

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOR 42189

**2145 AVOCADO LAND TRUST AND HOME WRECKERS, INC. V. FLORIDA EAST
COAST RAILWAY, LLC**

MOTION FOR CLARIFICATION AND MOTION FOR EXTENSION

Communications with respect to this document
should be addressed to:

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Counsel for Florida East Coast Railway, LLC

Dated: October 2, 2026

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**2145 AVOCADO LAND TRUST AND HOME WRECKERS, INC. V. FLORIDA EAST
COAST RAILWAY, LLC**

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Florida East Coast Railway, LLC (“FEC”) moves to clarify that, because the complainants in this proceeding failed to serve process on FEC as required by the Board’s regulations, the time for filing an answer in this proceeding has not begun to run. In the alternative, FEC moves to clarify that the deadline for filing an answer is October 14, 2026, and to extend that deadline to November 13, 2026.

I. BACKGROUND

On August 28, 2026, 2145 Avocado Land Trust and Home Wreckers, Inc. (the “Complainants”) filed a petition with the Board against FEC, which the Board docketed as a formal complaint (the “Complaint”). The certificate of service at the conclusion of the Complaint stated that the Complainants served copies of the Complaint “via US Certified Mail and electronic mail to John Terwilliger [sic], Esq., counsel for Respondent.”

The certificate of service was inaccurate. Service was never accomplished. Mr. Terwilliger never received the Complaint by email. Mr. Terwilliger later received a mailing from the Complainants’ counsel that included a short letter indicating the mailing was intended to contain a flash drive. However, no such flash drive was contained in the envelope. On September 9, 2026, Mr. Terwilliger’s assistant informed counsel for Complainants that the flash drive may have fallen out of a hole in the side of the envelope sent by certified mail. *See* Exhibit 1. Counsel

for Complainants sent an email the same day stating that he would send the document electronically, but to our understanding Mr. Terwilleger and his assistant never received an electronic copy of the document.

On September 24, 2026, an attorney in the Board's Office of Chief Counsel sent an email to Mr. Terwilleger regarding this proceeding. *See Exhibit 2.* The attorney informed Mr. Terwilleger that the Complainants had filed a petition with the Board against FEC, which the Board docketed as a formal complaint. The STB attorney noted that, while the Complaint's certificate of service stated that it was served by certified mail and email on "John Terwilliger, Esq., counsel for Respondent," the certificate of service did not include a mailing address or email address. The attorney explained where the Complaint could be found on the Board's website.

FEC learned of the Complaint from Mr. Terwilleger on September 24, 2026. FEC had no knowledge of the Complaint before September 24.

II. ARGUMENT

The Board should clarify that the time for FEC to file an answer to the Complaint has not begun to run. An answer must be filed "within 20 days after the service of the complaint." 49 C.F.R. § 1111.5(c). The complaint was never properly served, so the deadline has not yet been set.

Service of process was defective in this proceeding. FEC never received a copy of the Complaint until directed to the public copy by the Board's attorney on September 24. Even if the Complainants properly attempted service, they had failed to complete it.

Moreover, the Complainants' attempts at service did not comply with the Board's regulations. The Board requires that formal complaints be served "by sending a copy of such complaint to the chief legal officer of each defendant by either confirmed facsimile and first-class

mail or express overnight courier.” 49 C.F.R. § 1111.4. The Complainants addressed their efforts at service to Mr. Terwilleger, rather than FEC’s chief legal officer. The Board additionally requires a complainant to file “an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service.” *Id.* The Complainants submitted to the Board neither an acknowledgement of service nor proof of service.

At best, the Complainants attempted to comply with the general service provision at 49 C.F.R. § 1104.12(a), but they were unsuccessful. That regulation permits service of e-filed documents by email “if that means of service is acceptable,” or by personal service otherwise, and by mail only if email is not acceptable and personal service is not feasible. But the Complainants never asked FEC whether service by email was acceptable, and attempted to mail, rather than personally serve, a copy of the Complaint, without explaining why personal service was not feasible. Moreover, the Complainants never inquired whether Mr. Terwilleger was authorized to accept service in this proceeding. Although Mr. Terwilleger represented FEC in litigation connected to this proceeding, that litigation has concluded, and neither he nor FEC had made representations to the Complainants concerning his authority in any potential proceeding before the Board.

In light of the defective service of process on FEC, FEC moves the Board to clarify that the time for FEC to file its answer under 49 C.F.R. § 1111.5(c) has not started to run. The Board’s regulations expressly prescribe how service must be accomplished and that the deadline to file an answer is determined by service.

In the alternative, if the Board finds it appropriate to set a deadline given that FEC eventually received notice of the Complaint, if not service, FEC moves the Board to (1) clarify that the time for filing an answer began to run on September 24, when FEC received notice of the proceeding, such that the deadline for filing an answer would be October 14, and (2) to extend the period for FEC to file an answer by 30 days to November 13, 2026. For the reasons stated above, it would be improper and unfair for the time for FEC to file an answer to begin to run any earlier than when FEC received actual notice of the Complaint. Additionally, an extension is warranted because FEC has recently engaged the undersigned counsel to represent it before the Board, and counsel requires additional time to review this case's lengthy procedural history and the numerous filings across multiple fora.

III. CONCLUSION

The Board should clarify that, in light of Complainants' failure to serve FEC as required by 49 C.F.R. § 1111.4, the time for filing an answer under 49 C.F.R. § 1111.5(c) has not begun to run.

