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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

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

CSX TRANSPORTATION, INC.'S
RESTATED AND AMENDED MOTION TO COMPEL PRODUCTION
OF DOCUMENTS BY
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY AND NORFOLK &
PORTSMOUTH BELT LINE RAILROAD COMPANY

Pursuant to the Board¹ decision issued on June 13, 2025, the parties were “directed to meet and confer on the discovery issues raised in CSXT’s first and second motions to compel.” *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co. (Decision No. 5)*, FD 36836, slip op. at 7 (STB served June 13, 2025). While CSXT and NS made significant progress resolving the discovery requests that were the subject of CSXT’s second motion to compel,² the parties have reached an impasse on CSXT’s first motion to compel

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 Norfolk Southern’s Minor Application, filed on February 27, 2025.

² As outlined below, at this time, CSXT and NS have a dispute regarding one of the requests at issue in CSXT’s second motion to compel. The parties continue to work together to resolve the other requests and CSXT will seek Board intervention at a later date if necessary.

against NS and NPBL. CSXT's first motion petitioned the Board to compel NS and NPBL to produce documents and information that they produced or disclosed in the district court antitrust lawsuit against NS and NPBL, *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530-MSD (E.D. Va. Oct. 4, 2018). (CSXT-6.)

Accordingly, CSXT respectfully submits this Restated and Amended Motion to Compel Production of Documents, pursuant to 49 C.F.R. § 1117.1 and the Board's Decision No. 5 in this matter, to reflect the current status of the parties' discovery disputes.

The Board should put an end to NS's blatant attempt to run out the limited clock for discovery in this control proceeding subject to tight statutory deadlines. NS told the Board in its original application on February 14, 2025 that the district court proceeding record is "known by all and ready for presentation and argument" to the Board. (NS Reply 35, Mar. 7, 2025; *see also id.* at 17 (offering to the Board that facts "examined in the federal courts" are "available to the parties and the Board.")) More than four months later, CSXT still does not have access to the district court record for use in this proceeding. Instead of honoring its representations to the Board, NS has decided to play games, raising three pretextual objections to obstruct CSXT's access to these materials: (1) timing of discovery in this control proceeding, (2) relevance and (3) the district court Protective Order. Each of these objections is baseless, reflecting NS's desire to avoid fulsome discovery of its anticompetitive conduct, which is directly relevant to the Board's standard of review in this proceeding.

First, the Board has already resolved NS's timing objection, rejecting its argument that discovery should begin only after the Board has accepted their application for a significant transaction. *Decision No. 5*, FD 36836, slip op. at 1. By raising that objection, NS deprived CSXT of the opportunity to prepare its case by more than two months. Still NS persists in raising baseless objections.

Second, the district court discovery materials are clearly relevant to the issues before the Board. As the Board well knows, in a control proceeding such as this one, “the Board’s primary focus is on the anticipated competitive effects.” *Soo Line Corp.—Control—Cent. Maine & Quebec Ry. US Inc.*, FD 36368, slip op. at 4 (STB served May 4, 2020). The district court proceeding involved precisely the same issue that is the focus of this proceeding – the competitive effects of NS’s unlawful manipulation of NPBL to preclude CSXT’s access to NIT. The Board has already acknowledged that “any future decision concerning control would benefit from the findings of the district court” in the district court proceeding. *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).

Tellingly, NS made affirmative use of confidential deposition transcripts and documents from the district court proceeding in its Revised Application.³ Having put materials from the district court proceeding at issue in this proceeding, it is fundamentally unfair for NS to simultaneously prevent CSXT from accessing those same materials. In light of NS’s Revised Application, any assertion that the District Court record is not relevant here defies credibility. Recognizing the preposterous nature of its position, NS’s most recent proposal is that CSXT should issue document requests for “certain limited documents that it believes are relevant to this proceeding.” (Ex. 1, NS Letter 1, June 19, 2025.) But CSXT has no ability to access the district court record to identify precisely the “certain limited documents” it needs for this proceeding. NS’s approach only serves its goal of delaying the production of documents so long that the discovery is useless to CSXT under the tight statutory deadlines.

³ NS filed a Supplement and Perfection of Application on June 13, 2025. NS’s supplement, and its February 14, 2025 submission, are collectively referred to herein as the “Revised Application.”

Third, NS's contrived concern about the district court Protective Order is just another attempt to complicate and delay discovery. The district court Protective Order has no bearing on CSXT's requests. NS's objection based on the Protective Order is a classic red herring. CSXT is only seeking information belonging to NS and NPBL that those parties previously produced or disclosed in the district court proceeding. The Protective Order does not govern what a party does with its own information, and it certainly does not act as a shield to prevent disclosure of that party's information in another litigation where the information is relevant. Alternatively—rather than reproducing their materials from the district court record—NS and NPBL could simply consent to CSXT accessing district court record in this proceeding and fully resolve CSXT's first set of requests for production with no additional effort.

NS and NPBL are wrongfully withholding the district court discovery materials in this matter. An order from the Board is necessary to compel their production and to ensure that NS and NPBL do not succeed in their attempt to significantly disadvantage CSXT because of the statutory deadlines in this proceeding.

Additionally, CSXT requests that the Board compel NS to produce its negotiations files with any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port. (*See* Ex. 2, CSXT's Second Set of Requests for Production of Documents to NS 10, Request 20, Mar. 26, 2026.) Customer negotiations and agreements at other East Coast ports are clearly relevant to NS's Application. NS's Revised Application suggests that the relevant market for this transaction is all East Coast ports. (NS Supplement 34 (stating that the Port of Virginia faces "robust competition from other East Coast ports" and that numerous east coast ports compete against the Port of Virginia to attract international shipping companies).) CSXT requests that the Board compel NS to

produce documents responsive to Request 20, so CSXT may assess NS claims about the competitive dynamics related to this transaction.

