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VIA E-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
May 6, 2026
Part of
Public Record

Re: FD 36447, Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad, Inc. Located in East Carroll and Madison Parishes, Louisiana; Status Report

Dear Chief of Case Administration:

The letter dated May 5, 2026, from counsel for Applicants, Southeast Arkansas Economic Development District (“SEAEDD”), Lake Providence Port Commission (“LPPC”), and North Louisiana and Arkansas Railroad (“NLA”)¹ to the Board (“Letter”) regarding discovery is ironic.

The Board’s discovery rules provide great flexibility to a party seeking discovery: “Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding[.]” 49 C.F.R. § 1114.21(a)(1); *see also* ALJ Decision No. 52942 (STB Decided Feb. 27, 2026) at 6. Inadmissibility is not an appropriate objection if the information sought appears to be reasonably calculated to lead to discovery of admissible evidence. 49 C.F.R. § 1114.21(a)(2). Moreover, parties have wide discretion to pursue discovery “in any sequence” and “without filing a petition and obtaining prior Board approval.” 49 C.F.R. §§ 1114.21(b) and (d).

Such discovery procedures include, among other things, depositions. Under the Board’s rules, a party may take the deposition of “any person, including a party.” 49 C.F.R. § 1114.22(a). If a witness refuses to be deposed, 49 U.S.C. 1321(d)(2) explicitly authorizes the Board to issue a subpoena “to take a deposition, produce the records, or both.” *See also* ALJ Decision No. 52942 at 6.

¹ The Letter does not state on which parties’ behalf the letter was filed. Given that counsel represents all three entities listed here, DSRR assumes it was filed on behalf of all three. *See* Letter at 3, making representations as to all three entities.

In its proposed procedural scheduled filed on November 19, 2025, DSRR proposed a reasonable period for discovery to be included in the yet-to-be-issued procedural schedule. DSRR also foreshadowed the conduct in which LPPC has chosen to engage to obstruct discovery.

“Even with a specific period for discovery built into the schedule, DSRR may need to seek extensions to complete discovery if discovery has not concluded by the deadlines established in DSRR’s proposed procedural schedule. For instance, DSRR reasonably anticipates that a motion to compel or subpoena may be required to compel discovery responses from LPPC’s witnesses because, LPPC’s counsel has stated that its witnesses may fight discovery.”

DSRR Mot. for Procedural Sched. (STB filed Nov. 19, 2025) (Document No. 310279) at 5.

DSRR was prescient. Applicants have objected to, fought, and lost numerous objections to discovery in this proceeding since the Board made clear that DSRR was entitled to resume discovery after the Board removed this case from abeyance.² For example,

- On November 24, 2025, LPPC objected to DSRR taking depositions of the witnesses whose verified statements LPPC submitted with the Amended Application. Document No. 310338.
- On January 16, 2026, the Administrative Law Judge ruled that DSRR was entitled to depose the witnesses, albeit through a different form than DSRR originally sought. ALJ Decision No. 52891 at 3 & n.3 (STB Decided Jan. 16, 2026).
- On February 13, 2026, the Administrative Law Judge ordered the issuance of subpoenas duces tecum as to six witnesses to whom LPPC no longer objected. ALJ Decision No. 52929 at 2 (STB Decided Feb. 13, 2026).
- On February 27, 2026, the Administrative Law Judge ruled in favor of DSRR and rejected Complex Chemical and LPPC’s objections to the issuance of a document subpoena on Complex Chemical. ALJ Decision No. 52942 at 8-9 (STB Decided Feb. 27, 2026).
- Complex Chemical and LPPC then jointly appealed the February 27 ALJ decision. Document No. 310942.

² The Board placed this matter in abeyance on August 2, 2024, following Applicants’ *ultra vires* actions in pursuit of its amended feeder line application, which seeks to acquire rail lines outside East Carroll Parish. LPPC’s complaint that it has incurred litigation costs in connection with these matters warrants no sympathy; LPPC chose to file litigation and has decided to fight discovery rather than cooperating. If LPPC wanted to avoid litigation costs, it should have worked with DSRR on the most judicious and responsible use of taxpayer funds rather than file litigation.

- On March 25, 2026, the Board rejected LPPC and Complex Chemical’s appeal. STB Decision No. 52954 at 3-7 (STB Decided Mar. 25, 2025).
- After objecting to and fighting discovery for months on the rejected grounds that DSRR sought discovery of documents overly broad in temporal scope, Complex Chemical revealed in its discovery responses that a tornado destroyed Complex’s offices in 2010 and that its document retention policy is “approximately three (3) years” anyway.

