

Peter W. Denton
202 429 6445
pdenton@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoelaw.com

309378

ENTERED
Office of Proceedings
March 20, 2025
Part of
Public Record

Steptoe

March 20, 2025

CSXT-4

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

**Re: STB Docket No. FD 36836, Norfolk Southern Corporation & Norfolk
Southern Railway Company—Acquisition of Control—Norfolk &
Portsmouth Belt Line Railroad Company**

Dear Ms. Brown:

I am writing on behalf of CSXT¹ to notify the Board of a discovery issue in the above-referenced proceeding that may require the Board's resolution on an expedited basis.

The Board has acknowledged that “any future decision concerning control would benefit from the findings of the district court” in CSXT's antitrust lawsuit against NS and NPBL. *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co. (Decision No. 2)*, FD 36836, slip op. at 3 (STB served Mar. 14, 2025). The parties have generated a substantial record in the district court proceeding, all of which is directly relevant to the threshold issue in this STB proceeding: whether as a result of the Board's authorization of NS's control of NPBL, “there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.” 49 U.S.C. § 11324(d)(1). Indeed, CSXT's allegations in the district court antitrust proceeding speak directly to those issues.

¹ Unless otherwise defined, the acronyms and defined terms used herein are the same as those used in the Board's *Decision No. 2*, served on March 14, 2025 in this proceeding, or in CSX Transportation Inc.'s Petition to Reject Northern Southern's Minor Application, filed on February 27, 2025.

Naturally, CSXT intends to rely, in part, on the record in the district court proceeding in making its case in this STB control proceeding. Presumably NS and other parties will as well. Reliance on the district court record would result in significant efficiencies for the parties and the Board, especially given the statutory deadlines faced by the Board in control proceedings. NS has acknowledged this, when it stated that “[t]he history of [the CSXT antitrust] litigation (including the decision of the appeals court) is also known and available to all of the parties” and that “[t]he record is known by all and ready for presentation and argument before the Board.” (NS Reply 35, Mar. 7, 2025.)

However, the district court record is subject to the attached protective order. There are many relevant materials in that record designated as “confidential” or “confidential—attorneys eyes only.” For example, significant portions of CSXT’s Consolidated Opposition to Defendants’ Motions for Summary Judgment in the district court proceeding that CSXT attached with its Petition to Reject in this proceeding were redacted due to their confidential designation under the district court’s protective order. The confidential materials produced under the protective order may only be used “solely for the purpose of [the district court action].” Stipulated Protective Order Governing the Handling of Confidential Information and the Non-Waiver of Information Subject to Attorney-Client Privilege and/or Work Product Protection Pursuant to Fed. R. Evid. 502(d) ¶ 5, *CSX Transp. Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530 (E.D. Va. Oct. 29, 2019), ECF No. 79.

Under the protective order, the parties may consent to disclosure of confidential or confidential—attorneys eyes only material. *Id.* at ¶ 24. CSXT has asked NS to consent to allow the district court record to be used in the STB control proceeding, given all of the efficiencies described above and NS’s representation that “[t]he record is known by all and ready for presentation and argument before the Board.” But NS has refused and insisted that CSXT make formal discovery requests in this STB control proceeding in order to gain access to certain of those materials.

CSXT hereby notifies the Board that it has served the attached discovery requests on NS and NPBL, so that all parties may gain access to the district court record for use in this STB control proceeding. CSXT has asked for NS’s and NPBL’s responses by April 2, 2025. CSXT is certainly willing to respond affirmatively to any reciprocal request from NS or NPBL. Given NS’s refusal to consent to an informal resolution to this issue, CSXT anticipates that it may need to ask the Board to resolve this discovery issue on an expedited basis. NS represented to the Board that the “record is known by all and ready for presentation” but now seems to be seeking to delay CSXT’s access to those materials.

Cynthia T. Brown
March 20, 2025
Page 3

Given the tight deadlines in control proceedings, CSXT is notifying the Board of this issue now, so that the Board can take prompt action if and when CSXT must present the issue to the Board.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Anthony J. LaRocca
Molly Bruder Fox
Sally Mordi
Lauren Goldschmidt
Attorneys for CSX Transportation, Inc.

Enclosures

cc: All parties of record

DISTRICT COURT PROCEEDING
PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,	)	
individually and on behalf of NORFOLK &	)	
PORTSMOUTH BELT LINE RAILROAD	)	
COMPANY,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 2:18-cv-00530-MSD
	)	
NORFOLK SOUTHERN RAILWAY	)	
COMPANY, NORFOLK &	)	
PORTSMOUTH BELT LINE RAILROAD	)	
COMPANY, JERRY HALL, THOMAS	)	
HURLBUT, PHILIP MERILLI, and	)	
CANNON MOSS,	)	
	)	
Defendants.	)	
	)	

**STIPULATED PROTECTIVE ORDER GOVERNING
THE HANDLING OF CONFIDENTIAL INFORMATION AND
THE NON-WAIVER OF INFORMATION SUBJECT TO ATTORNEY-CLIENT
PRIVILEGE AND/OR WORK PRODUCT PROTECTION
PURSUANT TO FED. R. EVID. 502(d)**

