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March 11, 2026      310998

**VIA ELECTRONIC FILING**

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

ENTERED  
Office of Chief Counsel  
March 11, 2026  
Part of  
Public Record

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

Dear Chief of Case Administration:

Attached to file in the above-captioned proceeding is the Delta Southern Railroad, Inc.'s Response to Appeal of Administrative Law Judge's Ruling.

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

Respectfully submitted,

*/s/ John M. Scheib*

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Attorney for:  
Delta Southern Railroad, Inc.

cc: ALJ Soulikias  
Parties of Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 36447**

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

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**DELTA SOUTHERN RAILROAD INC.’S RESPONSE TO APPEAL OF  
ADMINISTRATIVE LAW JUDGE’S RULING**

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**Dated: March 11, 2026**

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The appeal by Complex Chemical Company, Inc. (“Complex”) and Lake Providence Port Commission (“LPPC”) of a decision by the Board-appointed ALJ (“ALJ”) in this proceeding is meritless.<sup>1</sup> They appeal only one element of the ALJ’s decision, which overruled their numerous objections to issuance of a subpoena to Complex. Complex is the largest shipper on the Line served by DSRR, and it submitted a verified statement in support of LPPC’s Amended Application harkening to events going all the way back to 1988. DSRR sought discovery from Complex regarding core issues in this case. The ALJ balanced the relevance of the document requests with any burden on Complex and issued a modified subpoena, which narrowed the temporal scope to 1999 to the present, and further narrowed two of the eight requests. Complex and LPPC make two arguments in support of their appeal: (1) that Complex

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<sup>1</sup> Complex Chemical Co., Inc.’s and Lake Providence Port Comm.’s Joint Appeal of One Aspect of the ALJ’s Feb. 27 Decision and Order, STB Finance Docket No. 36447 (STB filed Mar. 5, 2026) (hereinafter “Appeal”).

should not have to produce documents that might already be in DSRR's possession; and (2) that 1999 is too far back in time. Both arguments lack merit.

First, the ALJ correctly issued the subpoena for Complex to produce all documents within its custody, possession, or control that are responsive to a set of document requests targeted to get at information that likely only Complex has. The appeal contorts the ALJ's decision into something it is not. It is erroneous to argue that the subpoena issued by the ALJ included requests for documents that were totally, completely, and already in DSRR's possession. Instead, the Complex subpoena plainly seeks relevant documents that are *not* likely in DSRR's possession, including Complex's internal opinions regarding DSRR and NLA's service, as well as analysis of shipping options on the Line or by truck. The requests plainly target far more than any potential minor overlap with documents DSRR may already have in its possession. Accordingly, the ALJ correctly decided that the fact that DSRR *might* have a document within the requested documents is "beside the point" because the requests target relevant subject matter and DSRR cannot know before the fact the universe of documents Complex possesses.

Second, the ALJ established the proper temporal scope of discovery based on the Amended Application. The temporal issue is a problem of LPPC's making, and it has no right to have it both ways in this proceeding. The Amended Application begins a more than 40-page, one-sided history in 1988. So too, the Complex verified statement begins in 1988. Amended Application, Exhibit L, at ¶2. The Administrative Law Judge ("ALJ") therefore ruled correctly (absent a ruling from the Board limiting the relevant time period in this proceeding) to require Complex to produce documents for substantially all of the period of time addressed in the Amended Application and in Complex's verified statement. Decision 52942 at 9.

Complex and LPPC now suggests that the Board should limit discovery “to the last three years, i.e. January 1, 2023, to the present, which would be consistent with the filing of the Amended Application herein on January 4, 2023.” Appeal at n. 10. Such a limitation would also roughly coincide with when Patriot Rail acquired and began to operate DSRR a transaction that the Board approved as in the public interest – effectively providing the remedy of a feeder line case, which is a new operator.