1. BACKGROUND

For purposes of this Motion, CSXT assumes the Board is familiar with the facts of this proceeding. (See CSXT First Motion to Compel 4-7, Apr.9, 2025).

1.1. Discovery in the 2018 District Court Litigation

In 2018, CSXT sued NS, NPBL, and members of NPBL's Board of Directors in federal district court alleging that NS and NPBL committed antitrust violations beginning with the implementation of an exclusionary switch rate that prevented CSXT from competing at NIT. NS's exclusionary conduct through its unlawful control of NPBL resulted in substantial harm to competition, to intermodal shippers, and to CSXT.

The evidence presented in the district court proceeding of exclusionary conduct by NS and NPBL was extensive and was summarized in CSXT's Consolidated Opposition to Defendants' Motion for Summary Judgment, No. 2:18-cv-00530-MSD, 2021 WL 2373044 (E.D. Va. May 3, 2021), ECF No. 328. The district court concluded that CSXT had presented substantial antitrust claims based on the record developed and presented at summary judgment, but the Court dismissed CSXT's claims for monetary damages on statute of limitations grounds. *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 648 F. Supp. 3d 679, 721, 727 (E.D. Va. 2023), *aff'd*, 114 F.4th 280 (4th Cir. 2024). The Court later dismissed CSXT's claims for injunctive relief on jurisdictional grounds. *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530-MSD, 2023 WL 2552343, at *11 (E.D. Va. Jan. 27, 2023).

During the litigation, the parties produced 93,214 documents, conducted more than 40 depositions, and disclosed 5 expert reports pursuant to the Protective Order entered in the district court proceeding. The Protective Order in that

proceeding allowed parties to designate information produced during discovery as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS EYES ONLY” and redact such information from public filings. (Ex. 3, District Court Proceeding Protective Order ¶ 2.) The filings in the district court proceeding rely heavily on documents designated as “confidential” or “confidential-attorneys eyes only” and therefore are heavily redacted.

As shown in the public versions of the documents attached to CSXT’s Petition to Reject NS’s Minor Application, the context of the documents and filings makes it clear that the redacted information is relevant to and would support CSXT’s claims in the control proceeding. However, the public versions of filings exist only for a portion of the district court record. Without access to the entire district court record, CSXT will be at a disadvantage as it prepares its case in the control proceeding.

1.2. Dismissal of District Court Claims – Additional Forum

Although the district court dismissed CSXT’s claims, it expressly noted that CSXT’s claims of anticompetitive conduct could be subject to investigation by the U.S. Department of Justice (“DOJ”). *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530-MSD, 2023 WL 2552343, at *9 (E.D. Va. Jan. 27, 2023). On February 19, 2025, counsel for CSXT received a letter from the DOJ informing CSXT that the DOJ’s Antitrust Division opened an investigation into the alleged exclusionary conduct undertaken by NS and NPBL against CSXT, in potential violation of Sections 1 and 2 of the Sherman Act, 15 USC §§ 1 and 2. On March 26, 2025, the DOJ issued a civil investigative demand (“CID”) to CSXT pursuant to the Antitrust Civil Process Act, requiring CSXT submit to the DOJ all discovery, pleadings, filings, motions, transcripts, rulings, orders, written discovery, and expert reports, including any supporting documents and data, relating to the district court proceeding and *Norfolk Southern Railway Co. v. STB et al.*,

Case No. 22-1209 (D.C. Cir.). DOJ's request includes discovery material that is designated as "confidential" or "confidential-attorneys eyes only" and subject to the Protective Order in the district court proceeding.

1.3. This Discovery Dispute

CSXT's allegations in the district court proceeding speak directly to its allegations in the control proceeding. Since the parties have already developed an extensive factual record in that proceeding, use of 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. To access the documents NS and NPBL designated under the Protective Order, CSXT requested that NS consent to disclosure of the district court record. NS refused.

Consenting to disclosure of the district court record would have been the most efficient and least burdensome course of action because the parties already exchanged the requested information during the district court proceeding. CSXT's counsel for the district court proceeding maintains these records in a litigation database. Upon receipt of written consent from NS and NPBL, CSXT's counsel for the STB proceeding could have accessed the responsive material immediately without further assistance from NS or NPBL.⁴ In addition to efficiency, this approach would have mitigated costs associated with drafting and responding to written discovery requests.

Notwithstanding these efficiencies, NS chose to be obstructionist and directed CSXT to serve written requests. On March 19, 2025, CSXT served on NS its First Set of Requests, asking for production of all discovery from the district court

⁴ Additionally, three third parties made small productions in the district court proceeding. CSXT would not use those documents for purposes of this case until it obtains written consent from the third parties. Those documents bear bates numbers with unique prefixes that can easily be segregated from the overwhelming majority of the district court discovery materials.

proceeding or, in the alternative, asking for consent to access the responsive material, which is maintained by CSXT's counsel in the district court litigation, immediately and without further assistance from NS or NPBL. CSXT's document requests requested seven categories of documents that would have been immediately available to CSXT had NS and NPBL consented to their disclosure.

These categories of documents include:

- Documents NS/NPBL produced in the district court proceeding.
- Documents NS/NPBL filed in the district court proceeding.
- NS/NPBL initial disclosures from the district court proceeding.
- Deposition records from the district court proceeding, including but not limited to, transcripts of each deposition, corresponding exhibits, video recordings and errata.
- Declarations, affidavits or other sworn statements NS/NPBL made relating to the district court proceeding.
- Expert reports NS/NPBL disclosed in the district court proceeding.
- NS/NPBL's responses and objections to written discovery in the district court proceeding, including requests for production, interrogatories and requests for admissions.