THIS MATTER came before the Court on the Joint Motion for Entry of Stipulated Protective Order Governing the Handling of Confidential Information and the Non-Waiver of Information Subject to Attorney-Client Privilege and/or Work Product Protection Pursuant to Fed. R. Evid. 502(d) ("Joint Motion") filed by plaintiff CSX Transportation, Inc. ("CSXT"), and defendants Norfolk Southern Railway Company ("NS"), Norfolk & Portsmouth Belt Line Railroad Company ("NPBL"), Jerry Hall, Thomas Hurlbut, Philip Merilli, and Cannon Moss (each a "Party," and collectively, the "Parties"). Pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502(e), the Parties, through their respective attorneys, hereby jointly request that the following Order be entered in the above-captioned case (the "Action") to govern:

(i) the exchange of discovery material by the Parties and/or by third parties, (ii) the use or exhibition of documents and things during discovery, (iii) testimony containing trade secrets or confidential or proprietary research, development, technical, financial, strategic, competitive, customer, or commercial information, as well as other kinds of commercially sensitive information within the meaning of Fed. R. Civ. P. 26(c)(1)(G), and (iv) the non-waiver of information subject to attorney-client privilege and/or work product protection.

The Parties and this Court agree that the disclosure of such commercially sensitive information poses a substantial risk of harm to the legitimate proprietary interests of the Parties and third parties. Therefore, good cause exists for entry of this Order to preserve the confidentiality of certain documents and information, to outline procedures for and reasonable restrictions on the disclosure of sensitive materials, and to permit discovery to proceed without delay. The Parties and this Court further agree that good cause exists for entry of this Order to protect the Parties to the Action, to the fullest extent permissible by law, against any waiver of any attorney-client privilege and/or work product protection in this or any other federal or state proceeding that might otherwise arise from the disclosure, production, or exchange of information in this Action, and to outline procedures for handling the clawback of such protected information.

Accordingly, the Court hereby enters the following Order, which shall control (i) the disclosure, dissemination, and use of confidential and/or proprietary information in this Action, and (ii) the clawback of information subject to attorney-client privilege or work product protection following the disclosure of the same, which shall be deemed a non-waiver:

PROTECTION OF CONFIDENTIAL INFORMATION

1. This Order shall govern confidential and/or proprietary information disclosed during discovery in this Action, including, but not limited to, documents, things, requests, and

responses to requests for production of documents and things, interrogatory answers, deposition testimony, answers to requests for admissions, expert reports, requests and responses to discovery demands, as well as any copies, notes, abstracts, or summaries of such information. The provisions of this Order shall not affect, and this Order does not limit, the use or admissibility of such protected information or material or references to such information or material as evidence at trial, or during a hearing or similar proceeding in this Action or as part of the record on appeal, provided that any Party may seek an appropriate Court Order to protect such material.

2. Except with the prior written consent of the producing Party (“Producing Party”), any Material that the Producing Party designates as CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY shall be considered “Protected Material” and shall not be disclosed to any person or used for any purpose except as expressly permitted in this Protective Order. The Producing Party may designate as “CONFIDENTIAL” any Material that it produces in this Action which contains confidential, non-public financial, sales, marketing, customer or cost/pricing information, and confidential and proprietary internal business, strategic planning, or tactical information, as well as any other information or record that the Producing Party believes in good faith must or may be protected from disclosure in accordance with the Federal Rules of Civil Procedure or other applicable law (collectively “Confidential Material”). Any Party to this Litigation, or any third party who elects to be covered by this Protective Order, may designate Material as “CONFIDENTIAL—ATTORNEYS EYES ONLY” to the extent it qualifies for designation as CONFIDENTIAL and, in addition, if the designating Party believes in good faith that disclosure to the Parties would create a substantial risk of serious injury to the designating Party (“Confidential—Attorneys Eyes Only Material”). Confidential Material and Confidential – Attorneys Eyes Only Material are collectively “Protected Material” under this order.

3. The Parties submit that the following categories of information that may be discovered under this Protective Order may qualify as trade secrets or some other properly demarcated category of legitimately confidential information and accordingly may be Confidential Material or Confidential—Attorneys Eyes Only Material, regardless of the form such information may take, including, but not limited to, documents, things, requests and responses to requests for production of documents and things, interrogatory answers, deposition testimony, answers to requests for admissions, expert reports, and other requests and responses to discovery demands, as well as any copies, notes, abstracts, or summaries of such information, whether produced informally or in response to requests for production of documents or things, interrogatories, requests for admissions, or other formal methods of discovery:

- Research and development data;
- Pricing information, including sales and profits;
- Financial data, including sales, marketing, and costs data;
- Confidential business information; and/or
- Identities and lists of customers and vendors.

