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ALJ

SERVICE DATE – JANUARY 16, 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 DENYING DSRR’S MOTION TO STRIKE, AND IN THE ALTERNATIVE,
MOTION TO COMPEL, OR FOR A SUBPOENA DUCES TECUM AND
GRANTING LPPC’S MOTION TO COMPEL

Decided: January 16, 2026

This discovery matter 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 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. By decision served September 25, 2025, the Board denied two motions to dismiss the proceeding, lifted a previously imposed abeyance, and directed the parties to submit (jointly if possible) a proposed procedural schedule that took into account a reasonable period of time for DSRR to complete discovery. Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La. (September 2025 Decision), FD 36447 (STB served Sept. 25, 2025). The parties submitted competing proposals for a procedural schedule on November 19, 2025. See Materials Due to Be Submitted During the Fed. Gov’t Shutdown, EP 751 (STB served Nov. 13, 2025) (setting deadlines of November 20, 2025, due to the lapse in the Board’s appropriations).

Also on November 19, 2025, DSRR filed a motion to strike verified statements signed by shipper witnesses in support of LPPC’s amended application or, in the alternative, to compel discovery from and then depose those witnesses.¹ (DSRR Mot. to Strike 1-2, Nov. 19, 2025.) DSRR stated that the witnesses on whom it served written discovery requests objected to the discovery and refused to respond. (Id.)

¹ DSRR’s motion was captioned and alternatively requested the issuance of subpoena duces tecum. (DSRR Mot. to Strike 1 & 6.)

LPPC replied in opposition to this motion 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).) LPPC also objects to DSRR’s subpoena duces tecum on the ground that each witness should be the subject of a separate petition for such a subpoena. (*Id.* at 12-13.) The four shipper witnesses also objected, arguing that they are not parties. (Epstein Letter 1; LP&M Letter 1; Hollybrook Warehouse Letter 1-2; Complex Letter 1-3.) They also want separate subpoenas to challenge. (Epstein Letter 2; LP&M Letter 2; Hollybrook Warehouse Letter 1-2; Complex Letter 3.)

As a separate discovery issue, LPPC filed a motion to compel DSRR to produce updated valuation evidence on December 16, 2025.

To streamline resolution of the discovery in this case, the undersigned ordered: any replies to pending discovery motions must be filed on or before January 5, 2026; a meet and confer (including counsel for the witnesses) on or before January 8, 2026; and if not all issues were resolved, then a letter to the ALJ (jointly, if possible) with a brief description of the remaining issues and list of attendees on or before January 9, 2026; and a Status Conference on January 13, 2026, on the remaining discovery issues. See Decision (Dec. 31, 2025).

DSRR filed its response in opposition to LPPC’s Motion to Compel Supplementation of Responses on January 5, 2026. In advance of the Status Conference, DSRR and LPPC (including the witnesses’ attorneys) each submitted letters outlining the discovery issues to be resolved at the Status Conference.

This Decision memorializes the rulings made at the January 13, 2026, Status Conference.

DSRR’s Motion to Strike the witnesses’ statements is Denied. The witnesses have not refused to engage in discovery altogether such that their statements should be stricken (and they have not disobeyed any order compelling discovery). See 49 C.F.R. § 1114.31(b)(iii).² Instead, the witnesses have argued that they are non-parties, and DSRR has not yet engaged the proper procedural device for discovery upon a non-party (i.e., a subpoena duces tecum). DSRR propounded interrogatories, requests for production of documents, and served notices of deposition. (See, e.g., DSRR Mot. to Strike; Ex. A, Livingston discovery requests.)

DSRR argues that whether the witnesses are parties or non-parties is irrelevant pursuant to section 49 C.F.R. § 1114.21(a)(1), which provides that parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding. This section sets forth the **scope** of discovery, not the target—party or non-party—and corresponding discovery procedural device.

The Board’s regulations define a party as:

² An order to strike pleadings as a discovery sanction is available only after there is an order on a motion to compel and then a failure to comply with that order.

Party means a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding. **It will not include persons merely signing certificates of support or witnesses at oral hearing or in modified procedure proceedings**, unless they are otherwise a party to the proceeding.

49 C.F.R. § 1101.2(d) (emphasis added). Here, the witnesses signed verified statements to LPPC's Amended Application. DSRR argued that verified witness statements are not the same as "certificates of support" in 49 C.F.R. § 1101.2(d). Without a Board case rejecting that argument, the language of 49 C.F.R. § 1101.2(d) indicates that a person who provides a verified witness statement is not party and is more analogous to one merely signing a certificate of support or a witness at an oral hearing. Thus, undersigned found that the witnesses are non-party witnesses. Moreover, contrary to DSRR's argument, it matters for discovery purposes, because a non-party witness must be issued a subpoena duces tecum.