(Ex. 4, CSXT's First Requests for Production to NS; Ex. 5, CSXT's First Request for Production to NPBL.)

On April 3, 2025, NS and NPBL served their objections. NS took the position that the requests were untimely, overbroad, and unduly burdensome. (Ex. 6, NS Responses and Objections to CSXT's First Requests for Production.) NPBL, on the other hand, expressed willingness to disclose the district court record, but was unwilling to do so until NS's objections were resolved. (Ex. 7, NPBL Letter, April 3, 2025.)

On April 4, 2025, CSXT and NS conferred regarding NS's objections. NS stood on its objections to producing any material from the district court record, highlighting its positions that discovery is untimely before the STB sets a procedural schedule, the district court record is not relevant, and the district court record is subject to the Protective Order in that case. On April 9, 2025, CSXT filed a motion to compel that requested the Board direct NS and NPBL to consent to the use of the district court discovery material in this proceeding or to reproduce all documents responsive to CSXT's discovery requests. (*See CSXT First Mot. to Compel* 20, Apr. 9, 2025).

By order dated April 11, 2025, the Board determined that it would be appropriate for discovery to begin, rather than adopting NS's position that discovery should not start until the Board accepts a significant application. *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.* (*Decision No. 3*), FD 36836, slip op. at 2 n.2 (STB served Apr. 11, 2025). NS filed a petition seeking reconsideration of that determination, a petition to stay the applicable portion of *Decision No. 3*, and a petition for a housekeeping stay to toll its deadlines for responding to CSXT's motions to compel. (NS Pet. for Recons., Apr. 21, 2025; NS Pet. for Stay, Apr. 21, 2025; NS Pet. for Housekeeping Stay, Apr. 21, 2025.)

On June 13, 2025, the Board denied the motion for reconsideration, noting that “[i]t is essential that discovery in this case be conducted in a timely manner given the tight statutory deadlines applicable to this proceeding.” *Decision No. 5*, FD 36836, slip op. at 7. The Board directed the parties “to meet and confer on the discovery issues raised in CSXT's first and second motions to compel.” *Id.*

Following the Board's June 13 decision, CSXT and NS met and conferred on June 17, 2025 to discuss the discovery issues raised in CSXT's first and second motions to compel. NS remains unwilling to produce the district court records. (*See*

Ex. 8, CSXT Letter, June 17, 2025; Ex. 1, NS Letter, June 19, 2025.) On June 19, 2025, NS suggested that “to the extent CSXT has certain limited documents that it believes are relevant to this proceeding, then CSXT should draft narrowly tailored discovery seeking production of such documents and provide NS with the opportunity to object or produce.” (Ex. 1, NS Letter 1, June 19, 2025). NPBL, on the other hand, has been willing to disclose the district court record since April 3, 2025 – the day CSXT filed its first motion to compel. (See Ex. 6, NPBL Letter, April 3, 2025.) However, NPBL is unwilling to produce the district court records until NS’s objections are resolved. The parties have reached an impasse on the production of the district court record.

1.4. CSXT’s Second Motion to Compel

CSXT’s Second Set of Requests seeks information that expands upon CSXT’s requests to NS in the district court proceeding. The Second Set of Requests extends the relevant period to include later years because NS has continued to unlawfully control NPBL since the district court proceeding began more than six years ago. The requests also seek responsive information about traffic data, rates, and competition, all of which are directly relevant to NS’s unlawful control of NPBL. CSXT filed a second motion to compel the production of the requested documents from its Second Set of Requests. (See CSXT Second Mot. to Compel 20, Apr. 18, 2025).

CSXT and NS have resolved many of the disputes that were the subject of CSXT Second Motion to Compel and continue to discuss at least one request. (See Ex. 8, CSXT Letter, June 17, 2025; Ex. 1, NS Letter, June 19, 2025.) One dispute between CSXT and NS requires resolution by the Board at this time. CSXT’s Request No. 20 asks for:

All Documents and Communications between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port, including any

requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements, and any related communications from January 1, 2018-present.”

(Ex. 2, CSXT’s Second Set of Requests for Production of Documents to NS 10, Request 20, Mar. 26, 2026.) During the meet-and-confer process and in response to NS’s concern about burden, CSXT proposed narrowing the request to:

All requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements exchanged between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port from January 1, 2018-present.

(Ex. 8, CSXT Letter, June 17, 2025.) NS rejected the proposed compromise and proposed producing:

All final contracts in NS’s possession and control that involve customers for whom NS or CSXT moved freight through any East Coast Port from January 1, 2018-present.

(Ex. 1, NS Letter, June 19, 2025.)

NS’s proposal is unacceptable because it does not allow CSXT to assess NS’s contention in its Revised Application that the Port of Virginia faces “robust competition from other East Coast ports” and that numerous east coast ports compete against the Port of Virginia to attract international shipping companies. (*See, e.g.*, NS Supplement 18-19, 29, 34, 47.) Because NS suggests that the market at issue here is all East Coast ports, CSXT should have the ability to assess NS’s contentions.

2. ARGUMENTS

2.1. Discovery is timely.

In Decision No. 5, the Board rejected NS’s first pretextual excuse not to produce the district court record—the argument that discovery should begin only

after the Board accepts their application for a significant transaction. *Decision No. 5*, FD 36836, slip op. at 1.