4. If discovery is sought from a non-party to this Action, the words “Party” and “Parties” herein shall be read to include that non-party once that non-party informs the Parties to this Action in writing or by e-mail that it is invoking the terms of this Protective Order. Any such non-party shall have all the rights and all the responsibilities set forth under this Protective Order, including the responsibilities with respect to any material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY that it receives. Additionally, any such non-party shall have standing to appear in this Action to file motions and oppose motions, as necessary, to protect such non-party's rights in its Confidential Material.

5. Each Party and all other persons bound by the terms of this Protective Order shall use material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY by any Party other than itself solely for the purpose of this Action, and not for any other purpose whatsoever. The receiving Party (“Receiving Party”) shall not make any copies, duplicates, extracts, summaries, or descriptions of Confidential Material except as may be reasonably necessary in the litigation of this Action. This Order shall be fully applicable to all such copies, duplicates, extracts, summaries, or descriptions of Confidential Material.

6. Confidential Material that is produced by a Party shall be clearly marked or stamped with the legend “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS EYES ONLY.” Such legend shall be placed on every page of a multi-page document. Such legend need not be placed on the original document of the Producing Party but instead may be placed upon copies produced or exchanged. Subject to the exceptions set forth below in this Protective Order, as to each document or portion so marked, the Receiving Party shall not disclose such document or portion or the contents thereof to others unless by specific order of this Court or by written consent of the Producing Party. All Confidential Material not reduced to documentary or tangible form or which cannot be conveniently designated in the manner set forth above, such as models or electronic files, shall be designated by the Producing Party by informing the Receiving Party in writing and/or by so labeling the media on which electronic files are produced.

7. Interrogatories or the answers thereto, requests for admissions or the responses thereto, motions, briefs, memoranda, correspondence, and other documents prepared, produced, served, and/or filed in connection with this Action, or portions of the foregoing, containing Confidential Material or quoting or referring to the substance of any Confidential Material may be similarly designated or treated as CONFIDENTIAL in accordance with the provisions and

procedures of this Protective Order.

8. All or part of any oral or written deposition testimony may be designated CONFIDENTIAL either (a) at the time the testimony is given, or (b) within eight (8) days following receipt of a transcript by written notice to the court reporter, with a copy of the notice to counsel for each Party to the Action of the specific pages and lines of the transcript that contain Confidential Material. Such written notification shall then be attached by the Receiving Party and/or the reporter to the transcript and each copy thereof in its possession, custody, or control. All deposition transcripts shall be treated as CONFIDENTIAL in their entirety until eight (8) business days following receipt of the transcript unless receipt of confidentiality designations is received earlier. Deposition exhibits previously designated CONFIDENTIAL need not be re-designated to retain their status as Confidential Material. If a Party designates an entire deposition as CONFIDENTIAL, that Party shall, within eight (8) days of receiving a copy of the deposition transcript, de-designate any non-confidential portions or confirm in writing that the entire transcript shall remain designated CONFIDENTIAL.

9. In the event the Producing Party elects to produce Confidential Material for inspection, as opposed to, for example, delivering documents or things, no marking need be made by the Producing Party in advance of the inspection if the Producing Party otherwise informs the Receiving Party of its intention to so designate the produced material, and all information produced for inspection shall be treated as CONFIDENTIAL during the inspection. Thereafter, upon selection by the inspecting Party of specified documents or things for copying, the copies of such documents that contain Confidential Material shall be marked appropriately.

10. Information that becomes available to a Party via inspection, measuring, analyzing, or testing of any sample or thing marked CONFIDENTIAL or which is prepared or derived by

utilizing such a sample or thing shall also be considered to be CONFIDENTIAL.

11. Absent written consent from the Producing Party or unless otherwise directed by the Court, Protected Material may be disclosed only to the following persons:

- a. Individuals who are Party to this action in their individual capacities;
- b. With respect to business entities who are Party to this action, no more than two individuals employed by the Receiving Party who are directly and actively involved in assisting with the prosecution or defense of this Litigation, whose identities have been previously disclosed to the Parties, and who must have agreed to be bound by this Protective Order by signing a confidentiality agreement substantially in the form of Attachment A (the "Business Personnel"), except that, upon the Receiving Party's identification of Business Personnel, the Producing Party shall have five (5) days to petition the Court to challenge such designation. Until the Court issues a decision, no Confidential Material shall be disclosed to such Business Personnel without prior written consent of the Producing Party;
- c. Outside counsel of record for the Parties;
- d. In-house counsel for the Parties who are actively involved in assisting with the prosecution or defense of this Litigation;
- e. Outside experts or consultants who are not regular employees of a Party but are retained on behalf of any of the Parties by their outside counsel to assist in the preparation of this case;
- f. Outside photocopying, graphic production services or litigation support services employed by the Parties' counsel to assist in this Litigation, and computer service personnel performing duties in relation to a computerized litigation system;

