eudora, AR
10. Greenfield (Former Big River Grain)	Lake Providence, LA
11. Rail Vehicle Services	Talla Bena, LA
12. Helena Chemical	Lake Providence & Talla Bena, LA
13. Nutrien (Former CPS)	Lake Providence, LA
14. Terral River Services	Lake Providence & Talla Bena, LA
15. MD Power	Lake Village, AR
16. Simplot (Former Lake Village Seed and Tire)	Lake Village, AR
17. Gavilon (Former CHS)	Lake Providence, LA
18. APEX	Lake Providence, LA
19. Scott Petroleum	Lake Village, AR
20. Complex Chemical	Talla Bena, LA
21. John Deere	Lake Providence, LA

Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/11/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of Arkansas, Inc. 706 W. Main Russellville AR 72801	CONTACT NAME: Rhonda Smith PHONE (A/C, No, Ext): (479) 968-3333 FAX (A/C, No): (479) 968-4439 E-MAIL ADDRESS: Rhonda.Smith@bbrown.com																					
INSURED Arkansas Short Line Railroads, Inc. 4416 South Arkansas Ave Russellville AR 72801	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Westchester Surplus Lines Insurance Company</td><td>10172</td></tr><tr><td>INSURER B:</td><td>Auto-Owners Insurance Company</td><td>18988</td></tr><tr><td>INSURER C:</td><td>Starr Surplus Lines Insurance Company</td><td>13604</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Westchester Surplus Lines Insurance Company	10172	INSURER B:	Auto-Owners Insurance Company	18988	INSURER C:	Starr Surplus Lines Insurance Company	13604	INSURER D:			INSURER E:			INSURER F:		
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INSURER C:	Starr Surplus Lines Insurance Company	13604																				
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** 22/23**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☐ OCCUR ☒ Comprehensive ☒ Railroad Liability GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:			G71758333004	11/10/2022	11/10/2023	EACH OCCURRENCE \$ 10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ Excluded GENERAL AGGREGATE \$ 20,000,000 PRODUCTS - COMP/OP AGG \$ 10,000,000 Retention \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			4671056100	03/01/2022	03/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Equipment Floater			ITA11198721	12/10/2021	12/10/2022	Rented/Leased \$200,000 Deductible \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

(Comprehensive Railroad Liability Policy), FELA provides Employer's Liability Coverage as prescribed under the Federal Employers Liability Act as the sole remedy for railroad employee injuries.

CERTIFICATE HOLDER**CANCELLATION**

INFORMATION PURPOSES ONLY
INFORMATION PURPOSES ONLY
INFORMATION PURPOSES ONLY
INFORMATION PURPOSE

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Rhonda Smith

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Additional Named Insureds

Other Named Insureds

Camden & Southern Railroad, Inc.	Corporation, Additional Named Insured
Dardanelle and Russellville Railroad, Inc.	Corporation, Additional Named Insured
North Louisiana & Arkansas Railroad, Inc.	Corporation, Additional Named Insured
Ouachita Railroad, Inc.	Corporation, Additional Named Insured

**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 ISSUANCE OF SUBPOENA TO NEIL MARTIN, ON BEHALF OF
TERRAL RIVERSERVICE, INC.**

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

**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 ISSUANCE OF SUBPOENA TO NEIL MARTIN, ON BEHALF OF
TERRAL RIVERSERVICE, INC.**

Delta Southern Railroad, Inc. (“DSRR”), by counsel, pursuant to the Board’s January 16, 2026 order, as amended, and 49 U.S.C. §§ 1113.2(b) and 1114.21, *et seq.*, moves the Board for issuance of a subpoena to Neil Martin, on behalf of Terral RiverService, Inc. A copy of the proposed subpoena is attached hereto as **Exhibit A**. A copy of Mr. Martin’s verified statement in this proceeding is also included for reference as **Exhibit B**.

The grounds for this Motion are stated in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas filed contemporaneously herewith.

WHEREFORE, for the reasons stated herein and in DSRR’s Omnibus Brief in support of Motions for Non-Party Subpoenas, DSRR respectfully requests the Board grant this Motion, issue and endorse the subpoena attached hereto as **Exhibit A**, and award DSRR any further relief as the Board deems appropriate.

Respectfully Submitted,

/s/ John M. Scheib

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

Attorneys for:
Delta Southern Railroad, Inc.