That suggestion is indeed ironic. During meet and confer sessions, DSRR offered to limit the temporal scope of the discovery requests to 2020, but only if LPPC would agree that that would be the relevant time period for the merits portion of this proceeding.<sup>2</sup> LPPC declined and asserted that the entire time covered by the Amended Application is relevant. Attachment A (email from LPPC’s counsel rejecting limitation of 2020 to present). The ALJ’s ruling is consistent with LPPC’s position.

The documents in Complex’s possession are particularly important because, although the Board did not make any substantive factual findings about Complex’s verified statement yet,<sup>3</sup> it did say:

DSR argues that Complex Chemical’s verified statement “does not and cannot claim inadequate service” because that would contradict an earlier statement submitted on November 12, 2020. (DSR Mot. 12, Jan. 13, 2023.) However, DSR fails to consider the possibility that circumstances may have changed since then. Moreover, it is not clear that there is a contradiction. *In any event,*

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<sup>2</sup> DSRR chose 2020 because that would at least encompass the period of time for which LPPC makes allegations about service to Complex as evidence for one element of the public convenience and necessity test. Amended Application at 63-64 (making an allegation about February 2020).

<sup>3</sup> The ALJ addressed LPPC and Complex’s misguided argument in contravention of the plain language of the Board’s Decision No 51875 that the Board was not making any factual findings. “LPPC and Complex argue that the Board made findings of verified evidence. (Joint Reply 9-10.) They are mistaken. Again, the Board reviewed LPPC’s Amended Application for completeness.” Decision No. 51875 at 8.

*any contradiction that does exist would go to the weight and credibility that should be afforded to Complex Chemical's more recent statement in a proceeding on the merits of the amended application, following evidence and arguments that DSR will remain free to present.*

Decision No. 51875 at 8.<sup>4</sup> This discovery from Complex is essential to DSRR's due process rights especially when: Complex's statements for litigation at the Board are different from the statements made in the ordinary course of business (including as recent as the summer of 2025) that DSRR has seen; Complex concedes that it is a customer whose freight DSRR has and is moving where it needs to move; Complex concedes its traffic is being interchanged by DSRR to DSRR's only Class I connection; and Complex makes no allegation that it made a reasonable request for service that was unmet.

## **I. BACKGROUND**

### **A. The Amended Application**

This case began with the filing of an amended feeder line application on January 4, 2023, by the LPPC ("Amended Application"). The Amended Application seeks a forced sale of a rail line from MP 471.0 at Lake Providence, Louisiana, to the point of interchange with Canadian Pacific Kansas City ("CPKC"), which is DSRR's only Class I connection, at MP 498.44 (the "Line"). Complex is located at the Madison Parish Port at MP 491.0 – part way up the Line.

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<sup>4</sup> Indeed, one of the most significant changes since 2020 is that Patriot Rail acquired the line in a Board-approved transaction because it was in the public interest. *Patriot Rail Co. LLC, Steelriver Transport Ventures LLC; Global Diversified Infrastructure Fund (North America) LP; First State Infrastructure Managers (International) Limited; and Mitsubishi UFJ Financial Group, Inc. —Control Exemption— Delta South. R.R., Inc.*, STB Finance Docket 36642 (STB Decided Dec. 23, 2022). Since at least then, DSRR has invested in the Line, solicited business, and moved all rail traffic upon reasonable request. *See* DSRR's Motion to Dismiss and for Attorney's Fees, STB Finance Docket No. 36447 (STB filed June 27, 2024) (Verified Statement of Rob Thrall).

The Amended Application makes allegations dating back to 1988. In fact, the Amended Application spends about 43 pages on history from 1988 to 2022. Amended Application at 11-54. During that time, multiple entities from Missouri-Pacific to Continental Rail and others owned the Line. Applicants are clear that they seek to “Acquire a Segment of the McGehee-Tallulah Railroad Corridor from DSRR Pursuant to a Finding by the Board That DSRR, *while owned by West Branch . . .*” did something wrong – even though West Branch has not owned or operated the line for years. Amended Application at 60; *see also* Amended Application at 46 “. . . THE BOARD MUST HOLD PATRIOT RAIL ACCOUNTABLE FOR WEST BRANCH’S PAST ACTIONS . . .”). Significant to the ALJ, the Amended Application also states that DSRR’s failure to implement an adequate maintenance program can be traced back to 1999, when Willaim Wainright and his wife acquired the track. Decision No. 52942 at 9.