- g. The Court, court reporters, videographers, stenographers, and court personnel;
 - h. The direct staff of, and any contract support personnel employed or retained by, any of the foregoing persons, provided that such persons are actively involved in assisting with the prosecution or defense of this Litigation; and
 - i. Any person who is an employee of the Producing Party, or a former employee of the Producing Party (if they were employed by the Producing Party when the Confidential Material was created).
12. Absent prior written consent from the Producing Party or unless otherwise directed by the Court, Confidential-Attorneys Eyes Only Material may be disclosed only to the following persons:
- a. Outside counsel for the Receiving Party, their employees and outside photocopying, graphic production services or litigation support services assisting such counsel, and computer service personnel performing duties in relation to a computerized litigation system;
 - b. The Court, court reporters, videographers, stenographers, and court personnel, as are necessarily incident to depositions, hearings or trial;
 - c. Outside experts or consultants who are not regular employees of a Party but are retained on behalf of any of the Parties by their outside counsel to assist in the preparation of this case; and
 - d. Any person who is an employee of the Producing Party, or a former employee of the Producing Party (if they were employed by the Producing Party when the AEO Material was created).
13. If any Party believes in good faith that its in-house counsel who are actively

involved in assisting with the prosecution or defense of this Litigation, or if an individual, the Party himself, requires access to Confidential-Attorneys Eyes Only Material to effectively assist in this Litigation, the Party may provide written notice to the designating Party, identifying in good faith specific, limited Confidential-Attorneys Eyes Only Material to which it believes such access is required. The designating Party shall consider any such request in good faith and, to the extent feasible and not unduly burdensome, produce a second version of the specified Confidential-Attorneys Eyes Only Material that redacts discrete pieces of information, such as specific figures, statements, or information that the designating Party in good faith believes warrant a designation of CONFIDENTIAL—ATTORNEYS EYES ONLY. The redacted version shall be subject to the same restrictions and protections as Confidential-Attorneys Eyes Only Material, except that it may be disclosed to in-house counsel or individual defendant who is/are actively involved in assisting with the prosecution or defense of this Litigation. To the extent the Parties cannot after good faith efforts reach agreement on any such request, either Party may seek appropriate relief from the Court.

14. Outside experts and consultants shall not be permitted access to material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY unless and until they agree in writing to be bound by this Protective Order by signing a confidentiality agreement substantially in the form of Attachment A. Disclosing outside counsel shall retain the original of all executed confidentiality agreements.

15. No disclosure of Confidential Material or Confidential-Attorneys Eyes Only Material shall be made by any person authorized to have access thereto to any person who is not authorized for such access under this Protective Order. The Parties shall safeguard all designated material to protect against disclosure to any unauthorized persons or entities.

16. Should any Receiving Party file any Confidential Material or Confidential-Attorneys Eyes Only Material with the Court, that Party must file a separate and specific motion filing that material under seal pursuant to Local Civil Rule 5 of the United States District Court for the Eastern District of Virginia ("Local Civil Rules"). The filing Party must comply with Local Civil Rule 5 and its procedures. Further, with regard to material filed under seal, the Parties shall (a) follow the procedures set forth by this Court and Local Civil Rule 5 and (b) shall file a redacted version where possible of the filed document in compliance with the CM/ECF Procedures of the Court and Local Civil Rule 5.

17. The Parties shall limit their CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY designations solely to information which they in good faith believe to fall within the scope of this Protective Order. No Receiving Party shall be under any obligation to object to the designation of any document or information at the time such designation is made or at any time thereafter, and no Party shall, by failure to object, be found to have acquiesced or agreed to such designation or be barred from objecting to such designation at any time.

18. Should any material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY under this Protective Order be disclosed through Inadvertent/Mistaken Disclosure by the Receiving Party to any person not entitled to receive the material, there shall be no waiver or loss of confidentiality. The inadvertently/mistakenly disclosing Party shall immediately inform counsel for the Producing Party of the Inadvertent/Mistaken Disclosure. The inadvertently/mistakenly disclosing Party shall also exercise all reasonable efforts to retrieve any such Confidential Material or to Confidential-Attorneys Eyes Only Material disclosed to persons not authorized to receive the Confidential Material or to Confidential-Attorneys Eyes Only Material under this Protective Order and to ensure

that no further or greater unauthorized or Inadvertent/Mistaken Disclosure and/or use thereof is made.

19. A Party may object to the designation of particular "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS EYES ONLY" information by giving written notice to the Party designating the disputed information. The written notice shall identify the information to which the objection is made. If the Parties cannot resolve the objection, it shall be the obligation of the Party designating the information as "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS EYES ONLY" to file an appropriate motion within ten (10) business days after the notice is received requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order. If such a motion is timely filed, the disputed information shall be treated as designated by the Producing Party under the terms of this Protective Order until the Court rules on the motion. If the designating Party fails to file such a motion within the prescribed time, the disputed information shall lose its designation and shall not thereafter be treated in accordance with this Protective Order. In connection with the motion filed under this provision, the Party designating the information as "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS EYES ONLY" shall bear the burden of establishing that good cause exists for the disputed information to be so designated and treated under the terms of this Protective Order.