2.2. The district court record is relevant to the Control Proceeding.

The full district court record is obviously relevant in this proceeding. The Board allows parties to obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” 49

C.F.R. § 1114.2(a)(1). Information is relevant when it could impact the outcome of a proceeding. *See Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry.*, FD 35743, slip op. at 8 (STB served Sept. 23, 2014). A party is generally entitled to all relevant and potentially admissible information and is not limited to only “the information that [a party] believes is sufficient” to prove its case. *See Seminole Electric Coop., Inc. v. CSX Transp., Inc.*, NOR 42110, slip op. at 2 (STB served Feb. 17, 2009).

The district court record is relevant to the Board’s resolution of the control proceeding because the record in that proceeding focused on the anticompetitive effects of NS’s manipulation of NPBL and therefore overlaps completely with the statutory review standard in this control proceeding which focuses on the same anticompetitive effects of NS’s manipulation of NPBL.

Indeed, the Board has already acknowledged the relevance of the documents in the district court record when it said that “any future decision concerning control would benefit from the findings of the district court.” *Decision No. 2*, FD 36836, slip op. at 3. Likewise, DOJ as part of its investigation of NS’s anticompetitive conduct, issued a CID to CSXT to obtain the full discovery record developed before the district court, thereby demonstrating the relevance of the materials to the competitive issues to be decided in this proceeding.

The Board will not approve a control application if the “anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.” 49 U.S.C. § 11324(d)(2). Under 49 U.S.C. § 11324(d), the Board must approve the transaction unless it finds that: (1) as a result of the transaction, 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; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. *See, e.g., Canadian Pac. Ry. Co.—Control—Dakota, Minnesota & E. R.R. Corp.*, FD 35081, slip op. at 8 (STB served Sept. 30, 2008). The Board has stated that, in assessing transactions subject to 49 U.S.C. § 11324(d), “*the Board’s primary focus is on the anticipated competitive effects*. The Board must approve an application unless there would be adverse competitive impacts that are both ‘likely’ and ‘substantial.’” *Soo Line Corp.—Control—Cent. Maine & Quebec Ry. US Inc.*, FD 36368, slip op. at 4 (STB served May 4, 2020) (emphasis added).

Thus, in this control proceeding, the Board must consider the same issue that was examined in the district court proceeding—the anticompetitive effects of NS’s control over the NPBL. In the district court proceeding, NS, NPBL, and CSXT disputed the competitive effects of NS’s unlawful control over NPBL. *CSX Transportation, Inc. v. Norfolk S. Ry. Co.*, 648 F. Supp. 3d 679 (E.D. Va. 2023), *aff’d*, 114 F.4th 280 (4th Cir. 2024). The Court determined that CSXT “had identified sufficient direct and circumstantial evidence of an agreement between [NS] and NPBL in and around 2009 that was aimed (and may have unlawfully succeeded) at erecting barriers to [CSXT’s] ability to provide on-dock rail service at NIT.” *Id.* at 727.

In other words, through discovery and related litigation, CSXT developed evidence in the district court proceeding of anticompetitive conduct by NS and

NPBL – and the anticompetitive effects of that conduct. NS continues to dispute the competitive effects of their unlawful control over NPBL. NS’s Supplement and Perfection of Application filed on June 13, 2025 reiterates NS’s view that their control of NPBL “will not result in any anticompetitive effects.” (NS Supplement 30.) Since the Board must consider the same anticompetitive effects of the same NS’s conduct, the full district court record should be made available to the parties in this control proceeding.

Because the central factual issues in the district court proceeding – NS’s unlawful control over NPBL and the anticompetitive effects of that conduct – are before the Board in this proceeding, the entire district court record is relevant to this proceeding. NS acknowledged this reality when in its original application NS told the Board that the district court record is “known by all and ready for presentation and argument” to the Board. (NS Reply 35, Mar. 7, 2025.) In fact, NS repeated its commitment to make the district court record available, offering: “[t]he facts experienced over the past 42 years of service are known and speak for themselves. They have been reviewed and examined in the federal courts, and that analysis (as desired by the Board) is available to the parties and the Board.” (NS Reply 17, Mar. 7, 2025.)

Through its Revised Application, filed on June 13, 2025, NS continues to rely on materials from the district court litigation that CSXT cannot currently access for use in this litigation. NS included in its Revised Application a white paper it prepared for the Department of Justice regarding NPBL costs. (NS Supplement, Ex. C.) This white paper repeatedly cites deposition transcripts and documents that are subject to the Protective Order in the district court litigation. Specifically, NS cites Cannon Moss’s deposition testimony five times and Donna Coleman’s deposition testimony twice. Both transcripts are designated as confidential under the Protective Order. NS also refers to one document produced by CSXT in the district

court litigation, and 11 documents produced by NPBL in the district court litigation. Seven of these documents are marked as Confidential under the Protective Order—NPBL015601; NPBL015196; NPBL015563; NPBL015601; NPBL013498; NPBL026348; CSXT0100329—and one document that is further designated as Attorneys’ Eyes Only: NPBL015196.

The fundamental unfairness of NS’s position is untenable – CSXT can only review one of those eight documents. Meanwhile, NS can have its counsel from the district court proceeding cherry-pick useful confidential records from the district court record, provide them to DOJ in a whitepaper, and then somehow introduce those materials into this STB proceeding. NS’s use of the district court materials in its Revised Application is a tacit acknowledgement that they are relevant here.

Recognizing its position was untenable, NS’s most recent proposal is that CSXT should issue document requests for “certain limited documents that it believes are relevant to this proceeding.” (Ex. 1, NS Letter 1, June 19, 2025.) But CSXT has no ability to access the district court record to identify precisely the “certain limited documents” that CSXT needs for this proceeding.