## **B. Complex Chemical**

Complex is a valued customer of DSRR (who often does not pay the freight or chose the transportation options). Complex has admitted again, as it must, that DSRR “transports railcars containing chemicals to Tallulah, LA to interconnect with [CPKC’s] . . . Meridian Speedway,” which is also a concession that DSRR is interchanging traffic with its sole Class I connection. Complex at 6. It further admits to being a “current and long-time substantial customer of DSRR.” Complex at 9. The original application includes a letter from Complex, signed by Mr. Melton in 2020, that was prepared in the ordinary course of business (not for litigation) and that states: “[t]he current rail provider, DSR[R] is providing adequate service.” Original Application, Exhibit 8. Mr. Melton also wrote in an email to DSRR in the summer of 2025 that he “appreciate[s] the level of service Patriot Rail has and continues to provide Complex.” Attachment B.

Then, LPPC submitted Complex's verified statement as part of the Amended Application. Amended Application, Exhibit L. It did so for purposes of evidence – not as a mere support statement. *See e.g.*, Amended Application at 63-64. That statement starts in 1988. *Id.* at ¶2. It further asserts, without specifying a time frame, that “[f]or 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"). *Id.* at ¶3. Notably, Complex explains that “the relationship between Complex Chemical and UP is significant” but does not allege that it cannot ship to or from UP today using DSRR. Indeed, Complex admits that it can and does ship to UP using DSRR; otherwise, Complex could not have a significant relationship with UP. Today, Complex reaches UP via DSRR to CPKC at Tallulah, La., to UP at Monroe, La.

### **C. Relevant Procedural History**

This appeal is another round in a long-running fight by Applicants and their allies to prevent DSRR from obtaining discovery regarding allegations in the Amended Application.

LPPC, North Louisiana and Arkansas Railroad (“NLA”), and Southeast Arkansas Economic Development District (“SEAEDD”) all tried to prevent DSRR from obtaining discovery of them. DSRR had to file motions to compel. ALJ McCarthy rejected the Applicants’ arguments and ordered discovery of each of them. Decision No. 52109 (“I find that DSRR is entitled to take discovery from LPPC et al.”); Decision No. 52736 at n.19 (“In response to LPPC’s assertion that DSR[R] was not permitted to engage in discovery, the Board notes that the ALJ previously assigned to this case found that DSR[R] was permitted to engage in discovery.”).

After the Board removed this proceeding from an extended abeyance that was necessary because of what Louisiana courts found to be LPPC’s *ultra vires* actions, it ordered – over

LPPC's objection<sup>5</sup> – that DSRR was entitled to complete the discovery that had been on pause during the abeyance. Decision No. 52736 at 8 (“The proposed schedule(s) should take into account a reasonable period of time for DSR to complete discovery and the general timeline for record-building contemplated by the Board’s regulations.”).

Accordingly, DSRR sought to obtain discovery from Applicants’ witnesses. LPPC objected to DSRR taking such discovery during a meet and confer session ordered by the Board. DSRR argued in the alternative that the Board could strike the verified statements and obviate the need for discovery, grant a motion to compel, or issue subpoenas duces tecum.

DSRR believed that entities that submit verified statements as evidence in a case are parties or at least the witnesses of a party – like an expert in a rate case or merger proceeding. Accordingly, it sought discovery of Applicant’s witnesses as parties and served discovery on them. They objected and asserted that they were not parties. Documents Nos. 310461, 310460, 310474, 310471, and 310492.

