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ALJ

SERVICE DATE – JUNE 3, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36447

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

DECISION GRANTING DSRR’S MOTIONS FOR ISSUANCE OF SUBPOENAS  
TO APPLICANT AND TO A PARTY TO THIS PROCEEDING  
BUT LIMITING THE DEPOSITIONS TO ONE DAY

Decided: June 3, 2026

The Motions for Issuance of Subpoena to Applicant and a Party to this Proceeding by Delta Southern Railroad, Inc. (DSRR or DSR) is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision (Dec. 12, 2025). This proceeding involves efforts by the Lake Providence Port Commission (LPPC), a noncarrier political subdivision of the State of Louisiana, to acquire the portion of the McGehee-Tallulah rail corridor owned by DSRR, a Class III rail carrier, through a feeder line application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151.

DSRR’s motion seeks the issuance of subpoenas for depositions to two party witnesses. Those witnesses are: 1) the port director of LPPC, Bryant Killen; and 2) the Executive Director of Southeast Arkansas Economic Development Director (SEAEDD), Patrecia Hargrove. (DSRR Motion 1-3.)

DSRR’s Motion argues that LPPC and SEAEDD are parties, and subpoenas are not required. (DSRR Motion 3.) DSRR explains that when it attempted to schedule the depositions, LPPC and SEAEDD objected claiming the deponents were not disclosed timely pursuant to the ALJ’s December 31, 2025, order. (DSRR Motion 4.) DSRR claims it complied with the ALJ’s order, and “provided even more information than was requested” when it claimed that “[c]urrently, there are no other ‘disputed witnesses.’ However, DSRR identifies that it may seek to depose other LPPC witnesses” and listed both Mr. Killen and Ms. Hargrove. (DSRR Motion 4) (citing DSRR Reply 8, Jan. 5, 2026).) DSRR argues that the ALJ limited the scope of the January 16, 2026 order, but DSRR did not waive its discovery rights or fail to comply with any order. (DSRR Motion 4-5.)

Regarding Mr. Killen, DSRR argues that the Board should subpoena or compel the deposition testimony of Mr. Killen, the current port director. (DSRR Motion 1, 5.) DSRR seeks

Mr. Killen’s deposition testimony on the adequacy of DSRR’s service, whether the sale of the Line to LPPC will result in improved railroad transportation, LPPC’s financial fitness, and the value of the rail Line at issue. *Id.* DSRR also argues that Mr. Killen became the port director in August 2024, succeeding non-party witness, Wyly Gilfoil. (DSRR Motion 4, 6.) DSRR states that during Mr. Gilfoil’s deposition, he disclaimed knowledge of “many topics,” because Mr. Gilfoil was not the current port director. (DSRR Motion 6; Att. A, Gilfoil depo. excerpts.)

DSRR argues that the Board should subpoena or compel the deposition testimony of Ms. Hargrove. (DSRR Motion 2, 6.) Ms. Hargrove filed a Verified Statement to the Amended Application. (Amended Appl., Exh. I; *see also* DSRR Motion, Att. B.) SEAEDD administers the INFRA grant that is at issue in the Amended Application, and DSRR argues that topics related to the grant and its administration are likely to lead to admissible information. (DSRR Motion 6-7.)

In their corrected<sup>1</sup> joint reply to DSRR’s Motion, LPPC and SEAEDD argue that DSRR’s Motion is untimely, because the ALJ required DSRR to specifically identify the witnesses it wanted to depose “months ago.” (Joint Reply 1-3.) Further, DSRR had more than a reasonable time for discovery, according to the Joint Reply. (Joint Reply 1, 2-3.) The Joint Reply argues the depositions would not lead to any admissible new evidence but instead cause needless additional discovery costs. (Joint Reply 5-10.)

The Surface Transportation Board regulations provide for broad discovery. These regulations provide that “[p]arties 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). The Board has recognized that this regulation allows for broad discovery. *See Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery “[b]roadly”). Whether there is evidence to rebut that presumption is reasonably calculated to lead to discoverable evidence, and whether the evidence ultimately is admissible is not grounds for objection. 49 C.F.R. § 1114.21(a)(2). An order may be entered for good cause and which justice requires, to protect from “annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of the issues untimely or inappropriate to the proceeding.” 49 C.F.R. § 1114.21(c). Protective orders may include that discovery not be had or that discovery be had only on specified conditions. 49 C.F.R. § 1114.21(c)(1)-(2).

