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SERVICE DATE – SEPTEMBER 2, 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.

Digest:[1] The Board denies an appeal of two discovery rulings by an administrative law judge. It also authorizes Delta Southern Railroad, Inc., to reopen two depositions for the limited purpose of questioning those witnesses about certain newly disclosed information.

Decided: September 1, 2026

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 Delta Southern Railroad, Inc. (DSRR), a Class III rail carrier, through a feeder line application under 49 U.S.C. § 10907 and 49 C.F.R. part 1151.[2] LPPC owns two other segments of the corridor (one, jointly with North Louisiana & Arkansas Railroad, Inc. (NLA)), and Southeast Arkansas Economic Development District (SEAEDD) owns the third segment; NLA holds operating authority over these three segments and has been designated by LPPC as the proposed operator of DSRR's segment if the feeder line application is granted. (See, e.g., Am. Appl. 1, 19-20, 56, 58-59, Jan. 4, 2023.)

The Board has assigned and authorized Administrative Law Judge (ALJ) Jenifer Soulikias to address discovery matters in this docket. See Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La. (Dec. 2025 Decision), FD 36447, slip op. at 3-4 (STB served Dec. 12, 2025). On July 2, 2026, the ALJ

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] The McGehee-Tallulah rail corridor extends from milepost 408.9 in McGehee, Ark., where it connects with Union Pacific Railroad Company (UP), south to milepost 498.44 in Tallulah, La., where it connects with Canadian Pacific Kansas City Limited (CPKC). DSRR owns and operates the southernmost segment of the corridor, from milepost 471.0 at Lake Providence, La., south to the connection with CPKC at milepost 498.44 in Tallulah (hereafter, the Line).

denied a motion by DSRR to compel NLA to respond to certain discovery.[3] Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La. (July 2 Decision), FD 36447 (STB served July 2, 2026). DSRR has appealed two aspects of that decision. The Board will deny the appeal.

Unrelated to the appeal, on July 6, 2026, DSRR requested leave to reopen two depositions taken in February 2026 for the limited purpose of questioning those witnesses about information that was newly disclosed by applicant's counsel. The Board will grant this request.

BACKGROUND[4]

As noted above, the December 2025 Decision assigned and authorized ALJ Soulikias to handle all remaining discovery matters in this proceeding. Dec. 2025 Decision, FD 36447, slip op. at 3-4. Since then, the parties continued to pursue discovery and have been engaged before the ALJ on various discovery disputes. By decision served May 27, 2026, the Board set a deadline of July 6, 2026, for the close of discovery. See Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La., FD 36447, slip op. at 3 (STB served May 27, 2026).

As relevant here, on June 16, 2026, DSRR moved to compel NLA (1) to supplement its responses to DSRR's discovery requests dated March 19, 2026 (relating to NLA's financial position for the past several years) and (2) to answer DSRR's discovery requests dated May 6, 2026 (relating to a recent transaction in Docket No. FD 36922 in which OmniTRAX Holdings Combined, Inc. (OmniTRAX), acquired all three of the rail carriers formerly affiliated with NLA but determined after due diligence not to acquire NLA).[5] (DSRR Mot. to Compel 2-4, June 16, 2026.) NLA filed a response in opposition on June 25, 2026. With respect to the March 19, 2026 discovery requests, NLA argued that the motion to compel was largely moot (because on June 17, 2026, NLA had provided DSRR with audited year-end financial information pertaining to six of the seven categories of financial information sought by DSRR), and that the information sought in the remaining category (month-end cash on hand) was not relevant or reasonably likely

[3] DSRR's motion to compel failed to identify the specific discovery requests at issue. The July 2 Decision explains that, in light of DSRR's failure to do so, the ALJ attempted to match specific discovery requests with the category referenced in the motion, and that any remaining unmatched requests were denied. July 2 Decision, FD 36447, slip op. at 1 n.1.

[4] For a more detailed description of the procedural history and background of this proceeding, see Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La., FD 36447, slip op. at 2-6 (STB served Sept. 25, 2025).

[5] (See Verified Notice 4, Apr. 27, 2026, OmniTRAX Holdings Combined, Inc.—Control Exemption—Ark. Short Line R.R.s, FD 36922.) By notice served May 13, 2026, an exemption was granted permitting consummation of the proposed transaction on or after May 27, 2026. See OmniTRAX Holdings Combined, Inc.—Control Exemption—Ark. Short Line R.R.s, FD 36922, slip op. at 2 (STB served May 13, 2026).

to lead to the discovery of relevant evidence. (NLA Reply to Mot. to Compel 2-3, June 25, 2026 (Filing ID 311676).) NLA also stated that it had provided DSRR's counsel with its responses to DSRR's May 6, 2026 discovery requests on June 17, 2026, and that it would provide its audited financial results for 2025 as soon as they were available. (Id. at 2, 8.) The ALJ denied DSRR's motion to compel on July 2, 2026. On July 6, 2026, DSRR appealed two aspects of the decision. NLA filed a reply in opposition to the appeal on July 9, 2026.