February 9, 2026

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

Mr. Michael F. McBride
Van Ness Feldman
2000 Pennsylvania Ave, NW
Suite 6000
Washington, DC 20006
mfm@vnf.com

Noah P. Sullivan
919 East Main Street, Suite 1130
Richmond, VA 23219
Tel: 804-956-2069
nsullivan@gentrylocke.com

Thomas D. Crowley
1501 Duke Street, Ste. 200
Alexandria, VA 22314
tc@lepeabody.com

Mr. Ernesto Andre Silva Cruz
Terral RiverService, Inc.
112B Monument Place
Vicksburg, MS 39180
ernestoc@terralriverservice.com

Mr. Glover Alcorn "Russ" Russell, Jr.
Glover Russell, P.A.
The Plaza Building
120 N. Congress Street, Ste. 600
Jackson, MS 39201
Phone: (601) 709-7000
russ@gloverrussell.com

Mr. William L. Mencer
Law Office of William L. Mencer, LLC
P.O. Box 523
Lake Village, AR 71653
Phone: (870) 265-6737
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Mr. Jacob A. Brister
Brister Law Firm, PLC
318 Morgan Street
P.O. Box 266
Lake Providence, LA 71254
Phone: (318) 559-5800
jacob@bristerlaw.com

/s/ William L. Spotswood

William L. Spotswood
Dated: February 9, 2026

**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.**

**SUBPOENA DUCES TECUM TO NEIL MARTIN, ON BEHALF OF TERRAL
RIVERSERVICE, INC., TO TESTIFY IN A DEPOSITION AND PRODUCE
DOCUMENTS**

To: Terral RiverService, Inc.
c/o Neil Martin, Vice President
10100 Hwy 65 South
Lake Providence, LA 71254

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R. § 1114, *et seq.*, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear at Lake Providence Municipal Courtroom, 201 Sparrow Street, Lake Providence, Louisiana 71254 at 9:00 a.m. on February 23, 2026, to provide testimony by oral deposition at the request of Delta Southern Railroad, Inc., in the above-caption proceeding. Your testimony will be recorded stenographically, by an officer authorized to administer oaths, and may be used as evidence in this proceeding. The deposition is anticipated to be completed within one-half of a business day, but may be continued from time to time until completed. Specific topics for which you will be expected to provide testimony are included in Attachment A to this subpoena.

YOU ARE ALSO COMMANDED to produce the items described in Attachment B to this subpoena by 9:00 a.m. on February 23, 2026, to Delta Southern Railroad, Inc., c/o GENTRY LOCKE ATTORNEYS at Lake Providence Municipal Courtroom, 201 Sparrow Street, Lake

Providence, Louisiana 71254 by physical copy or electronic mail to William L. Spotswood, Esq. (spotswood@gentrylocke.com) and J. Cole Gayle, Esq. (CGayle@gentrylocke.com), or at such time and place as the attorneys for Delta Southern Railroad, Inc. and you agree.

DATED: February 9, 2026

Administrative Law Judge Jenifer J. Soulikias: _____

ATTACHMENT A TO SUBPOENA DUCES TECUM

Delta Southern Railroad, Inc. (“DSRR”) seeks to depose you in order to obtain relevant evidence to the Lake Providence Port Commission’s (“LPPC”) Amended Feeder Line Application to acquire the Line of DSRR located in East Carroll and Madison Parishes, Louisiana, STB Docket No. FD 36447 (the “proceeding”). Specifically, DSRR seeks testimony regarding the following topics:

1. All subject matter and facts asserted in Your verified statement submitted in this proceeding, including the factual basis for any such assertions.
2. Requests for rail service made by Terral RiverService, Inc. (“Terral”) to DSRR.
3. Rail service provided to Terral by DSRR.
4. Requests for rail service made by Terral to North Louisiana & Arkansas Railroad, Inc. (“NLA”).
5. Rail service provided to Terral by NLA.
6. Costs and effectiveness of transportation options for Terral, as comparing trucking, rail, and other alternatives.
7. Current and anticipated demand for rail service by Terral.
8. Drafts and communications regarding Your verified statement in this proceeding with LPPC (including its counsel) or any third party.
9. Documents produced by Terral in response to a subpoena duces tecum in this proceeding.