DSRR's alternative motion to compel is denied. DSRR's interrogatories, requests for production of documents, and notices of deposition are incorrect procedural devices for non-party witnesses. 49 C.F.R. §§ 1114.23(d)(2) (failure to serve subpoena upon witness for deposition); 1114.26(a) (written interrogatories may be served upon any "party"); and 1114.30(a) (requests for production of documents may be served upon any "party").

As discussed at the Status Conference, DSRR, in its final alternative, requested issuance of a subpoena duces tecum for each witness. However, DSRR's motion did not attach the proposed subpoena duces tecum for review, objection, and if necessary, file a motion for protective order, or for the undersigned to issue. Under 49 U.S.C. § 1321(d), in a proceeding, the Board (and this ALJ through its referral of discovery to her), may take the testimony of a witness by deposition and order the witness to produce records.

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.³ 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.

³ As explained at the Status Conference, DSRR's motion to strike was less than clear about precisely who it sought to depose (i.e., the undersigned could not make a complete list of the proposed witnesses. See Decision 2 n.2 (Dec. 31, 2025). This is especially an issue when there is general request for a subpoena duces tecum without any subpoena attached directed to the proposed deponent. The non-party witnesses (plus Missy Courtwright, discussed later) at issue in this decision are:

- 1) Robert N. Amacker, Jr., on behalf of Hollybrook Warehouse, Inc. (Hollybrook Warehouse),
- 2) Sam Angel on behalf of Epstein Gin Co. and Epstein Transloading (Epstein),
- 3) Blake Livingston on behalf of Livingston Pecan & Metal, Inc. (LP&M),
- 4) Neil Martin, Terral RiverService, and

- a. **On or before January 21, 2026**, DSRR must circulate the proposed subpoena duces tecum (date, time, length) and the attached requested documents for each witness to LPPC and counsel for the witness.⁴
- b. DSRR must confer with counsel for LPPC and the attorney for the witness regarding the proposed subpoena duces tecum in an attempt to resolve any disputed issues **on or before January 30, 2026**.
- c. DSRR must file its requests for issuance of subpoenas duces tecum (preferably undisputed) regarding these witnesses **on or before February 2, 2026**.

Regarding the assertions of privilege based on attorney work product, this is not yet ripe for adjudication. While a privilege log has been completed, no **documents** have been withheld based upon it. No witness has refused to answer any question at deposition. This issue may be revisited if documents are withheld or communications refused based upon this alleged privilege or work product doctrine.

Finally, for the non-party witness, Missy Courtwright. She did not prepare a verified statement, and she is not an employee of a party (although DSRR claims she is an employee of NLA⁵—a party—she works for one of NLA’s child companies). Ms. Courtwright is a customer service representative listed on documents that have been produced in discovery. While the scope of discovery is broad, it is not limitless, particularly when it comes to non-parties. 49 C.F.R. § 1114.21(c) (protective conditions may be imposed). The discovery sought can be obtained from a party, NLA. Thus, DSRR must attempt to obtain the discovery first from the party, NLA. If that discovery is not available, DSRR may return seek a subpoena (duces tecum) after conferring with LPPC and counsel for Ms. Courtwright.

LPPC’s motion to compel DSRR to supplement discovery responses and provide an updated valuation is granted. LPPC argues that its experts require time to prepare their analysis. In response, DSRR argues that the valuation was complete when made and is not required to be supplemented. DSRR provided its valuation on July 5, 2025. (LPPC Mot. to Compel 2). Due to the passage of time, it is appropriate for DSRR to supplement the discovery responses regarding the valuation. 49 C.F.R. § 1114.29(c) (a duty to supplement may be imposed by order). The parties previously narrowed the discovery requests regarding the valuation.

5) Jerry J. Melton, on behalf of Complex Chemical Company, Inc. (Complex). (DSRR Resp. 7-8, Jan. 5, 2026).

⁴ The scope of the discovery must be tailored to the **witness**. It was not clear that the witness could answer questions and produce documents about the witness’s corresponding business. If so, an additional witness may be offered for a limited deposition for those purposes. The meet and confer should be used to resolve such issues.

⁵ The Board found North Louisiana & Arkansas Railroad (NLA) has participated as a party in this proceeding. See Decision 3 (June 1, 2021).

A procedural schedule has not been entered by the Board, but the parties have submitted proposed procedural schedules. Accordingly, it is also appropriate to give a deadline for the updated valuation discovery. DSSR must provide updated discovery responses to LPPC's valuation discovery **on or before March 15, 2026**.

It is ordered:

1. DSSR's Motion to Strike is denied, and in the Alternative, Motion to Compel is denied, but the Motion for a Subpoena Duces Tecum is denied without prejudice. Additional requirements and deadlines are set forth in the body of this decision.
2. LPPC's Motion to Compel Updated Valuation Discovery is granted. DSSR shall produce updated discovery **on or before March 15, 2026**.
3. This decision is effective on the date of service.

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