Separately, and unrelated to the appeal, on July 1, 2026, counsel for LPPC and NLA filed a letter disclosing an unwritten agreement to modify the LPPC-NLA lease agreement, which would govern the operation of the Line if LPPC's feeder line application were granted, that had not been previously identified or submitted to the Board. (LPPC-NLA Letter 1, July 1, 2026.) The July 1 letter states that the modification was agreed to by Daniel Robbins, NLA's President, and Wyly Gilfoil, LPPC's former Executive Director, and relied on by LPPC when it filed an application with the Louisiana Bond Commission in 2024. (Id. at 1.) By letter filed on July 6, 2026, DSRR sought leave to reopen the February 2026 depositions of Mr. Robbins and Mr. Gilfoil to question them about the amendment. (DSRR Letter 1, 3, July 6, 2026.) LPPC and NLA oppose this request, arguing there is no showing that the earlier deposition testimony or discovery responses are misleading or incorrect. (LPPC-NLA Letter 1, 4, July 8, 2026.)[6]

DISCUSSION AND CONCLUSIONS

The Appeal

An appeal prior to a final Board decision on the merits of a proceeding is an interlocutory appeal. Finch Paper LLC—Pet. for Declaratory Ord., FD 35981, slip op. at 5 (STB served Jan. 11, 2017). Interlocutory appeals are permitted only if a party establishes one of four circumstances enumerated in 49 C.F.R. § 1115.9(a). Id. If an interlocutory appeal meets one of those requirements under 49 C.F.R. § 1115.9(a), the Board then analyzes the merits of the appeal under the standard outlined in 49 C.F.R. § 1115.1(c). Id.

DSRR appeals two aspects of the ALJ's July 2 Decision. DSRR contends that the appeal should be entertained under 49 C.F.R. § 1115.9(a) because the rulings in question "may result in substantial irreparable harm . . . or undue prejudice to a party," thereby satisfying the criterion at § 1115.9(a)(4). (DSRR Appeal 6.) On the merits, DSRR contends that reversal is required under § 1115.1(c) to correct "a clear error of judgment" and prevent "manifest injustice." (Id.) The Board finds that DSRR has not shown "substantial irreparable harm" or "undue prejudice" under

[6] The parties filed additional letters relating to the undisclosed amendment on July 10, 2026 and July 21, 2026, but those letters do not reference DSRR's request to reopen the two depositions. LPPC and NLA filed an additional letter on July 24, 2026, objecting to DSRR's July 21, 2026 letter and reiterating their position that DSRR's request to reopen discovery should be denied.

§ 1115.9(a)(4) with respect to either of the challenged rulings. Accordingly, the Board will not entertain DSRR's appeal.

NLA's Financial Information

DSRR claims undue prejudice because it was "denie[d] discovery into the finances of a party to this proceeding"—namely, NLA—that has agreed with LPPC to accept responsibility in the first instance for covering operating expenses over the Line. (Appeal 6; see also id. at 8 (arguing that "discovery into NLA's finances" would also be relevant to whether the sale of the Line would be likely to result in improved railroad transportation for shippers that transport traffic over the Line).)

However, DSRR has received financial discovery from NLA. On June 17, 2026, the day after DSRR filed its motion to compel, NLA produced its year-end audited financial statements for 2023 and 2024 and committed to providing its final year-end statement for 2025 as soon as it was available. (NLA Response to Mot. to Compel 2, 4-6, June 25, 2026); see July 2 Decision, FD 36447, slip op. at 4-5. The 2025 final year-end statement was produced on July 8, 2026. (NLA Reply to Appeal 2-3, July 9, 2026.) Additionally, in response to DSRR's motion to compel, NLA argued that six of the seven categories of information sought in DSRR's motion are included in NLA's final year-end financial statements and that the seventh category (month-end cash on hand) is not relevant or likely to lead to relevant evidence. (NLA Response to Mot. to Compel 2-3, 6-8.) In the July 2 Decision, the ALJ noted that NLA had already produced audited financial discovery and that DSRR "ha[d] not explained why the unaudited financial documents [sought in the motion to compel] are discoverable in this matter." July 2 Decision, FD 36447, slip op. at 3.