The Board assigned the discovery disputes to the ALJ. Decision No. 52830. After a meet-and-confer session at which the witnesses continued to assert that they were non-parties and to object to the discovery that DSRR had served on them, the ALJ held a status hearing. Thereafter, the ALJ ordered that the witnesses were non-parties and that the form of DSRR’s discovery was improper for non-parties. The ALJ ruled against DSRR without prejudice:

Because the requests to produce records were not attached to DSRR’s motion, the undersigned denied the alternative motion for issuance of a subpoena duces tecum without prejudice. Before refiling, the following must occur. The proposed subpoena duces tecum must be specific as to each witness and the requested documents to be produced.

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<sup>5</sup> Decision No. 52736 at 4 (“LPPC requests that the Board remove this proceeding from abeyance, establish a deadline for DSR’s submission of its evidence (claiming that DSR does not need additional discovery) . . .”).

Decision No. 52891 at 3.

Thereafter, DSRR and Applicant's witnesses (from whom DSRR has sought discovery so far) except Complex were able to reach agreement on the terms of subpoenas duces tecum. LPPC objected to the time period covered by the discovery requests proposed for Complex. DSRR offered to limit the period covered but only if LPPC was willing to agree that the only time period relevant to this proceeding was similarly limited. LPPC rejected that offer. *See* Attachment A.

DSRR then filed a motion for issuance of proposed subpoenas. Complex was the only nonparty with which DSRR was unable to reach an agreement. The ALJ issued the subpoenas duces tecum as to the relevant witnesses except Complex. Decision No. 52929. Complex continued to object to prevent DSRR from obtaining discovery despite the targeted scope of the documents sought.<sup>6</sup>

DSRR substantially reduced the scope of its requests from 18 interrogatories and 21 document requests to eight document request. The subpoena was tailored to seek documents likely in Complex's possession only:

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

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<sup>6</sup> Reply to the Motion for Issuance of a Subpoena Duces Tecum to Complex Chemical Company to Produce Documents, STB Finance Docket No. 36447 (STB filed Feb. 13, 2026) (Document 310876).

- All Documents regarding the proceeding, including any communications regarding, or drafts of, the Verified Statement.

Document No. 310854.

The ALJ rejected Complex's objections, while narrowing DSRR's proposed subpoena, including reducing the time covered from 1988-to-present to 1999-to-present, and then issued the subpoena duces tecum for Complex that is the subject of this appeal. Decision No. 52942.

#### **D. The Importance of Discovery**

Supreme Court Justice Louis Brandeis famously wrote, "Sunlight is said to be the best of disinfectants." The same can be said of discovery. Applicants and other entities that the ALJ ruled to be non-parties<sup>7</sup> have fought mightily not to be subject to discovery. But, once obtained, discovery has been invaluable to DSRR's preparation to defend itself. Among other things, it has revealed that some of the alleged shippers are not served by DSRR, have not requested service from DSRR, are not the payor of freight or securer of transportation services, or do not even have the ability to load or unload a railcar.

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<sup>7</sup> When Applicants' allies asserted that they were non-parties, they relied on the definition of "party" that says filers of a "certificate of support" are not parties. DSRR argued that a verified statement is not a "certificate of support," but the ALJ rejected that argument because there was no Board decision on point. Decision No. 52891 at 3. Even absent a Board precedent distinguishing the two, a "certificate of support" in 49 C.F.R. §1101.2 clearly refers to a motor carrier form that previously was required in certain proceedings, and not to letters of support or verified statements in rail proceedings. *See Rules Governing Applications for Operating Authority – Revisions of Form OP-1*, Ex Parte No. 55 (SUB-NO. 69), 6 I.C.C. 2d 266, 1989 MCC LEXIS 461 (Nov. 29, 1989); *Rules Governing Applications for Operating Authority–Revisions of Form OP-1*, Ex Parte No. 55 (Sub-69A), 1990 MCC LEXIS 61, (Apr. 5, 1990).