NS’s latest proposal is another thinly-veiled attempt to continue to delay the production of documents until the discovery materials are useless to CSXT under the tight statutory deadlines in this proceeding. In light of NS’s gamesmanship and the existence of a ready-made set of relevant documents, the Board should compel the production of the district court record as requested in CSXT’s first sets of document requests that have been pending for three months. (*See* Ex. 4, CSXT’s First Requests for Production to NS; Ex. 5, CSXT’s First Request for Production to NPBL.)

2.3. The district court protective order does not limit NS or NPBL's production of their own materials.

NS's objection that CSXT's Requests for Production run afoul of the district court Protective Order is a classic red herring. CSXT does not seek from NS or NPBL any information that NS or NPBL received from another party in the district court proceeding. CSXT is seeking only information and facts from NS and NPBL themselves. The Protective Order does not govern what NS and NPBL do with their own information, and it does not shield from discovery any information relevant to the STB proceeding simply because that information was produced in the district court proceeding. NS's objection is simply another ruse for impeding and delaying the discovery of information that will shed light on its anticompetitive practices.

NS and NPBL have two options to respond to the discovery requests: (1) grant consent to CSXT to access the materials it already has in its possession for use in this case; or (2) reproduce their respective materials from the district court proceeding. CSXT first requested that NS consent to CSXT's access to the district court record for use in this case. Had NS accepted this request, it would have required no action from NS other than consenting to CSXT's request. However, as explained in Section 1.3 above, NS refused to consent to disclosure and instead suggested that CSXT serve written discovery requests. Following NS's refusal to consent, CSXT served written discovery requests that asked both NS and NPBL for the district court discovery materials that they produced, respectively.

Parties can reproduce their own documents and the statements from their witnesses without implicating the district court Protective Order. The Protective Order restricts the receiving party's use of designated material but explicitly allows the designating party to use its own discovery material for other purposes. Paragraph 5 of the district court proceeding Protective Order provides:

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 purposes of this Action, and not for any other purpose whatsoever.

(Ex. 3, District Court Proceeding Protective Order ¶ 5 (emphasis added).)

Paragraph 6 of the Protective Order reiterates that the obligations are on the receiving party, not the producing party:

Subject to the exceptions...in this Protective Order... 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*. (emphasis added).

(*Id.* at ¶ 6 (emphasis added).) NS and NPBL, as the producing parties, can use their own discovery material however they choose.

Under this regime, CSXT, as the receiving party, can only use material designated by NS and NPBL for purposes of the district court proceeding, unless an exception applies. One exception is that NS or NPBL consents to the use of the materials it designated for purposes beyond the district court proceeding. The Protective Order provides:

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. . . .

(*Id.* at ¶ 2 (emphasis added).) As noted previously, CSX sought from NS “prior written consent of the producing Party.” NS withheld that consent.

Moreover, courts have found that a party that produced material subject to a protective order in one case, cannot later avoid discovery in a subsequent case by shielding itself under the terms of that protective order. *Tucker v. Ohtsu Tire & Rubber Co., Ltd.*, 191 F.R.D. 495, 501 (D. Md. 2000) (explaining there is “something unsettling about the notion that [a producing party] might forever be insulated from producing discovery in this, or other actions, by virtue of having once produced it in a protected fashion in the [earlier action]”); *Carter-Wallace Inc. v. Hartz Mountain Indus. Inc.*, 92 F.R.D. 67, 69 (S.D.N.Y. 1981) (finding the documents could be disclosed because the obligations of the protective order were not on the producing party). In the district court proceeding, the obligations under the Protective Order are on the receiving party and therefore, both NS and NPBL can produce the discovery materials CSXT requests without implicating the Protective Order.⁵

Additionally, the district court Protective Order anticipates the situation where the STB or another agency orders the production of the district court discovery materials, providing:

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.

(Ex. 3, District Court Proceeding Protective Order ¶ 31.) But that provision only addresses information that a Party has obtained from someone else under the

⁵ The reproduction of the district court discovery record imposes little burden on NS and NPBL. District court counsel for the parties still have the district court record in their possession. That production is likely maintained in an e-discovery database or a central filing system. Reproducing these documents to CSXT’s STB counsel would require several hours of paralegal time, at most. This is not a heavy lift given the nature of the dispute and that NS already committed to the Board that the record was available.

Protective Order. The Protective Order does not affect information that is already in the possession of the Party because it belongs to the Party itself. And even if this provision were relevant, CSXT is only seeking an order directing NS and NPBL to provide the discovery materials that they produced or proffered in the district court proceeding, so the “designating Party” will already be notified by serving NS and NPBL with this motion.

At bottom, CSXT’s document requests ask NS and NPBL to produce the district court materials that each party produced or proffered in the district court proceeding. This approach, whereby litigants reproduce their own materials, does not implicate the district court Protective Order. Moreover, the district court materials will be covered by the protective order that the Board has entered in this proceeding. Alternatively, should the Board enter an order compelling production of the district court discovery materials, NS or NPBL could satisfy that order by consenting to CSXT accessing the materials for use in this proceeding. Such an election by NS or NPBL would further reduce any burden to the parties. It would also aid the parties in conducting discovery in a timely manner, per the Board’s request. *Decision No. 5*, FD 36836, slip op. at 7. Indeed, there would be no burden on NS or NPBL whatsoever, because they would not need to produce a single document.