In its appeal, DSRR continues to broadly seek NLA's "financials for 2025," including the unaudited financial information NLA submitted in Docket No. FD 36922, the OmniTRAX proceeding. (Appeal 11; see also id. at 8-9.) But DSRR does not explain how the ALJ's denial of its request for that additional, unaudited financial information may cause substantial irreparable harm or undue prejudice to DSRR. DSRR argues only that "there is no burden to NLA to provide that information" because it exists and has been provided in another proceeding. (Appeal 8.)[7] Nor does DSRR dispute NLA's arguments in response to the motion to compel that DSRR's request for information beyond the year-end financial statements would be redundant (because comparable information is contained in the financial statements)[8] or irrelevant (in the case of month-end cash on hand).[9] In sum, DSRR has not shown that the threshold circumstance required to entertain its appeal—that the ALJ's denial of its request for NLA's unaudited 2025

7 The unaudited financial information was designated as highly confidential and produced under seal in the OmniTRAX proceeding. (See id. at 4, 8.)

8 (See NLA Response to Mot. to Compel 2-3, 8, June 25, 2026.)

9 (See NLA Response to Mot. to Compel 3, 6-8, June 25, 2026.)

financial information may result in substantial irreparable harm or undue prejudice to DSRR—is present here.

Discovery involving the OmniTRAX Proceeding

DSRR also seeks discovery regarding the reason(s) OmniTRAX did not acquire NLA in the transaction in Docket No. FD 36922 earlier this year, in which OmniTRAX acquired NLA's parent and other affiliated rail carriers. DSRR argues that it is possible the requested discovery "will show it was because of NLA's finances, NLA's lack of customers, NLA's history of derailments, or NLA's service deficiencies—all of which are relevant to this proceeding." (Appeal 10.) But DSRR has had ample opportunity to obtain discovery in this proceeding on these topics—including depositions as well as multiple rounds of written discovery.[10] DSRR does not claim otherwise. Nor does DSRR explain how it would suffer "substantial irreparable harm" or "undue prejudice" from the denial of a request for discovery about what transpired in the OmniTRAX proceeding. In sum, there is no basis for a finding of "undue prejudice" or "substantial irreparable harm" to DSRR from denying the requested discovery about the OmniTRAX proceeding. Because the threshold standard is not met under § 1115.9(a)(4), the Board will not entertain this aspect of DSRR's appeal.

DSRR does claim "prejudice" in another respect, but that claim is misplaced and, moreover, is not about the impact of denying discovery. DSRR argues that the ALJ "blindly accepted" NLA's assertion that OmniTRAX declined to acquire NLA due to the pendency of the feeder line proceeding[11] and that this "prejudices DSRR because DSRR and the Board are not required to just take NLA at its word as to why OmniTRAX did not buy NLA." (Appeal 10.) Although, while describing the parties' differing assertions about the possible reasons OmniTRAX did not acquire NLA, the ALJ observed that NLA's assertion was "logical," July 2 Decision, FD 36447, slip op. at 3, she made no finding on the factual accuracy of that assertion. The ALJ's rationale for denying DSRR's request, rather, appears later in the July 2 Decision, when she explained that "DSRR failed to demonstrate that its May 6, 2026, discovery requests regarding the OmniTRAX transaction are relevant to this matter." Id. at 4. The ALJ made no reference to NLA's assertion that OmniTRAX did not acquire NLA because of the pending

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[10] (See, e.g., DSRR Exs., July 7, 2026 (Robbins Dep. Tr. at 83-95, 109-110, 114-115, 153-162, 167-173 [pdf file pages 1236-1248, 1262-1263, 1267-1268, 1306-1315, 1320-1326], Feb. 27, 2026 (NLA derailments and service complaints); Gilfoil Dep. Tr. at 99-100, 159-165, 168-169 [pdf file pages 479-480, 539-545, 548-549], Feb. 24, 2026 (same)); DSRR Mot. to Compel, Ex. B (NLA Responses to Requests for Admission, Third Set of Interrogatories and Second Set of Requests for Production of Documents Propounded by DSRR) at 1-9, 14-18 (NLA customers), June 16, 2026; DSRR Exs., July 7, 2026 (Robbins Dep. Tr. at 21-26, 29-40, 73-75, 107-109 [pdf file pages 1174-1179, 1182-1193, 1226-1228, 1260-1262], Feb. 27, 2026 (same)).)