Even when ordered to respond to discovery, LPPC, SEAEDD, and NLA have been uncooperative and have forced DSRR to do extensive follow up where discovery has been demonstrably deficient. For example, just yesterday, LPPC finally provided, perhaps, complete information related to its application to the Louisiana Bond Commission. This production came only after DSRR found references to the bond application in previously produced records and pressed LPPC as to why the LPPC had not produced the bond application itself (and related documents). That production, which should have been readily found and produced months ago, shows that LPPC’s estimates of revenue for the line at issue are substantially different than its experts’ opinion and that, despite criticizing the fact that DSRR from time to time earns revenue from storing rail cars on the line at issue, LPPC’s plan if it were to acquire the line in this proceeding is the exact same.

Similarly, NLA continues to refuse to provide financial information for 2025, even though such financial materials *are attachments to the notice of exemption filed in Finance Docket No. 36922*, as the Board is undoubtably aware.³

The list of Applicants’ obstructionist discovery tactics goes on and on. Without listing all of them here, the operative point is that the objection raised by Applicants in their Letter lacks credibility given their repeated attempts to thwart fulsome discovery and failures to conduct reasonable searches in response to discovery.

Despite Applicants bemoaning the discovery process, DSRR fully intends to continue to seek reasonable discovery pursuant to the Board’s liberal discovery rules on topics likely to lead to admissible evidence. Indeed, the notice of exemption filed last week in Finance Docket No. 36922 presents new information that DSRR is entitled to explore – namely, why did OmniTRAX originally agree to buy NLA (as shown in the publicly available Stock Purchase Agreement) but later decide not to buy it (as discussed in the body of the Notice of Exemption)?⁴ DSRR is propounding a set of discovery to understand OmniTRAX’s rejection of NLA, which is likely to lead to admissible evidence regarding NLA’s fitness to serve as a substitute carrier, as LPPC proposes in the Amended Application.

³ Verified Notice of Exemption of OmniTRAX Holdings Combined, Inc. and HGS Ry. Holdings, Inc. Pursuant to 49 C.F.R. § 1180.2(d)(2), Finance Docket No. 36922 (STB filed Apr. 27, 2026) (*see e.g.*, schedules 4.09(a) and 4.09(f)) (hereinafter “OmniTRAX Notice of Exemption”).

⁴ *See* OmniTRAX Notice of Exemption, Finance Docket No. 36922 at 4 and Exhibit B.

And, DSRR has already advised the ALJ that there are additional witnesses who DSRR might seek to depose. In the ALJ Decision of December 31, 2025, the ALJ requested that “[a]ny other disputed witnesses should be identified and included now.” ALJ Decision No. 52859 (STB Decided Dec. 31, 2025) at 2 n.2. In its January 5, 2026, filing, DSRR answered the ALJ’s question, but also provided even more information than was requested. DSRR explained that “[c]urrently, there are no other ‘disputed witnesses.’ However, DSRR identifies that it may seek to depose other LPPC witnesses[.]” Document No. 310650 at 8. DSRR went on to list potential witnesses, including the current directors of both LPPC and SEAEDD. *Id.* DSRR intends to seek depositions from those two individuals, exercising its broad discretion to employ discovery tools to make the most of the time spent with these witnesses. *See* 49 C.F.R. §§ 1114.21(b) and (d).

In conclusion, the objections that LPPC, SEAEDD, and NLA raise in the Letter are like those that they have previously raised and rejected. As the ALJ ruled in this proceeding, discovery is “not stayed or concluded.” ALJ Decision No 52942 (Feb. 27, 2026) at 8 (noting that the Board has not yet entered a procedural schedule). Even under LPPC’s proposed procedural schedule submitted on November 19, 2025, LPPC argued that its procedural schedule, which did not provide a specific time for discovery, nevertheless implicitly met the Board’s requirement to provide for discovery because discovery could occur even after a procedural schedule that did not specifically address discovery was issued. Clearly, LPPC’s position then applies now under the Board’s discovery rules, which is that discovery may occur right up to the date DSRR files its response to the Amended Application. Document No. 310281 at 5-6 “potential depositions of parties and other persons (see 49 CFR § 1114.22) can proceed independently of the Procedural Schedule”).

Sincerely,

/s/ John M. Scheib

John M. Scheib
Counsel for Delta Southern Railroad, Inc.

cc: Parties of Record
Administrative Law Judge Soulikias