2.4. Customer negotiations discovery is essential to assess NS’s claims regarding the competitive landscape.

The Board should order NS to produce documents relating to customer negotiations at East Coast ports. NS’s Revised Application suggests that the relevant market for analysis in this proceeding is all East Coast ports, and NS puts at issue the competitive landscape for intermodal traffic at those ports. NS’s Supplement and Perfection of Application suggests that the Port of Virginia faces “robust competition from other East Coast ports” and that numerous east coast

ports compete against the Port of Virginia to attract international shipping companies. (See, e.g., NS Supplement 18-19, 29, 34, 47.) Given NS's contentions in its Revised Application, customer negotiations and agreements at other East Coast ports are clearly relevant to NS's Application and should be produced to CSXT. CSXT has proposed a reasonable revision to its original Request No. 20 to lessen the burden of production for NS. (See Ex. 8, CSXT Letter, June 17, 2025 (narrowing earlier request for "[a]ll Documents and Communications . . ." to specifically "requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements.").) Without this discovery material, CSXT's analysis NS's claims in its Revised Application will be significantly limited.

3. CONCLUSION

For the foregoing reasons, CSXT requests that the Board grant this Restated and Amended Motion to Compel and (1) direct NS and NPBL to consent to the use of the district court discovery material in this proceeding or to reproduce all documents responsive to the discovery requests discussed herein within one week of the Board's order granting this Motion, and (2) direct NS to produce its negotiation files with any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port from January 1, 2018 to present within three weeks of the Board's order granting this Motion.

Dated: June 20, 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

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

Exhibit 1

NS Discovery Letter, June 19, 2025

MULLINS LAW GROUP PLLC

Transportation Solutions for the 21st Century

2001 L Street NW, Suite 720

Washington, DC 20036

William A. Mullins

wmullins@mullinslawgroup.net

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Telephone: (202) 663-7850

Direct: (202) 663-7823

Facsimile: (202) 464-9123

June 19, 2025

VIA E-MAIL

Molly Bruder Fox

Steptoe

1330 Connecticut Avenue, NW

Washington, DC 20036-1795

Re: Norfolk Southern Railway Company – Control Acquisition – Norfolk & Portsmouth Belt Line Railroad Company, FD No. 36836

Dear Molly:

I am writing in reply to your June 17 discovery letter in the above proceeding and to follow up from our “meet and confer” from that date. Below is NS’s understanding of our conversation and your letter.

District Court Record

It is unfortunate that we were not able to reach an agreement. I want to be clear that it is not NS’s position that no documents from the antitrust litigation can ever be the subject of discovery in this proceeding and used in this proceeding. NS’s position is that to the extent CSXT has certain limited documents that it believes are relevant to this proceeding, then CSXT should draft narrowly tailored discovery seeking production of such documents and provide NS with the opportunity to object or produce. NS does reject the notion that “all” documents from the underlying district court proceeding are relevant and should be produced. NS remains willing to discuss such an approach, but to the extent you continue to pursue your motion to compel, NS will respond on June 25.

Objections Resolved

Subject to its General Objections, NS is willing to produce responsive documents as long as such documents fall within the January 1, 2018 to present time period. NS will search for and produce responsive, non-privileged documents that fall within that time period and that are responsive to the following requests:

Nos. 3, 4, 5, 15, 17, 18, 19, 21, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 44, 49, 50, 51, 52, 53, 58, 63, 64, 65, 66, 67, 68, 72, 74, 77, 78, 81, 82, 83, 84.

As for Request No. 27, NS did agree to produce documents sufficient to show NS's capacity through NIT, VIG, and PMT from January 1, 2018-present.

As for Request No. 43, NS did agree to produce all Documents relating to business relationships concerning intermodal transportation services at the Port of Virginia that were acquired by You [NS] after being held by CSXT, including all analyses of the reasons why You [NS] were able to acquire the business, from January 1, 2018-present.

As for Request No. 54, NS did agree to produce the data requested for the period from January 1, 2018 to December 31, 2024. With respect to the data fields, in our conversation, I had not yet had a chance to have those data fields reviewed by either NS or our experts. I had assumed the data fields were the standard fields. They are not. Upon review of the data fields listed in Request No. 54, and the additional data fields requested in Request No. 90 from CSXT's third set of requests for production of documents served on NS on June 6, 2025, and the data fields contained in your appendix to your June 17 letter, it is now clear that those data fields are not the customary data fields that are used in merger/control cases and go far beyond what has been required to be produced in past merger/control cases. In fact, NS indicates that it would not be able to produce all of the required fields within CSXT's requested timeframe and/or without undertaking a special study. Examples include the data fields requested in mm-qq, among others. NS is willing to produce the same data fields that were provided to Mr. Fapp and used in the Supplement And Perfection filing. Those data fields are listed in the Appendix at the end of this letter. Assuming CSXT is agreeable to using the data fields given to Mr. Fapp, NS will be able to produce the traffic data by June 24, 2025 as you requested.

Customer Negotiations – Proposed Compromise

Request No. 20 asks for "All Documents and Communications between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port, including any requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements, and any related communications from January 1, 2018-present."

NS did propose narrowing this request to the Port of Virginia, but CSXT has rejected that compromise. CSXT has proposed to modify Request No. 20, which would also replace Request Nos. 91 and 92 from CSXT's third set of requests for production of documents (served June 6, 2025) to the following:

All requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements exchanged between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port from January 1, 2018-present.

NS does not agree with this proposed compromise. Instead, NS proposes that it will produce:

All final contracts in NS's possession and control that involve customers for whom NS or CSXT moved freight through any East Coast Port from January 1, 2018-present.