A shipper seeking to provide evidence has two options. First, it could intervene, which would undisputably make it a "party" under Section 1101.2, and file. Second, it can have the complainant or respondent file its verified statement as part of the complaint or responsive pleading. Under this ruling, by having the complainant or respondent file its verified statement, the shipper can avoid being a "party" and still have its testimony treated as evidence. The Board may consider updating its rules so that shipper's that submit verified statements as evidence are a "party" in both instances.

## **II. STANDARD OF REVIEW**

Complex and LPPC appeal pursuant to 49 C.F.R. §1115.1. The Board can only rule in their favor “in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” 49 C.F.R. §1115.1(c).

Discovery must be "relevant to the subject matter involved in a proceeding" and may not be objected to if it is "reasonably calculated to lead to the discovery" of relevant evidence. 49 CFR §1114.21(a)(1-2). Complex and LPPC do not object to the discovery on these grounds. Nor do they object on the grounds of privilege.

## **III. ARGUMENT**

Complex and LPPC’s arguments are without merit. LPPC and Complex do not object that the information sought is relevant to the public convenience and necessity test in a feeder line case and is likely to lead to relevant information. Given the targeted nature of the discovery and that Complex is the only entity that has Complex’s documents, the ALJ correctly ruled that discovery must encompass all responsive documents that Complex has. The ALJ also ruled correctly that – like the Amended Application – discovery must reach back in time.<sup>8</sup>

### **A. The ALJ Correctly Required Complex to Produce All Responsive Materials in Its Possession.**

Complex is not a stranger to this proceeding. It chose to allow LPPC to file its verified statement with the Amended Application as evidence. Decision No. 52924 at 7. DSRR carefully tailored the requests served on Complex to encompass documents that would likely be in Complex’s possession only; DSRR is entitled to the responsive documents Complex has.

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<sup>8</sup> Complex has not objected to producing materials on the grounds of attorney-client or work product privilege.

The ALJ's ruling was legally sound. Case law holds the opposite of Complex and LPPC's position on appeal. The Board itself has determined that discovery of an interested nonparty can be broad. *Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions (February 27 Order)*, STB Finance Docket No. 35557, slip op (Feb. 27, 2012). The ALJ properly relied on this Board precedent:

The February 27 Order balanced the relevance of the information sought against the burden. The order stated that: "In determining whether to issue a subpoena, the Board will examine whether the subpoenas could cause undue burden on third parties, especially those with a limited connection to the matter before the Board." February 27 Order, slip op. at 2. . . . Where, however, a party seeks a subpoena from a nonparty that has a clear interest in the proceeding and will be directly affected by its outcome, the Director concluded that a very strong foundation is not a prerequisite to the issuance of a nonparty subpoena.

Decision No. 52942 at 6-7. (quoting *Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. 3-5 (June 25, 2012)). Like in *Coal Dust*, Complex is interested, and the ALJ did not need a "very strong foundation" (although one exists here) as a prerequisite to issue the nonparty a carefully tailored subpoena that seeks documents to probe the facts in this case and the veracity of statements made. The ALJ implemented Board precedent for discovery requests targeted at information in Complex's possession and properly weighed Complex's and LPPC's vague burden assertions versus Complex's clear interest.

The ALJ's decision is also supported by courts decisions that have found that a nonparty cannot avoid producing documents in its possession by arguing that someone else might have the same documents. *Balfour Beatty Infrastructure, Inc. v. PB&A, Inc.*, 2016 U.S. Dist. LEXIS 182131 at \*9 (M.D. Fl. 2016) (holding in case seeking discovery from a nonparty that "the requesting party's alleged possession of the documents is not a legitimate basis for refusing to produce the documents"); *In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. 293, 300-301

(S.D.N.Y. 2003) (holding fact that a party may have documents did not excuse nonparty from producing its relevant documents which may differ slightly from a party's copies).