[11] The cited statement from footnote 8 of NLA's reply says: "Contrary to DSRR's baseless assertion, we are assured by NLA that the reason that OmniTRAX decided not to acquire NLA had nothing to do with its supposed 'financial weaknesses,' but rather because OmniTRAX, like most railroad owners and operators, did not want to become involved in a feeder-line proceeding such as this one." (NLA Reply to Mot. to Compel 6 n.8, June 25, 2026.)

feeder line proceeding. <u>See</u> <u>id.</u> at 4.[12] The ALJ thus did not "blindly accept" NLA's assertion; she never even relied on it. Accordingly, DSRR's alleged claim of prejudice is unfounded.

For this same reason, the Board also rejects any suggestion by NLA that "ALJ Soulikias found that DSRR's assertion about OmniTRAX's supposed belief was baseless, and instead relied on NLA's counsel's representation." (<u>See, e.g.</u>, NLA Reply to Appeal 3, July 9, 2026.) The Board does not make or endorse any finding here regarding the reason OmniTRAX chose not to purchase NLA.[13]

<u>The Request to Reopen Two Depositions</u>

As noted above, on July 1, 2026, counsel for LPPC and NLA disclosed an unwritten agreement—which had not previously been identified or submitted to the Board—to modify the written lease agreement that would govern the operation of the Line if LPPC's pending feeder line application were granted. (LPPC-NLA Letter 1, July 1, 2026.) The July 1 letter states that the unwritten agreement to modify Section 3.1.d of the Second Amended Railway Lease Agreement between LPPC and NLA was made between Daniel Robbins and Wyly Gilfoil (respectively, NLA's President and LPPC's former Executive Director) after LPPC submitted the Second Amended Railway Lease Agreement to the Board on November 30, 2023, pursuant to the regulation at 49 C.F.R. § 1151.3(a)(7) and the Board's November 20, 2023 order. (<u>Id.</u> at 1.) The July 1 letter further states that LPPC relied on the unwritten modification agreement when it filed an application with the Louisiana Bond Commission in 2024. (<u>Id.</u>)[14]

On July 6, 2026, DSRR requested leave to reopen the depositions of Mr. Robbins and Mr. Gilfoil to question them about the unwritten modification agreement, noting that it had never been disclosed in discovery and that neither witness had referenced it in their February 2026 depositions. (DSRR Letter 1-3, July 6, 2026.) DSRR also states that, when questioned about the

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[12] DSRR's motion to compel itself focused only on arguments that the evidence was not relevant to NLA's financial position. (<u>See</u> DSRR Mot. to Compel, June 16, 2026 (referencing issues pertaining to NLA's financial fitness and/or DSRR's need for financial information on every page of the motion).) DSSR's motion to compel also made no reference to lapses in service, NLA's history of derailments, or NLA's customer base—arguments DSRR raises only on appeal. The ALJ's decision could not be expected to reference or make findings on claims that were not made below.

[13] As DSRR points out, neither the Board nor the ALJ know why OmniTRAX declined to buy NLA. (Appeal 9-10.)

[14] (<u>See also</u> LPPC-NLA Letter 2-4, July 8, 2026 (stating that projected revenue sources used in support of LPPC's bond application were based on the unwritten modification agreement, under which LPPC would receive 100% of revenues for storage of railcars on its tracks).) According to Louisiana State Bond Commission records, LPPC sought $10 million in revenue bonds in April 2024, the proceeds of which would be used to acquire and rehabilitate DSRR's segment of the rail corridor if the Board approved the pending feeder line application. (<u>See</u> DSRR Brief in Support of Mot. for Issuance of Subpoena to Bryant Killen 6 & Attach. D, page 1, May 7, 2026.)

Second Amended Railway Lease Agreement at his June 30, 2026 deposition, Bryant Killen (who succeeded Mr. Gilfoil as LPPC's Executive Director) testified that he was not aware of any amendment to that agreement. (Id. at 3.) DSRR maintains that, unless the July 1 letter is struck, DSRR is entitled to question the individuals named in the letter—Mr. Robbins and Mr. Gilfoil—about the amendment to which they reportedly agreed. (Id. at 1.)

LPPC and NLA oppose this request on two grounds. They argue there is no showing that the earlier deposition testimony or discovery responses are misleading or incorrect. (LPPC-NLA Letter 1, 4, July 8, 2026.) And they assert that DSRR has had an opportunity to question Mr. Killen, whose deposition DSRR does not seek to reopen, "extensively" about LPPC's annual revenues. (Id. at 4.) Accordingly, they maintain, there is no basis to reopen the Gilfoil and Robbins depositions. (Id.) The Board disagrees with these arguments.