ATTACHMENT B TO SUBPOENA DUCES TECUM

INSTRUCTIONS AND DEFINITIONS

1. “Document(s)” shall mean anything on or in which data or information is recorded or stored, including, but not limited to: writings or representations of every kind, correspondence, electronic mail and files, text messages, memoranda, notes, statements, paraphrases or summaries of statements, drawings, tabulations, charts, graphs, plans, maps, sketches, photographs, brochures, diaries, records, rules, regulations, summaries, reports, report forms, studies, papers, work papers, letters, books, notebooks, schedules, lists, worksheets, agreements, contracts, records of telephone calls or any other communications or conversations, telegrams, teletypes, radiograms, cables, discs, tapes or any other forms of mechanical recordings of all statements not reduced to writing, film, microfilm, computer printouts and computations potentially generated to summarize information stored in computer storage by whatever means. The word “Document(s)” also includes, but is not limited to, all handwritten, typed, printed and photocopied matter, including all marginal notations and drafts, duplicates, carbon copies and any other copies thereof, all electronically stored documents such as information stored on computer drives, hard discs, diskettes, floppy discs, DVD, CD, memory sticks, any other means of electronic storage, and all information posted online such as information posted on social media or a blog, even if such information was later edited or deleted.

2. The connectors “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests any information that might otherwise be construed to be outside the scope of the interrogatory or request.

3. The word “person” shall mean any individual, firm partnership, corporation, association, business or governmental entity or subdivision, agency, department, and any “person” acting by or through, directly or indirectly, and other “person” as well as any “person” by whom such “person” was controlled with respect to the matter in question.

4. The word “including” shall mean “including but not limited to.”

5. “Terral,” “You,” and “Your” shall mean Terral RiverService, Inc. and each of its agents, attorneys, accountants, consultants, officers, commissioners, employees, independent contractors, and any other individual or entity associated or affiliated with it or purporting to act on its behalf.

6. “DSRR” shall mean line-owner Delta Southern Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

7. “NLA” shall mean the North Louisiana and Arkansas Railroad, Inc., and each of its agents, attorneys, accountants, consultants, officers, directors, employees, independent contractors, affiliates, and any other individual or entity associated or affiliated with it, or purporting to act on behalf of it.

8. The “Line” means the portion from milepost (“MP”) 471.0 to MP 498.44 of the DSRR line that runs from Lake Providence, Louisiana (MP 471.0) to the point of interchange with the Kansas City Southern Railway Company (“KCS”) at Tallulah, Louisiana, which is the complete and only subject of the amended feeder line application filed on January 3, 2023.

9. The phrase “request for rail service” shall mean any request made by Terral to DSRR that is specific to a commodity and date that DSRR provided said rail service.

10. “Proceeding” shall mean Surface Transportation Board Docket No. FD 36447.
11. “Verified Statement” means the Verified Statement of Neil Martin dated December 14, 2022, and that was submitted in LPPC’s Amended Application in the Proceeding.
12. Responsive documents should be produced as they are kept in the usual course of business, or organized and labeled to correspond with the categories in these requests.
13. Procedure for production of ESI: All metadata is to be included on every document, email, etc. produced electronically. All E-mails are to be produced in PST format. All data and documents to be produced electronically shall be produced using a Concordance Load File. Documents produced in PDF format should be text searchable (OCR). All documents stored in electronic format should be produced in electronic format.

DOCUMENTS REQUESTED:

1. All Documents referenced or relied upon in the Verified Statement.
2. All Documents regarding rail service by DSRR, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
3. All Documents regarding rail service by NLA, including requests for rail service, interchange service, derailments, delays in service, costs of service, or failures to provide service.
4. All Documents regarding the condition of the Line, including to any alleged inability of the Line to transport safely 100 ton gondola cars used by Terral.
5. All Documents sufficient to show Terral’s qualifications regarding rail safety.
6. Documents sufficient to show all Terral rail shipments received or sent on the Line from January 1, 2000 to present, including the railroad that transported each shipment.

7. All documents regarding DSRR's storage of railcars on the Line, including any alleged impact to Terral as a result of such storage.
8. All Documents regarding decisions to ship by rail or by truck, including cost analyses, price quotes, and other comparisons.
9. All Documents regarding any refusal by DSRR to take steps to maintain, rebuild, or improve the Line.
10. Any shipper surveys received or completed related to rail shipping.
11. All Documents regarding the proceeding, including any communications regarding, or drafts of, the Verified Statement.

Terral RiverService, Inc.

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket FD No. 36447

**LAKE PROVIDENCE PORT COMMISSION—FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN EAST CARROLL AND
MADISON PARISHES, LOUISIANA**

VERIFIED STATEMENT OF NEIL MARTIN

1. My name is Neil Martin. I am the Vice President of Terral RiverService, Inc. Our address is 10100 Hwy. 65 South, Lake Providence, LA 71254. My telephone number is 318-559-1500. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of Terral RiverService, Inc. ("Terral").