Similarly, Complex and LPPC have made no argument or provided any factual basis that producing the relevant, targeted discovery would be burdensome or tried to explain the scope of that burden. Mere assertions are not enough to meet Complex's and LPPC's burden of proof. *SSL, L.L.C. v. Garcia-Chicoine Enters.*, 2005 U.S. Dist. LEXIS 48113 (D. Kan. 2005) ("Any objections that discovery is unduly burdensome or overly broad must contain a factual basis for the claim (i.e., time it would take to collect the evidence requested or exorbitant costs of retrieving the information requested).") (citing *Daneshvar v. Graphic Technology, Inc.*, 1998 U.S. Dist. LEXIS 16446 (D. Kan. Oct. 9, 1998)). LPPC and Complex point to no category of documents sought that are burden. Nor do they point with specificity to any category of documents that could be in DSRR's possession. Nor do that provide any factual basis for their mere assertions of burden. General arguments are not enough.

The cases Complex and LPPC cite on appeal, but did not provide to the ALJ, are easily distinguishable when studied. Complex and LPPC ignore the outcome of *Wiwi v. Royal Dutch Petroleum Co.*, 392 F.3d 812 (5<sup>th</sup> Cir. 2004), which was a class action litigation in which the plaintiff sought discovery from a nonparty, Mr. Oteri. The court found that the district court abused its discretion when it quashed a subpoena. It then rejected Mr. Oteri's argument that the plaintiff did not need the documents because it already had the defendant's documents (*id.* at 820) and ordered Mr. Oteri to produce documents in his "custody, control, and possession," (*id.* at 821) regarding issues in the proceeding (rather than "all documents that related to [Mr. Oteri's] dealings with the Nigerian government")(*id.* at 820), and that were within the time

period covered by the complaint (*id.* at 821).<sup>9</sup> That outcome is no different than the effect of the ALJ's ruling.

A set of cases cited by Complex and LPPC arise in the criminal context, which is inapplicable here. *United States v. Nixon*, 418 U.S. 683 (1974) arose in the criminal context where a subpoena duces tecum “was not intended to provide a means of discovery for criminal cases.” *Nixon*, 418 U.S. at 699. *U.S. v. Abdush-Shakur*, 465 F.3d 458 (10<sup>th</sup> Cir. 2006), is similarly a criminal case applying the criminal rules of procedure and quoting *Nixon. Abdush-Shakur*, 465 F.3d at 467. As both cases make clear, discovery in the criminal context is different from civil litigation and Board proceedings where subpoenas duces tecum are a means of discovery.

Another set of cases cited by Complex and LPPC stand for a proposition not at issue here – requests for irrelevant material are improper. *EEOC v Skywest Airlines*, 2024 U.S. Dist. LEXIS 3429 (N.D. Tex. Jan. 8, 2024) is a case in which the court ruled that the discovery sought was not actually related to a claim or defense. The requests, it said, would “likely encompass many communications having nothing to do with the issues in the case.” *EEOC*, at 3-4 (citations omitted) (cleaned up). The court quashed the subpoena because the documents sought were not relevant or likely to lead to admissible evidence. *Id.* at \*3-4; *see also In re Weatherford Int’l Secs. Litig.*, 2013 U.S. Dist. LEXIS 154446 at \*10 (S.D.N.Y. 2013) (rejecting based on irrelevance). In another cited case, the court also affirmed a district court decision to grant a motion to quash after finding that the inquiries into voluntary relationships were irrelevant to the subject matter in a gender discrimination litigation and were (based on evidence presented) intended to harass the witness. *Misc. Docket Matter 1 v. Misc. Docket Matter 2*, 197 F.3d 922,

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<sup>9</sup> This case is instructive in that the court limited the time period covered by discovery to parallel the time period that was relevant to the merits consideration.

925-26 (8<sup>th</sup> Cir. 1999). Similarly, the ruling in *St. Matthew Publ'g., Inc. v. U.S.*, 41 Fed. Cl. 142 (1998), turned on the fact that the material sought was irrelevant. *St. Matthew Publ'g., Inc.*, 41 Fed. Cl. at 147. These cases have nothing to do with the issue raised on appeal here because Complex and LPPC have not argued that the information sought was irrelevant. In fact, there is no dispute that the eight categories of documents sought are relevant.