The deposition subpoenas issued to Mr. Robbins and Mr. Gilfoil both included as a topic of testimony "all contracts or agreements" their respective organizations had entered into related to the Line. See Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La., FD 36447 (STB served Feb. 13, 2026) (ALJ decision granting unopposed motions for issuance of subpoenas, Robbins Subpoena (Attach. A ¶ 13); Gilfoil Subpoena (Attach. A ¶ 12)). However, although both witnesses testified about various terms in the lease agreement between LPPC and NLA, including its revenue provisions, neither witness mentioned the modification referenced in the July 1, 2026 letter. (See, e.g., DSRR Exs., July 7, 2026 (Gilfoil Dep. Tr. at 142-143, 147-150 [pdf file pages 522-523, 527-530], Feb. 24, 2026; Robbins Dep. Tr. at 110-111 [pdf file pages 1263-1264], Feb. 27, 2026).) If Mr. Gilfoil or Mr. Robbins had disclosed the unwritten agreement at their February 2026 depositions—or if LPPC and NLA had disclosed the agreement in their responses (or, if necessary, supplemental responses) to written discovery served in January 2024—there would have been no need for counsel's July 1, 2026 letter. Nor would there have been a need for their counsel's follow-up letter on July 8, 2026 to "clarify the situation" by "advis[ing] the Board and DSRR that they had agreed . . . to further amend the Second Amended Lease Agreement to reflect that LPPC would be entitle [sic] to receive 100 percent of revenues for storage of railcars on LPPC's tracks." (LPPC-NLA Letter 2, July 8, 2026.) The pertinent point is that the modification to the agreement was never disclosed prior to—and was not disclosed at—the depositions of the two individuals who reportedly agreed to it. DSRR therefore has had no opportunity to examine those witnesses about the modification, including (for example) when, why, and by whom it was proposed and why it was not reduced to writing. That DSRR may have had an opportunity to question Mr. Killen "extensively" about LPPC's annual revenues is equally unpersuasive. Mr. Killen reportedly testified that he was not aware of any amendment to the Second Amended Railway Lease Agreement, (see DSRR Letter 3, July 6, 2026),[15] which is the subject DSRR seeks permission to probe in the reopened depositions, (id.).

The Board is also troubled by the timing and manner of LPPC's disclosure of the modification agreement. Agreements between a feeder line applicant and the proposed operator of the line the applicant seeks to acquire are plainly relevant information. See 49 C.F.R.

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[15] LPPC and NLA's July 8, 2026 letter opposing reopening does not dispute this statement.

§ 1151.3(a)(7) (requiring applicant to attach "any contract that the applicant may have with the proposed operator"). As a general matter, the Board expects parties to any proposed transaction to promptly notify the Board and other participants in the proceeding when there is a substantive change to underlying agreements or other information required by the Board's regulations. The Board—as well as other parties[16]—must be able to rely on the accuracy of an application and related documents in their consideration of the applicant's claims and contentions. This can only occur when such changes are disclosed in a timely and transparent manner.

For the foregoing reasons, the Board will authorize the reopening of the Robbins and Gilfoil depositions for the limited purpose of examination pertaining to the unwritten modification agreement disclosed in counsel's letter of July 1, 2026. Discovery otherwise remains closed, and DSRR's alternative suggestion to strike the July 1 letter, (see DSRR Letter 1, 3, July 6, 2026), will be denied as moot.[17]

The parties are directed to confer and set mutually-agreeable times on or before October 2, 2026, for the reopened depositions, and to jointly notify the Board when the depositions are completed.

It is ordered:

1. DSRR's interlocutory appeal of two aspects of the ALJ's July 2 Decision is denied.

2. DSRR's request to reopen the Robbins and Gilfoil depositions is granted for the purpose and subject to the directives specified above.

3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

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[16] See generally 49 C.F.R. § 1103.27 (referencing duty of candor and fairness in dealing with other litigants).

[17] The Board also notes that DSRR's suggestion to strike the July 1 letter, and its similar suggestion to strike the modification agreement, (id. at 2), are misplaced. The disclosure of the modification agreement—whether or not it has been formally integrated into the written lease agreement between LPPC and NLA—is relevant information in this proceeding, In particular, because it purports to modify the allocation of revenues between LPPC and NLA, it may bear on issues such as LPPC's qualification as a "financially responsible person" and the likelihood that NLA will provide improved railroad transportation for shippers that transport traffic over the Line—both criteria pertinent to the assessment of a feeder line application under 49 U.S.C. § 10907. See 49 U.S.C. § 10907(a)-(b) (financial responsibility), § 10907(c)(1)(E) (improved transportation). The Board will entertain evidence and argument pertaining to the significance of the modification agreement during the merits phase of this proceeding.