20. A designation of Confidential Material or Confidential-Attorneys Eyes Only Material may be made at any time as to materials produced during the litigation. The inadvertent, mistaken, or unintentional disclosure ("Inadvertent/Mistaken Disclosure") by the Producing Party of Confidential Material or to Confidential-Attorneys Eyes Only Material without having so designated the material shall not be deemed a waiver in whole or in part of Producing Party's claim of confidentiality if written notice is given to the Receiving Party promptly after the

discovery of the Inadvertent/Mistaken Disclosure and/or non-designation. Within five (5) business days of providing such written notice of the Inadvertent/Mistaken Disclosure and/or non-designation, the Producing Party shall re-produce appropriately designated materials, and the material that was inadvertently/mistakenly disclosed and/or non-designated and all copies thereof shall be immediately returned to the Producing Party or destroyed. Upon receipt of written notice of Inadvertent/Mistaken Disclosure and/or non-designation under this paragraph, the Receiving Party shall exercise all reasonable efforts to retrieve and/or limit disclosure of the Confidential Material or to Confidential-Attorneys Eyes Only Material to persons not authorized to receive such materials under this Protective Order.

21. The restrictions set forth in this Order regarding the protection of confidential information shall not apply or shall cease to apply to any material or information that:

- a. at the time of disclosure hereunder, was already lawfully in the possession of the Receiving Party and was not acquired from any third party under obligation of confidence to the Producing Party;
- b. after disclosure hereunder, is acquired by the Receiving Party from a third party lawfully possessing the same and having no obligation to the Producing Party hereunder;
- c. after disclosure hereunder, is developed by the Receiving Party independently of any Confidential Material or to Confidential-Attorneys Eyes Only Material obtained from the Producing Party;
- d. after disclosure hereunder, is disclosed to a third party by the Producing Party without an obligation of confidentiality;
- e. prior to the disclosure, was available to the public, or subsequent to the disclosure,

has become available to the public through no fault of the Receiving Party; or

- f. that is used or admitted in open court without objection; the Parties shall be permitted to raise any objections until the Parties' deadline to file with the Court a notice of intent to request redaction of the transcript of the Court proceeding.

22. Nothing contained in this Order shall be construed to require production of Confidential Material or to Confidential-Attorneys Eyes Only Material deemed to be privileged or otherwise protected from discovery.

23. Nothing contained in this Protective Order shall be construed to require production of material the disclosure of which would breach an express or implied agreement by the disclosing Party with a third party to maintain such information in confidence, but such withheld materials will be properly identified by disclosing Party on a privilege log.

24. Nothing contained in this Protective Order shall prevent disclosure beyond the terms of this Protective Order if the Party designating the material CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY consents to such disclosure or if the Court orders such disclosure.

25. At the conclusion of this Action, including any appeals, the originals and all copies of Protected Material, including electronic copies and including those provided to outside experts and other third parties, but excluding those provided to the Court, shall be returned to the Producing Party or destroyed, at the election of the Producing Party, except that neither Party nor the Court shall be obliged to return or destroy any materials or any photocopies thereof that were: (a) admitted into evidence at trial or at any hearing; or (b) incorporated, as an exhibit, appendix, or otherwise, as part of a document filed with or submitted to the Court. To the extent the communication or information in question may exist on any computer or back-up media which

cannot be reasonably deleted, it may be retained until such time as the media is subject to routine deletion or destruction, provided that no person attempts to access the contents of the communication or information unless allowed under the terms of this Order. Notwithstanding this provision, counsel shall be entitled, without violating this Protective Order, to retain archival copies of pleadings, affidavits, declarations, motions, briefs, expert reports, correspondence (including email and internal correspondence), any other papers or materials filed with the Court, deposition transcripts, the trial record, and attorney work product (regardless of whether such materials contain or reference information designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY), and any attachments or exhibits to any such categories of documents, so long as the materials are governed by this Protective Order. Written certification of compliance with these post-conclusion requirements shall be provided to the Producing Party not later than sixty (60) days after final termination of this Action. Any Party's failure to provide such post-conclusion certification of compliance may be relied upon by the Producing Party as such certification.

26. The terms of this Order shall survive the final termination of this Action to the extent that any Protected Material is not or does not become publicly available.

27. This Order shall be binding upon the Parties hereto, upon their attorneys, and upon the Parties' and their attorneys' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, officers, directors, employees, agents, and independent contractors and other persons or organizations over which they have control.

28. Nothing in this Order shall bar or otherwise restrict any attorney herein from rendering advice to the attorney's party-client with respect to this Action, and in the course thereof, relying upon an examination of material designated CONFIDENTIAL—ATTORNEYS EYES

ONLY, provided that, however, in rendering such advice and in otherwise communicating with the party-client, the attorney shall not disclose any material designated CONFIDENTIAL—ATTORNEYS EYES ONLY or the substance of such material to anyone not authorized by this Protective Order to receive such material.

29. This Order is not intended to govern the use of material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY at the trial of this Action. Procedures governing the use of material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY at trial will, if necessary, be established by separate order, pursuant to application to the Court by one or more of the Parties, after the Parties have met and conferred in a good faith attempt to reach agreement on the terms of such an order. Nothing in this Protective Order shall preclude any Party from moving the Court to seal the courtroom, trial exhibits, or trial transcript in order to preserve the confidential nature of any material designated as CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY.