Other cases stand for the proposition that a party should seek documents first from another party. For example, *City of Colton v. Am. Promotional, Inc.*, 2006 U.S. Dist. LEXIS 103141 (C.D. Ca. 2006), was a case in which the parties exchanged discovery. Then a subpoena was served on the nonparty document storage company used by a party. The court ruled that discovery was not proper under F.R.C.P. 45, which applies to discovery of nonparties. The court held that discovery should continue under F.R.C.P. 34 applicable to parties and discovery of a nonparty document storage company was improper “unless the seeking party is unable to discover [the documents] from the other party.” *City of Colton*, at \*18 (citing *Bada Co. v. Montgomery Ward & Co*, 32 F.R.D. 208 (S.D. Cal. 1963)). *Bada* ruled only that the discovery of the nonparty witnesses was not proper “at this stage of the proceeding” because the plaintiff had not yet sought the relevant information from the defendant and the record showed the documents at issue were in the hands of the defendant. *See U.S. v. American Optical Co.*, 39 F.R.D. 580 (N.D. Ca. 1966) (distinguishing *Bada*). Finally, in *Michael's Fabrics, LLC v. Donegal Mut. Ins. Co.*, 2024 U.S. Dist. LEXIS 146350 (D. My. 2024), the discovery had been sought from the parties to the relevant communications at issue. It then sought discovery from Google and Verizon to confirm that it had all communications, and they objected. The court ruled that burden on the nonparties outweighed the benefit of the discovery because the parties had

represented that “they have produced all such communications in their possession, custody and control.” *Michael's Fabrics, LLC* at \*8.

Here, DSRR has already sought discovery from LPPC, NLA, and SEAEDD. And no party to this case has produced the documents related to Complex’s verified statement, requests for service, adequacy of service, choices to use other transportation options, and the other topics covered by the eight document requests because only Complex has those documents.<sup>10</sup> DSRR is not seeking information to confirm communications between other parties. DSRR is seeking eight categories of Complex’s internal documents that are relevant to issues in this proceeding.

In short, the ALJ ruled correctly. Given the case law, there is no clear error of judgment to correct or manifest injustice to remedy. If there is any injustice, it is that DSRR has had to fight at every step to get discovery from Applicants and its allies.

#### **B. The ALJ Appropriately Allowed Discovery Reaching Back in Time.**

Suffice it to say that DSRR has a different view of history and its past with respect to the Line, but this proceeding is not about the past. The statute requires that this proceeding be about current rail service. It is not about Missouri Pacific, the Wainwrights, Continental Rail, or any other prior owner or operator about whom Applicants might complain.

On appeal, LPPC and Complex seem to argue that the ALJ erred by confining discovery to a substantial period of the time covered by the Amended Complaint and Complex’s verified statement. Decision 52942 at 9. They offer no support for that proposition.

In a last gasp footnote, LPPC and Complex contend that “if the Board does not grant this appeal . . . it should limit the ‘all documents’ requirements of categories 1-6 of the subpoena to

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<sup>10</sup> This fact also disposes of LPPC’s and Complex’s argument that the ALJ was somehow inconsistent. Appeal at 13.

the last three years, i.e., January 1, 2023 to the present, which would be consistent with the filing of the Amended Application . . .”). Appeal at n. 10. This proposal is disingenuous because it would not encompass the period of time during which Complex crafted two verified statements – one filed with the original application (which is no longer part of this proceeding but is likely to lead to admissible evidence) in 2020 and one filed with the Amended Application in January 2023 but clearly worked on before then – and multiple known ordinary course documents praising DSRR’s service.

Ironically, LPPC rejected an offer made by DSRR during the meet-and-confer sessions to limit discovery of Complex to a more recent period (2020 to present) if LPPC agreed that that more recent time period was the only relevant time period in this case. Instead, it and Complex stood their ground on the relevance of ancient history recounted in over 40 pages of the Amended Application. *See* Attachment A.