2. As its name reflects, Terral River Service, Inc. is a river transportation service company specializing in the bulk storage and handling of dry and liquid materials along the Mississippi River system, including the inland waterways of Louisiana and southern Arkansas. Services offered include terminal dock operations, custom barge operations, bulk storage, and bulk material handling. Given our activities, we are heavily involved with the efforts of the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project ("Project"). That project was intended to modernize and improve rail infrastructure along the very important freight corridor that provides shippers the potential ability to reach both the Union

Pacific Railroad Company ("UP") at McGehee and the Kansas City Southern Railroad ("KCS") at Tallulah.

3. Because we strongly believe that the Project will have a significant impact to the region's economic development and will expand the effectiveness and cost savings to the regional shippers, Terral supported the INFRA Grant Application that was filed in 2019 that resulted in a significant grant. It is my understanding that Terral's letter of support is included in the INFRA Grant Application that was approved by DOT. Our support stemmed from the strong support that was offered by the two short line railroads that were operating over the rail corridor between McGehee and Tallulah which, until 1988, was operated by the Missouri Pacific Railroad as part of its Lake Providence Branch Line. Although the Interstate Commerce Commission approved the abandonment of the Line, over the objection of many shippers who were located along the Line, the Line was never physically abandoned until later when William Wainwright, after acquiring the Line, allowed it to deteriorate. Fortunately, the Lake Providence Port Authority ("LPPC"), the Southeast Arkansas Economic Development District ("SEAEDD") and the North Louisiana & Arkansas Railroad ("NLA") jointly acquired the track between McGehee and the entrance to the Lake Providence Port from Wainwright. Had they not acquired it, the region would have suffered a devastating economic impact.

4. Because Wainwright continued to hold ownership of the last 28+ miles of the Lake Providence Branch, that segment continued to deteriorate. The deterioration in service adversely impacted Terral's operations at both the

Lake Providence Port and the Madison Parish Port. As a result, news of Continental Rail's acquisition of the last segment of the Lake Providence Branch Line was well received. According to the public statements from Continental Rail's new management team, they intended to rebuild the Line and eliminate storage of railcars on DSRR's mainline that continuously adversely impacted Terral's operations at the Madison Parish Port. For a while, the new team took steps to rebuild the track that extends between the Madison Parish Port and the intersection with KCS. However, little was done to restore the track that is located between the two ports. When DSRR joined with the other owners of the Lake Providence Branch Line in applying for the INFRA Grant Application, it appeared that the entire Line would be rebuilt. When the United States Department of Transportation ("DOT") announced the Grant in 2019 that required funds to be used to rehabilitate the twenty miles of track between the Ports, it seemed certain that the primary goals that prompted DOT to fund the rehabilitation of the entire corridor would be achieved.

5. As I belatedly learned, DSRR is actually owned by a private equity firm that did not support the efforts that were made by Continental Rail and by every other party that worked with the Applicants to obtain the INFRA Grant. Furthermore, I am aware that DSRR's new management team has stated on the record that it has concluded that there is no reason to rehabilitate the track. Given that attitude, Terral fully supports the sale of the DSRR's assets to LPPC. That sale will be consistent with the public convenience and necessity

and the public interest. Furthermore, that result will satisfy the goals that DOT has sought to promote.

6. I have advised NLA that Terral has interest in shipping cottonseed from the Madison Parish Port to UP when the track is in good enough condition to move the 100 ton gondola railcars that are used to transport cottonseed. Terral will not take a chance on risking an expensive derailment until it can be proven that the track that is located between mileposts 471.0 and 491.0 can handle such cars. Moreover, as I have previously advised NLA, Terral will also consider moving inbound aggregate that originates on UP points that would move to the Madison Parish Port. Because the additional costs associated with movements from McGehee to Monroe and then to KCS and DSRR are much higher than direct rail service between McGehee and Madison Parish Port, Terral will not consider that alternative.

7. I urge the Board to find that the forced sale of the track to LPPC is consistent with the public convenience and necessity as it will eliminate unnecessary and expensive multiple interchanges over a short line of railroad. Moreover, local ownership will help to guarantee the economic development of the region. The many environmental and financial benefits that will follow the shift back to rail from trucks that have been recognized by DOT should not be ignored.

VERIFICATION

I, Neil Martin, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 14th day of December, 2022.

A handwritten signature in blue ink, appearing to read "Neil D. Martin", is written over a horizontal line.

Neil D. Martin
V.P. of Services