30. This Order may be amended by further order of the Court and is without prejudice to the rights of any Party to move for relief from any of its provisions or to seek or agree to different or additional protection for any particular material or information.

31. If another court or an administrative agency subpoenas or orders production of material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY that a Party has obtained under this Protective Order, such Party shall promptly notify the designating Party of the pendency of such subpoena or order.

32. Each person or entity who receives any material designated CONFIDENTIAL or CONFIDENTIAL—ATTORNEYS EYES ONLY agrees to subject himself/herself to the jurisdiction of this Court for the purpose of any proceedings relating to the performance under,

compliance with, or violation of this Protective Order. This provision will not waive or be considered relevant to the subject matter and personal jurisdiction defenses raised by any defendant.

NON-WAIVER OF PRIVILEGE AND OTHER PROTECTIONS

33. Pursuant to Fed. R. Evid. 502(d), the disclosure or production of a communication or information protected by the attorney-client privilege, work product doctrine, and/or any other privilege or immunity that is made in connection with this Action shall not constitute a waiver of any claim of attorney-client privilege, work product protection, and/or other privilege or immunity available with respect to that communication or information in this or any other federal or state proceeding under any circumstances. This Order applies regardless of whether the communication or information disclosed or produced describes or relates to this Action.

34. A Receiving Party is under a good faith obligation to promptly alert a Producing Party if a communication or information is disclosed or produced by the Producing Party that appears to be protected by the attorney-client privilege, work product doctrine, and/or any other privilege or immunity on its face or in light of facts known to the Receiving Party.

35. To effectuate a clawback, upon learning of the production of privileged or otherwise protected communications or information, the Producing Party who made the disclosure shall send written notice of the production to all Receiving Parties. The Producing Party need not provide any explanation or evidence regarding the reasonableness of the efforts taken to prevent production, and the Receiving Parties agree not to challenge the reasonableness of such efforts. The notice shall identify the communication or information that was produced (including the format of the production—e.g., paper, electronically stored information) and the date(s) of production. If the Producing Party claims that only a portion of the communication or information

is protected, the Producing Party shall provide a new copy of the communication or information with the allegedly privileged or protected portions redacted.

36. Within five (5) business days of sending the written notice, the Producing Party also shall provide the Receiving Parties with a privilege log for the communication or information providing the following information: date, author(s), custodian(s), recipient(s), file type, and subject (to the extent the subject does not reveal protected content). In addition, the Producing Party shall also provide for each document on their privilege log an identifier for the privilege being asserted (e.g., “ACP” for attorney-client privilege, “WP” for work product, or other descriptions as necessary based on the specific privilege being claimed), a description of the contents of the document that, without revealing information itself privileged or protected, is sufficient to understand the subject matter of the document and the basis of the claim of privilege or immunity, the Bates range for the document(s), and a unique document number/identifier that need not be formatted as, or consecutive with, Bates numbers of produced documents (e.g., “Def_Priv_00001”).

37. Upon determination that a communication or information received is privileged or protected in whole or in part, or upon receipt of notice from the Producing Party that a privileged or protected communication or information has been disclosed or produced, a Receiving Party must promptly: (a) return and/or destroy the original and all copies, including any electronic copies, of the protected communication or information; (b) destroy all notes or other work product reflecting or referring to the content of such material; and (c) certify in writing that the Receiving Party has complied with this section. To the extent the communication or information in question may exist on any computer or back-up media which cannot be reasonably deleted, it may be retained until such time as the media is subject to routine deletion or destruction, provided that no

person attempts to access the contents of the communication or information unless allowed under the terms of this Order. If a Receiving Party used, shared, or disclosed the communication or information prior to notification, it must take reasonable steps to retrieve and prevent further use or distribution of the communication or information. This duty expires only if this Court rules that the communication or information is not privileged or protected.

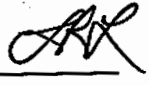
38. If a Receiving Party contests the claim of privilege or other protection in good faith, then within ten (10) business days of receiving the Producing Party's notice, it may move for a ruling that the communication or information is not protected by the attorney-client privilege, work product protection and/or other privilege or immunity. Pending resolution of said motion, a Receiving Party may retain a single copy of the communication or information subject to the motion in a secure location, but it may not be used, shared or disclosed in any way prior to the Court's resolution of the motion, except among counsel for use as to the motion. If the Court denies the motion contesting the claim of privilege or other protection, then within ten (10) business days of the Court's Order, the Receiving Party must promptly (a) return and/or destroy the original and all copies, including any electronic copies, of the protected communication or information; (b) destroy all notes or other work product reflecting or referring to the content of such material; and (c) certify in writing that the Receiving Party has complied with this section.

39. Nothing in this Order shall be construed to limit a Party's right to conduct a review of documents, ESI, or information (including metadata) for relevance and responsiveness and/or require the production of any communication or information that a Party contends is covered by the attorney-client privilege and/or the work product protection.