Although DSRR would have liked to reach an agreement with LPPC and Complex, DSRR is in a Catch-22 situation absent a ruling from the Board. Absent a ruling from the Board that the issues in this feeder line case are about whether the current owner is currently providing adequate service upon reasonable request and whether the current owner refuses to within a reasonable time make necessary efforts to provide adequate service to customers who transport traffic over the line,<sup>11</sup> DSRR simply cannot take the chance that (a) the Board will later consider events or actions that took place at any earlier time to be relevant to the merits part of the proceeding but (b) DSRR will have foregone its rights to seek discovery for information from those time periods about issues relevant to the proceeding.

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<sup>11</sup> In fact, the public convenience and necessity test is expressly about current service. 49 U.S.C. 10907(c)(1)(A-B).

Unless the Board rules the relevant time period for the merits portion of this proceeding is January 2003 to present, DSRR must obtain discovery into the entire period covered by the Amended Application – especially from a customer that admits it is a long-standing customer that has and is receiving good service from DSRR. Original Application, Exhibit 8; Attachment B.

Respectfully submitted,

*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.

**March 11, 2026**

## CERTIFICATE OF SERVICE

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

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*/s/ John M. Scheib*

John M. Scheib  
Dated: March 11, 2026

## ATTACHMENT A

**Scheib, John M.**

---

**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.**

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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  
Get [Outlook for iOS](#)

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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**

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

## ATTACHMENT B

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**From:** Jerry Melton <jmelton@complexchemical.com>  
**Sent:** Saturday, June 14, 2025 3:35 PM  
**To:** Tyler Reddan <Tyler.Reddan@patriotrail.com>; Travis Melton <tmelton@complexchemical.com>  
**Subject:** Re: DSR Customer Letter

**[EXTERNAL]** - This Email originated outside of your organization. **Do Not Click** links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Tyler

Travis is out all next week, so I responding to this request.

First of all, I appreciate the level of service Patriot has and continues to provide Complex.

The situation with CPKS has required adjustments on both our parts, and I appreciate your level of effort. The particular situation referred to here, has been ongoing for a long time, even before Patriot acquired this line.

My decisions in these matters are driven by one thing, and that is, what does it do for Complex.

Complex, its rail customers and rail suppliers have been at the mercy of one main line carrier for years.

In the early days, after UP abandoned the line, the owner of DSR had a great opportunity to grow into a thriving large short line carrier..

However, due to a number of reasons, the owner simply “blew it”.

It would take pages to go through them all.

I am familiar with the path and events that have culminated in this piece of legislation and I in the best interest of Complex long term cannot take a position to oppose it.

I respect Patriots position to oppose this bill, I hope Patriots respects my position to not oppose it.

Regards

Jerry

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**From:** Tyler Reddan <Tyler.Reddan@patriotrail.com>  
**Sent:** Friday, June 13, 2025 2:15:58 PM  
**To:** Travis Melton <tmelton@complexchemical.com>  
**Cc:** Jerry Melton <jmelton@complexchemical.com>  
**Subject:** DSR Customer Letter

Good Afternoon Travis,

In Louisiana we are in a fight over legislation (SB146) adverse to Delta Southern. Madison Parish Port has expressed its opposition in a letter to Governor Landry (attached), and we are asking whether you would be willing to indicate your concern also.

1

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Attached is a proposed letter to Governor Landry. If after review you're able to place this text on your company letterhead, sign it, and return to us as .pdf, we'll ensure that this gets to Governor Landry's office.

Time is of the essence because the Governor could decide any day now whether to sign SB146. Please let us know if you have any questions, and we truly appreciate your considering this request.

Thank you,

**Tyler Reddan**

Account Manager

Patriot Rail Company

C: 463.254.5533

[Tyler.reddan@patriotrail.com](mailto:Tyler.reddan@patriotrail.com) | [Patriotrail.com](http://Patriotrail.com)



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