Requests Requiring NS Follow-up

Request No. 25:

NS can confirm that the White Paper that was included as Exhibit C to NS's June 13 Supplement and Perfection filing is the only document responsive to Request No. 25 and is the only document that NS has provided to the U.S. Department of Justice, Federal Trade Commission or any other administrative agency concerning any allegations of anticompetitive conduct by NS from 2018-present. NS can also confirm that it did not provide any "workpapers" or "back up" materials supporting the White Paper. To the extent NS does produce such additional materials to DOJ, NS will also provide those to CSXT.

Timing of Production

As for the documents that NS has agreed to produce as outlined in this letter, NS will endeavor to produce such materials by July 18, 2025. NS will produce documents on a rolling basis.

* * *

NS reserves all other rights of objection and arguments with respect to any further discovery requests by CSXT and reserves the right to seek discovery against CSXT or any other party of record in this proceeding.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

cc: T.J. Litwiler

APPENDIX

- a. Name of the consignee, shipper, and payee, for each shipment record;
- b. Commodity Code (seven-digit Standard Transportation Commodity Code “STCC,” including 49 Series HAZMAT Code);
- c. Origin station, State or Province, Standard Point Location Code (“SPLC”), and Freight Station Accounting Code (“FSAC”);
- d. Destination station, State or Province, SPLC, and FSAC;
- e. Full route interchange and carriers;
- f. Number of rail cars;
- g. Number of intermodal containers or trailers;
- h. Tons (Net);
- i. Total freight revenues from origin to destination, and total revenue to other railroads in the event that railroad was not the sole carrier for a particular movement, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- j. Fuel surcharge;
- k. The contract, agreement, tariff, or other pricing authority that the shipment is billed under including the amendment and item numbers;
- l. Unique Waybill number and Waybill date;
- m. Car/trailer/container initial and number for each car/trailer/container used to move the shipment;
- n. Intermodal service plan code and the intermodal line of business code for each intermodal shipment;
- o. Load and empty indicator for each movement;
- p. Equipment type for each movement;
- q. Local or interline movement indicator;
- r. Forward or received indicator;

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

Exhibit 2

CSXT's Second RFPs 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 Second 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 “CSXT’s Second Set of 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 15 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board (the “Board” or “STB”).

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. “Communication” shall mean every manner or means of disclosure, transfer, or exchange of information (in the form of facts, ideas, inquiries, or otherwise) whether oral, written, visual, or electronically stored, including, letters,

memoranda, electronic mail, metadata, invoices, interviews, discussions, text messages, messages sent via Internet-connected applications, telephone conversations, face-to-face meetings, and other similar forms of communication or correspondence.

5. “CSXT’s First Requests to NS” shall mean CXT’s First Set of Requests for Production of Documents to Norfolk Southern Corporation & Norfolk Southern Railway Corporation served on March 19, 2025 in this Action.

6. “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.

7. “CWRY” shall mean the Commonwealth Railway, 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 its behalf.

8. “Diamond” shall mean the track between NS Juncture and Carolina Juncture, operations over which were discontinued in 2008. *See Norfolk Southern Railway Company Discontinuance of Service Exemption—in Chesapeake, VA*, Docket No. AB-290 (Sub-No. 299X), filed April 25, 2008; *Norfolk and Portsmouth Belt Line Railroad Company—Discontinuance of Trackage Rights Exemption—in Chesapeake, VA*, AB 1024X, filed April 25, 2008.

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

10. “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 any information contained in any computer, even if not yet printed out.

11. “East Coast Ports” shall mean all ocean ports and marine terminals on the Atlantic and Gulf coasts in the United States located east of the Mississippi River that handle intermodal containers, including terminals located in the Port of New Orleans, Port of New York/New Jersey, Port of Baltimore, Port of Charleston, Port of Savannah, Port of Mobile, Port of Wilmington, Port of Jacksonville, Port of Virginia (VIG and NIT).

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

13. “International Intermodal freight” shall mean freight that is transported via ocean vessel and rail or truck in standardized 20-foot or 40-foot containers.

14. “NIT” shall mean Norfolk International Terminals, located in Norfolk, Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

15. “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.

16. “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.

17. “NPBL System” shall mean all rail lines and facilities owned or operated by NPBL, including rail lines and facilities that NPBL utilizes via trackage rights or other joint facility or joint use agreements on another railroad.

18. “NS System” shall mean all rail lines and facilities owned or operated by NS, including rail lines and facilities that NS utilizes via trackage rights or other joint facility or joint use agreements on another railroad.

19. “PMT” shall mean Portsmouth Marine Terminal, located in Portsmouth, Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

20. “Person” or “Persons” shall mean any natural person, firm, association, partnership, joint venture, corporation, estate, trust, receiver, syndicate, municipal corporation, government department or agency, and any form of legal entity and any other group in combination acting as a unit.

21. “Present” shall mean the date You serve Your Responses to CSXT’s Second Set of Requests.

22. “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.

23. “Relevant Period” shall mean January 1, 2007 – Present, unless otherwise specified. If a Request does not specify a date range, the Relevant Period applies.

24. “VIG” shall mean Virginia International Gateway, located in Portsmouth, Virginia, formerly known as APM Terminals Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

25. “VIT” shall mean Virginia International Terminals, LLC, a Virginia limited liability company wholly owned by the Virginia Port Authority, which operates a group of marine terminal facilities referred to as the “Port of Virginia,” and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

26. “VPA” shall mean Virginia Port Authority, a political subdivision of the Commonwealth of Virginia that owns the Port of Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

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

28. 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 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 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.

13. The subheadings listed in these Requests are provided solely to organize the Requests for ease of review. The subheadings shall not be interpreted to limit the scope of the Requests in any way.