40. Until such time as this Order has been entered by the Court, the Parties agree that, upon execution by the Parties, it will be treated as though it had been "So Ordered."

It is so ORDERED.

Date: October 29, 2019
Norfolk, Virginia

/s/
Lawrence R. Leonard
United States Magistrate Judge 
United States Judge

CSX TRANSPORTATION, INC.

Date: October 25, 2019

By its attorneys,

/s/

Robert W. McFarland (VSB No. 24021)
Benjamin L. Hatch (VSB No. 70116)
Jeanne E. Noonan (VSB No. 87963)
MCGUIREWOODS LLP
World Trade Center
101 West Main Street, Suite 9000
Norfolk, Virginia 23510-1655
Tel. (757) 640-3716
Fax (757) 640-3930
rmcfarland@mcguirewoods.com
bhatch@mcguirewoods.com
jnoonan@mcguirewoods.com

**NORFOLK SOUTHERN RAILWAY
COMPANY**

Date: October 25, 2019

By its attorneys,

/s/

Alan D. Wingfield (VSB No. 27489)
Michael E. Lacy (VSB No. 48477)
TROUTMAN SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
Tel. (804) 697-1200
Fax (804) 698-6061
alan.wingfield@troutman.com
michael.lacy@troutman.com

John C. Lynch (VSB No. 39267)
Elizabeth S. Flowers (VSB No. 78487)
Kathleen M. Knudsen (VSB No. 90845)
TROUTMAN SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
Tel. (757) 687-7537
Fax (757) 687-1546
liz.flowers@troutman.com

Monica McCarroll (VSB No. 45622)
REDGRAVE LLP
14555 Avion Parkway, Suite 275
Chantilly, Virginia 20151
Tel. (703) 592-1154
Fax (703) 230-9859
MMcCarroll@redgravellp.com

**NORFOLK & PORTSMOUTH BELT
LINE RAILROAD COMPANY**

Date: October 25, 2019

By its attorneys,

/s/

James L. Chapman IV (VSB No. 21983)
W. Ryan Snow (VSB No. 47423)
Darius K. Davenport (VSB No. 74064)
David C. Hartnett (VSB No. 80452)
CRENSHAW, WARE & MARTIN, P.L.C.
150 West Main Street, Suite 1500
Norfolk, Virginia 23510
Tel. (757) 623-3000
Fax (757) 623-5735
jchapman@cwm-law.com
wrsnow@cwm-law.com
ddavenport@cwm-law.com
dhartnett@cwm-law.com

**JERRY HALL, THOMAS
HURLBUT, and PHILIP MERILLI**

Date: October 25, 2019

By its attorneys,

/s/

Hugh M. Fain III (VSB No. 26494)
M.F. Connell Mullins Jr. (VSB No.
47213)
John M. Erbach (VSB No. 76695)
SPOTTS FAIN P.C.
411 East Main Street, Suite 600
Richmond, Virginia 23219
Tel. (804) 697-2000
Fax (804) 697-2100
hfain@spottsfain.com
cmullins@spottsfain.com
jerbach@spottsfain.com

CANNON MOSS

Date: October 25, 2019

By his attorneys,

/s/

W. Edgar Spivey (VSB No. 29125)
Clark J. Belote (VSB No. 87310)
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, Virginia 23510
Tel. (757) 624-3000
Fax (757) 360-9092
wespivey@kaufcan.com
cjbelote@kaufcan.com

**CSXT'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO NS**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

**CSXT's First Set of Requests for Production of Documents
to Norfolk Southern Corporation & Norfolk Southern Railway Company**

Pursuant to 49 C.F.R. § 1114.30, CSX Transportation, Inc. ("CSXT") hereby requests Norfolk Southern Corporation and Norfolk Southern Railway Company (together, "NS") produce all documents responsive to the requests below (the "Requests," and each a "Request") to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 14 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. "Action" shall mean Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Beltline Railroad Company, FD 36836, filed before the Surface Transportation Board.
2. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.
3. "Any" shall be construed as "all" and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
4. "CSX Transportation, Inc." or "CSXT" shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives,

attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

5. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

6. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

7. “Including” shall mean “including, without limitation” and “including but not limited to.”

8. “Norfolk Southern” or “NS” shall mean Norfolk Southern Corporation, Norfolk Southern Railway Company and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

9. “NPBL” shall mean Norfolk & Portsmouth Belt Line Railroad Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives,

attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

10. “Relating to” as used herein with reference to a subject shall mean both of the following:

- a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

11. “You” and “Your” shall refer to NS as defined above.

12. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

The following Instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of NS, which includes in NS’s actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media.

2. If there is no Document responsive to a particular Request, NS shall so state in writing.

3. If any Document or Communication called for by any Request is withheld because NS claims that it is privileged or otherwise protected from disclosure, NS must identify the Document or Communication so withheld and the privilege or doctrine NS claims. In the case of Documents of Communications that NS claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless

of whether NS considers the entire Document to be relevant or responsive to these Requests. If NS has redacted any portion of a Document for privilege, stamp the word “redacted” on each page of the Document which NS has redacted, identifying the basis for such redaction.