#### Brief Relevant Procedural History

On November 12, 2020, LPPC filed an application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151 to acquire from DSRR a 20-mile line, together with various ancillary tracks, in East Carroll and Madison Parishes, La. (the Line). On January 11, 2021, the Board accepted the

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<sup>1</sup> According to the May 12, 2026 cover letter, the corrected reply was filed because the reply inadvertently omitted pages 10 through 13. References to the “joint reply” are to the corrected, joint reply, which was filed on May 12, 2026.

application, after LPPC submitted the information the Board required, and set a procedural schedule. Decision (Jan. 15, 2021).

On March 2, 2021, DSRR filed a motion to dismiss and request to hold the proceeding in abeyance pending disposition of the dismissal motion and unresolved discovery issues with North Louisiana & Arkansas Railroad (NLA). The Board suspended the procedural schedule pending further Board order because of the numerous pending filings and the upcoming deadline for submission of verified statements and comments addressing the application. See Decision 2 (Mar. 9, 2021).

By its August 23, 2022 Decision, the Board allowed LPPC to file an amended feeder line application to acquire DSRR's entire rail line on the Tallulah-McGehee corridor, which was longer than originally proposed. See Decision 1 (Aug. 23, 2022). The Decision explained that the application must include the information specified in 49 C.F.R. § 1151.3 in the form of verified statements. Id. at 6-7. The Decision required LPPC to include all the arguments and evidence on which it will rely. Id. at 7. Further, each witness's sworn statement was required to be presented as a single verified statement from each witness. Id. The Decision also required LPPC to clarify certain information. Id. at 9-10. LPPC filed an amended feeder line application on January 4, 2023.

DSRR filed a motion to reject LPPC's amended application and terminate the proceeding. The Board denied DSRR's motion by its Decision served on November 20, 2023. See Decision (Nov. 20, 2023).

By decision served September 25, 2025, the Board denied two motions to dismiss the proceeding, lifted the abeyance, and directed the parties to submit (jointly, if possible) a proposed procedural schedule that took into account a reasonable period of time "for DSR to complete discovery[.]" Decision 8 (Sept. 25, 2025).

#### DSRR's Motion to Strike

On November 19, 2025, DSRR filed a motion to strike verified statements signed by "LPPC's witnesses" in support of LPPC's amended application or, in the alternative, to compel discovery from and then depose those witnesses ("Motion to Strike").<sup>2</sup> (DSRR Mot. to Strike 1-2, 4, Nov. 19, 2025.) LPPC replied in opposition to DSRR's Motion to Strike on November 24, 2025. LPPC argued, among other things, that the witnesses are not "parties" to the proceeding and, as such, are not required, under the Board's regulations, to respond to interrogatories or requests for production. (LPPC Reply 4-5, Nov. 24, 2025 (citing 49 C.F.R. §§ 1114.26, 1114.30).) On December 12, 2025, the Board assigned discovery matters to the undersigned. Decision 3-4 (Dec. 12, 2025).

DSRR's motion to strike, in relevant part, focused on taking discovery from "LPPC's witnesses" and then deposing them; DSRR's motion to strike was not clear about who DSRR

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<sup>2</sup> DSRR's motion was captioned and alternatively requested the issuance of subpoena duces tecum. (DSRR Mot. to Strike 1, 6.)

sought to depose. (See Motion to Strike passim.) The undersigned scheduled a Status Conference, identified Robert N. Amacker, Jr.; Sam Angel; Blake Livingston; and Jerry J. Melton, and stated: “Any other disputed witnesses should be identified and included **now**.” (Decision 2 n.2, Dec. 31, 2025.)

In reply to LPPC’s motion to compel updated valuation discovery (not at issue here but also addressed at the Status Conference), DSRR stated:

The December 31, 2025, ALJ Decision in footnote 2 requested that “[a]ny other disputed witnesses should be identified and included now.” Currently, there are no other “disputed witnesses.” However, DSRR identifies that it may seek to depose other LPPC witnesses, including Mr. Wyly Gilfoil, former Executive Director of LPPC . . . **Ms. Patrecia Hargrove** of Southeast Arkansas Economic Development District (“SEAEDD”) . . . Mr. Jerry Melton of Complex . . . . In addition, DSRR understands that the Executive Director of LPPC has changed, and it may seek to depose the current director, **Mr. Bryant Killen**. . . .

(LPPC Reply 8, Jan. 5, 2026 (emphasis added).)

A Status Conference was held as scheduled on January 13, 2026.

On January 16, 2026, an order memorializing the rulings made at the Status Conference was issued. See Decision 2 (The Subpoena Duces Tecum Decision “SDT Decision”) (Jan. 16, 2026). A precise list of DSRR’s proposed witnesses could not be made from the Motion to Strike. See id. at 3 n.3. At the Status Conference, DSRR’s counsel identified its proposed witnesses that were the subject of DSRR’s Motion to Strike, which is contained in the list found in the SDT Decision. Id.<sup>3</sup> The SDT Decision is necessarily limited to the witnesses identified by DSRR at the Status Conference.