In the alternative, the Board should clarify that the time for filing an answer did not begin to run until September 24, and extend the deadline for filing an answer to November 13, 2026.

[Signature block follows on next page]

Respectfully Submitted,



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Counsel for Florida East Coast Railway, LLC

Dated: October 2, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Motion to Clarify and Motion to Extend Deadline to be served by email upon counsel for 2145 Avocado Land Trust and Home Wreckers, Inc. at the following email addresses and via U.S. Mail:

W. Nathan Meloon
Josh A. Porteous
WIDERMANN MALEK, PL
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NMeloon@USLegalTeam.com
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afultz@kaplankirsch.com

Dated: October 2, 2026

EXHIBIT 1

From: Musco, Lisa <LMusco@gunster.com>

Sent: Thursday, September 10, 2026 8:25 AM

To: W. Nathan Meloon <nmeloon@uslegalteam.com>

Cc: Musco, Lisa <LMusco@gunster.com>

Subject: RE: 2145 Avocado Trust and Home Wreckers, Inc. v. FECR - September 3, 2026 Letter and enclosed flash drive

Thank you.



Lisa Musco | Legal Administrative Assistant to
Holly Griffin Goodman, Esq.; John W. Terwilleger, Esq.; Barbara Litten, Esq.;
and Nalani A. Gordon, Esq.

777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401

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gunster.com | lmusco@gunster.com

 Please consider the environment before printing this email.



From: W. Nathan Meloon <nmeloon@uslegalteam.com>

Sent: Wednesday, September 9, 2026 8:49 PM

To: Musco, Lisa <LMusco@gunster.com>; Cassandra Darrall <cdarrall@uslegalteam.com>

Cc: Musco, Lisa <LMusco@gunster.com>; Ariana Tellone <ATellone@uslegalteam.com>

Subject: Re: 2145 Avocado Trust and Home Wreckers, Inc. v. FECR - September 3, 2026 Letter and enclosed flash drive

This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I apologize that it fell out, we figured the flash drive was easier than printing and sending the 732 pages. @Cassandra Darrall will one drive the document with the attachments and send it.



W. Nathan Meloon, Attorney at Law
1990 W. New Haven Ave.
Second Floor
Melbourne, FL 32904
(321) 255-2332 (321) 255-2351 fax



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From: Musco, Lisa <LMusco@gunster.com>
Date: Wednesday, September 9, 2026 at 4:07 PM
To: W. Nathan Meloon <nmeloon@uslegalteam.com>
Cc: Musco, Lisa <LMusco@gunster.com>
Subject: 2145 Avocado Trust and Home Wreckers, Inc. v. FECR - September 3, 2026 Letter and enclosed flash drive

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Good Afternoon, Mr. Meloon:

I am writing to confirm that the flash drive that should have accompanied the attached letter, contained only 732 pages.

Strangely enough, it appears that the flash drive fell out of a hole in the side of the envelope sent by Certified Mail.

We look forward to your response.

Thank you.



Lisa Musco | Legal Administrative Assistant to
Holly Griffin Goodman, Esq.; John W. Terwilleger, Esq.; Barbara Litten, Esq.;
and Nalani A. Gordon, Esq.

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EXHIBIT 2

From: Schlosberg, Jason <Jason.Schlosberg@stb.gov>

Sent: Thursday, September 24, 2026 12:13 PM

To: Terwilleger, John <JTerwilleger@gunster.com>

Cc: Peterson, Deborah <DPeterson@gunster.com>; Muñiz, Juan M. <JMuniz@gunster.com>; Valido, Ada <AValido@gunster.com>

Subject: STB Docket No. NOR 42189, 2145 Avocado Land Trust and Home Wreckers, Inc. v. Florida East Coast Railway, LLC: Status Inquiry

This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Terwilleger,

I am an attorney in the Surface Transportation Board's Office of Chief Counsel. I am writing about Docket No. NOR 42189, 2145 Avocado Land Trust and Home Wreckers, Inc. v. Florida East Coast Railway, LLC.

On August 28, 2026, 2145 Avocado Land Trust and Home Wreckers, Inc. filed a petition with the Board against Florida East Coast Railway, LLC (FECR). The petition concerns flooding at 2145 Avocado Avenue in Melbourne, Florida. It was submitted under Docket No. FD 36952 and has been docketed as a formal complaint in Docket No. NOR 42189.

Under the Board's regulations, an answer to a complaint must be filed within 20 days after service of the complaint. 49 C.F.R. § 1111.5(c). As of today, no answer or other filing by FECR appears in the docket.

The petition's certificate of service states that it was served by certified mail and email on "John Terwilliger, Esq., counsel for Respondent." However, it does not include a mailing address or email address. I obtained your contact information from exhibits attached to the petition, which include materials from the related litigation in the Circuit Court for Brevard County and the U.S. District Court for the Middle District of Florida.

Could you please let me know:

1. whether you represent FECR in this proceeding before the Board; and
2. whether FECR intends to file an answer.

If you or FECR did not receive the petition, it is publicly available on the Board's website. Go to www.stb.gov, open the e-Library, and search filings by Docket No. NOR 42189. The petition is Filing ID 312153.

This inquiry concerns procedural matters only, and I am not able to discuss the merits of the proceeding. Thank you for your attention to this matter.

Sincerely,
Jason Schlosberg
Office of Chief Counsel
Surface Transportation Board

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