5. NS must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If NS objects to any Request or part of a Request, set forth the basis for NS’s objection with particularity and respond to all parts of the Request to which NS does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under NS’s obligation to supplement NS’s production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information (“ESI”).

10. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 TIFFs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as

native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named "TEXT" directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.

- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. "slipsheet"). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating "This document was produced in Native format." Group native files within incrementally named "NATIVE" directories; separate from images directories.
- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

11. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting

any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All Documents You produced in the District Court Proceeding.
2. All pleadings and filings You filed in the District Court Proceeding.
3. Your initial disclosures in the District Court Proceeding.
4. All deposition records from the District Court Proceeding, including but not limited to, transcripts of each deposition, corresponding exhibits, video recordings and errata.
5. All declarations, affidavits or other sworn statements You made relating to the District Court Proceeding.
6. All expert reports You disclosed in the District Court Proceeding.
7. All Your responses and objections to written discovery in the District Court Proceeding, including requests for production, interrogatories and requests for admissions.

Dated: March 19, 2025

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton

Anthony J. LaRocca

Molly Bruder Fox

Sally Mordi

Lauren Goldschmidt

Steptoe LLP

1330 Connecticut Ave., NW

Washington, DC 20036

(202) 429-3000

Counsel for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *CSXT's First Set of Requests for Production of Documents to Norfolk Southern Corporation & Norfolk Southern Railway Company* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
Counsel for CSX Transportation, Inc.

March 19, 2025

CSXT'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO NPBL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

**CSXT's First Set of Requests for Production of Documents
to Norfolk & Portsmouth Belt Line Railroad Company**

Pursuant to 49 C.F.R. § 1114.30, CSX Transportation, Inc. ("CSXT") hereby requests Norfolk & Portsmouth Belt Line Railroad Company ("NPBL") produce all documents responsive to the requests below (the "Requests," and each a "Request") to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 14 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. "Action" shall mean Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Beltline Railroad Company, FD 36836, filed before the Surface Transportation Board.
2. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.
3. "Any" shall be construed as "all" and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
4. "CSX Transportation, Inc." or "CSXT" shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area

offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

5. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

6. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

7. “Including” shall mean “including, without limitation” and “including but not limited to.”

8. “Norfolk Southern” or “NS” shall mean Norfolk Southern Corporation, Norfolk Southern Railway Company and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

9. “NPBL” shall mean Norfolk & Portsmouth Belt Line Railroad Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area

offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

10. “Relating to” as used herein with reference to a subject shall mean both of the following:

- a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

11. “You” and “Your” shall refer to NPBL as defined above.

12. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

The following Instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of NPBL, which includes in NPBL’s actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media.

2. If there is no Document responsive to a particular Request, NPBL shall so state in writing.

3. If any Document or Communication called for by any Request is withheld because NPBL claims that it is privileged or otherwise protected from disclosure, NPBL must identify the Document or Communication so withheld and the privilege or doctrine NPBL claims. In the case of Documents of Communications that NPBL claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless

of whether NPBL considers the entire Document to be relevant or responsive to these Requests. If NPBL has redacted any portion of a Document for privilege, stamp the word “redacted” on each page of the Document which NPBL has redacted, identifying the basis for such redaction.

5. NPBL must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If NPBL objects to any Request or part of a Request, set forth the basis for NPBL’s objection with particularity and respond to all parts of the Request to which NPBL does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under NPBL’s obligation to supplement NPBL’s production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information (“ESI”).

10. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 tiffs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as

native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named "TEXT" directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.

- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. "slipsheet"). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating "This document was produced in Native format." Group native files within incrementally named "NATIVE" directories; separate from images directories.
- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

11. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting

any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All Documents You produced in the District Court Proceeding.
2. All pleadings and filings You filed in the District Court Proceeding.
3. Your initial disclosures in the District Court Proceeding.
4. All deposition records from the District Court Proceeding, including but not limited to, transcripts of each deposition, corresponding exhibits, video recordings and errata.
5. All declarations, affidavits or other sworn statements You made relating to the District Court Proceeding.
6. All expert reports You disclosed in the District Court Proceeding.
7. All Your responses and objections to written discovery in the District Court Proceeding, including requests for production, interrogatories and requests for admissions.

Dated: March 19, 2025

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton

Anthony J. LaRocca

Molly Bruder Fox

Sally Mordi

Lauren Goldschmidt

Steptoe LLP

1330 Connecticut Ave., NW

Washington, DC 20036

(202) 429-3000

Counsel for CSX Transportation, Inc

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *CSXT's First Set of Requests for Production of Documents to Norfolk & Portsmouth Belt Line Railroad Company* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
Counsel for CSX Transportation, Inc.

March 19, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter in Docket No. FD 36836 to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
Attorney for CSX Transportation, Inc.

March 20, 2025