Thus, the SDT Decision addressed the status of DSRR’s deponents—party or non-party. The SDT Decision explicitly found that the witnesses who signed verified statements supporting the Amended Application (without another basis) were not parties.<sup>4</sup> See Decision 2-3 (Jan. 16, 2026) (citing 49 C.F.R. § 1101.2(d)). The SDT Decision further explained that the non-party designation matters for discovery purposes, because a non-party witness must be issued a subpoena duces tecum. Id.

The SDT Decision found Missy Courtwright to be a non-party witness. See Decision 4 (Jan. 16, 2026). She did not prepare a verified statement and worked as a customer service representative for a related company of NLA, id., which the Board found to be a party by participating as a party. See Decision 3 (Jun. 1, 2021). The SDT Decision explained that discovery is not limitless, particularly when it comes to non-parties. Decision 4 (Jan. 16, 2026) (citing 49 C.F.R. § 1114.21(c)). The SDT Decision ordered DSRR to seek discovery from NLA

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<sup>3</sup> The list in the SDT Decision does not include Mr. Killen or Ms. Hargrove. See id.

<sup>4</sup> Ms. Hargrove also signed a verified statement, but she is an employee of a party, SEAEDD. She is a party witness.

first, and if the discovery was not available, then DSRR could request a subpoena duces tecum from Ms. Courtwright. Id.

In sum, the SDT Decision denied DSRR's motion for subpoenas duces tecum without prejudice.<sup>5</sup> Decision 3-5 (Jan. 16, 2026). As explained at the Status Conference, DSRR must correct the procedural deficiencies of its discovery requests and attempt to resolve any disputed issues. See id. The SDT Decision set a schedule for DSRR to circulate proposed subpoenas duces tecum (date, time, and length) with the attached request for document production; confer with counsel; then file the requests for issuance of the subpoenas duces tecum. Id. at 4.

DSRR did not appeal the SDT Decision to the Board.

#### DSRR's Non-Party Motion for Issuance of Subpoena

Thereafter, DSRR filed its Motion for Issuance of Subpoenas, and six were agreed except the subpoena duces tecum to Complex Chemical Corporation (Complex). The undersigned issued the subpoena to Complex but limited its scope. See Decision 9 (Feb. 27, 2026), appeal denied (Mar. 25, 2026).

In the decision issuing the subpoena to Complex, the undersigned wrote that:

DSRR's motion "reserves the right" to depose Jerry Melton after documents are reviewed. (DSRR [Complex] Omnibus Brief 10.) The SDT Decision set the deadline for DSRR to request the subpoena for Mr. Melton, and that deadline has passed. See Decision 3-4 n.3. (Jan. 16, 2026). DSRR's far better course would have been to request the subpoena duces tecum of Jerry Melton in compliance with the SDT Decision and explain that Mr. Melton's deposition be scheduled after the Complex documents were returned.

Decision 5 n.6 (Feb. 27, 2026).

#### The Current Motion

LPPC and SEAEDD rely on the procedural history to argue that DSRR is tardy in requesting the subpoenas now. I disagree. There was not an express order requiring DSRR to disclose all its witnesses for this matter. Instead, the undersigned required DSRR to identify the witnesses subject to its motion to strike. See Decision 2 n.2 (Dec. 31, 2025); see also Decision 3 n.3 (Jan. 16, 2026).

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<sup>5</sup> I also denied the motion to strike the witnesses' statements, because the witnesses had not refused to engage in discovery altogether or disobeyed an order compelling discovery. See Decision at 2 (Jan. 16, 2026). I denied the motion to compel interrogatories, requests for production of documents, and notices of deposition, because they were the wrong procedural device for non-parties. See id. at 3. DSRR did not identify any party witness at that Status Conference.

The SDT Decision, however, specifically identified Jerry Melton as subject to DSRR's motion to strike. Decision 3-4 n.3 (Jan. 16, 2026). In its motion for issuance of subpoena to Complex, DSRR requested a subpoena duces tecum to Complex for documents only but "reserved its right" to subpoena Mr. Melton later. (DSRR [Complex] Omnibus Brief 10.) In a footnote, the order issuing the subpoena duces tecum to Complex noted that the deadline for Mr. Melton has passed and rather than "reserving the right," DSRR should have requested the subpoena duces tecum to Mr. Melton in compliance with the SDT Decision and requested Mr. Melton's deposition after the Complex's documents were returned. Decision 5 n.6 (Feb. 27, 2026).

LPPC and SEAEDD argue that like Mr. Melton, the subpoenas requested now are untimely. (See Joint Reply 3.) Again, I disagree. Mr. Melton was specifically identified in the SDT Decision, Decision 3-4 n.3 (Jan. 16, 2026), whereas Mr. Killen and Ms. Hargrove were not.

Thus, the timing of the subpoena requests is not contrary to the ALJ's orders.

#### Mr. Killen

LPPC and SEAEDD argue that DSRR had more than a "reasonable period of time" to complete discovery according to the Board's September 25, 2025 decision ordering the parties to submit procedural schedules. (Joint Reply 3-4.) On May 27, 2026, the Board set a discovery deadline of July 6, 2026. Decision 2 (May 27, 2026). Accordingly, this argument is superseded by the Board deciding the exact deadline for discovery completion. The discovery deadline has not passed yet.

LPPC argues that the Board should summarily reject DSRR's argument that discovery should be compelled of LPPC's port director, Mr. Killen, because LPPC is presumed to be a financially responsible person. (Joint Response 5-6.) As LPPC admits, this is a legal presumption. Whether there is evidence to rebut that presumption is reasonably calculated to lead to discoverable evidence, and whether the evidence ultimately is admissible is not grounds for objection. 49 C.F.R. § 1114.21(a)(2).

DSRR argues that it also seeks to depose Mr. Killen regarding the adequacy of DSRR's service, whether the sale of the line to LPPC will result in improved railroad transportation, and the value of the rail line at issue. (DSRR Motion at 8.) These topics may lead to discoverable evidence and are not contested by LPPC in its Joint Reply. (See Joint Reply.) As such, Mr. Killen's deposition is properly compelled.

#### Ms. Hargrove

DSRR argues that Ms. Hargrove should be issued a subpoena, because she signed a verified statement in support of the Amended Application. (DSRR Motion at 6.) In addition, DSRR argues that Ms. Hargrove is an executive director of SEAEDD that manages the INFRA grant. Id. DSRR seeks information about the INFRA grant's administration. Id.

LPPC and SEAEDD in their Joint Reply argue that DSRR withdrew from the public-private partnership regarding the INFRA grant. (Joint Reply 7.) LPPC and SEAEDD argue that DSRR had no influence over the funds. Id. LPPC and SEAEDD argue that accordingly, “there is no reason to believe that any information that DSRR could hope to acquire from Mrs. Hargrove could reasonably be calculated to lead to the discovery of admissible evidence that would be admissible to the Board’s determinations herein.” Id.

Again, Ms. Hargrove provided a verified statement in support of the Amended Application. At a minimum, DSRR is entitled to depose her about the issues within her verified statement. Moreover, while LPPC and SEAEDD may not agree that about the ultimate admissibility of any evidence that DSRR seeks, that does not mean that DSRR cannot obtain discovery about that evidence, because the information sought is reasonably calculated to lead to discoverable evidence. 49 C.F.R § 1114.21(a)(2).

Most importantly, Ms. Hargrove is employed by a party and provided a verified statement in support of the Amended Application. DSRR can obtain discovery about the support for Ms. Hargrove’s statements in her verified statement as likely to lead to discoverable evidence. She can be deposed by DSRR.

#### Location, Timing, and Time Limit

DSRR has noticed both depositions for two days. (DSRR Motion 8.) LPPC argues that if ordered, Mr. Killen’s deposition should be limited to one-half of a day, because Mr. Gilfoil already spent one day testifying about the same subjects. (Joint Reply at 7 n.6.) SEAEDD argues that if ordered, Ms. Hargrove’s deposition should be limited to one day. (Joint Reply at 10.)

LPPC and SEAEDD argue about the amount of discovery they have already produced and complain that the depositions would cause unnecessary costs. (Joint Reply 5-10.) To the extent that LPPC and SEAEDD have already produced documents and engaged in extensive discovery, LPPC and SEAEDD’s arguments are well taken.

The depositions are limited to one day each. DSRR admitted that it engaged in document discovery first to be more efficient. One deposition day is sufficient for each deponent. DSRR can plan each deposition accordingly.

In light of the Board-imposed discovery deadline and this order on the depositions, it is expected that the parties will work out the logistics for the depositions of Mr. Killen and Ms. Hargrove. DSRR and the corresponding counsel for the deponent must confer about the deposition to reach a mutually agreed location, date, and time. DSRR shall submit to the undersigned, attached to a letter, the proposed subpoenas for issuance (preferably with agreement with counsel for the deponent) **on or before Friday, June 5, 2026, at 9:00 a.m. Eastern Time.**

#### It is ordered:

1. DSRR’s Motion for Issuance of Subpoenas is Granted.

2. DSRR shall submit the proposed subpoenas to the ALJ as set forth above for issuance.
3. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.