REQUESTS

Extension of Select Requests from District Court Proceeding to Cover Subsequent Period

1. All Documents and Communications between NS and employees of NPBL relating to the Diamond from January 1, 2018-present.
2. All Documents and Communications between and among NS relating to the Diamond from January 1, 2018-present.
3. All Documents and Communications between NS and employees of NPBL relating to the use of NPBL by any entity other than NS from January 1, 2018-present.
4. All Documents and Communications between and among NS relating to the use of NPBL by any entity other than NS from January 1, 2018-present.
5. All Documents pertaining to setting NPBL's rates, including rates to be charged for switch services from January 1, 2018-present.
6. All minutes, agendas, presentations, or other Documents relating to meetings of the NPBL Board of Directors, NPBL Rate Committee, and NPBL Annual Shareholders' meetings from January 1, 2018-present, including drafts.
7. All audits conducted of NS from January 1, 2018-present.
8. All audits conducted of NPBL from January 1, 2018-present.
9. NPBL's annual financial statements from January 1, 2018-present.
10. All Documents that NS has received relating to Communications between NPBL and the VPA, VIT, NIT, PMT, and VIG from January 1, 2018-present.

11. All Communications between NS and the CWRV relating to the CWRV's switch rate formula, including any switch rate formula in effect and any proposed or considered switch rate formula that did not take effect from January 1, 2018-present.

12. All Documents relating to CSXT's use of tracks that access NIT, PMT, and VIG from January 1, 2018-present.

13. All Documents between NS and VPA or VIT relating to CSXT's access to NIT, PMT, and VIG from January 1, 2018-present.

14. All Documents between NS and VPA, or VIT relating to the switch rates, including NPBL and intraplant switch rates to be charged to NS at NIT, PMT, and VIG from January 1, 2018-present.

15. Documents sufficient to show switch rates at all East Coast Ports served by NS from January 1, 2018-present.

16. All Documents relating to the removal of track at the Diamond, including any Documents referencing the consequences of removing the track to CSXT or other rail companies from January 1, 2018-present.

17. All Documents relating to the use of CSXT locomotives by NPBL or on NPBL track from January 1, 2018-present.

18. All Documents relating to the use of NS locomotives by NPBL or on NPBL track from January 1, 2018-present.

19. All Documents relating to CSXT's proposals for revised rates, and any analysis or assessment performed regarding such proposals, including with respect to NPBL, NS, and/or port operations from January 1, 2018-present.

20. All Documents and Communications between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port, including any requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements, and any related communications from January 1, 2018-present.

21. All Documents in which NS references CSXT's lack of access or means to restrict access to NIT, PMT (including Pinner's Point), or VIG and NPBL from January 1, 2018-present.

22. All Documents relating to NS's pricing strategies for any freight transportation by rail moving in or out of any East Coast Port from January 1, 2018-present.

23. All Documents relating to NS's business performance at NIT, VIG, and PMT, including Documents reflecting sales growth or declines, increases or decreases in the number of customers serviced by NS, and increases or decreases in NS's market share for freight transportation by rail in or out of NIT, VIG, and PMT from January 1, 2018-present.

24. All market studies, competitive analyses, market share calculations, market intelligence, and revenue/profit forecasts for the Hampton Roads area, or any other East Coast Port that also refer to NIT, PMT, or VIG, including any

Documents identifying, comparing, or analyzing the cost of serving NIT, PMT, or VIG by rail versus by truck from January 1, 2018-present.

25. All Documents relating to any investigations by the U.S. Department of Justice, Federal Trade Commission, or any other administrative agency concerning any allegations of anticompetitive conduct by NS from January 1, 2018-present.

26. All Documents relating to competitive alternatives for customers shipping cargo through NIT, VIG, and PMT from January 1, 2018-present.

27. Documents sufficient to show capacity and freight volumes shipped by NS through NIT, VIG, and PMT from January 1, 2018-present.

28. Documents sufficient to show NS's gross margins for NS's services to and from NIT, VIG, and PMT from January 1, 2018-present.

29. All Documents relating to historical or current data and information relating to capacity, freight volumes, ports of origin, destinations, and rates for NS and its competitors at NIT, PMT, VIG, and other East Coast Ports from January 1, 2018-present.

30. All Documents relating to infrastructure for access via rail or truck at NIT, PMT (including Pinner's Point), and VIG, including Documents relating to double-stacking, lease of storage tracks, or other limitations on capacity, efficiency, or type of service from January 1, 2018-present.

31. All Documents and Communications relating to any contract or agreement effective at any time between You and NPBL, including all documents

that constitute, memorialize, evidence, describe, or are part of or incorporated into such contract or agreement from January 1, 2018-present.

32. All Documents and Communications between or among any or all of You, NPBL, or CSXT relating to access to NIT, including without limitation all Documents and Communications concerning CSXT's access to NIT via drayage and via rail, from January 1, 2018-present.

33. All Documents relating to communications between You and any person other than NPBL or CSXT relating to the ownership, shareholder structure, or corporate governance of NPBL from January 1, 2018-present.

34. All Documents containing internal NS Communications relating to the ownership, shareholder structure, or corporate governance of NPBL from January 1, 2018 to present.

35. All Documents relating to Communications between You and the Commonwealth of Virginia relating to intermodal freight operations at a Port of Virginia Terminal, including NIT, VIG, and PMT, from January 1, 2018-present.

36. All Documents relating to the analysis of the economic effects of the merger of Southern Railway Company with Norfolk & Western Railway Company on NPBL or the intermodal freight business from January 1, 2018-present.

37. All Documents and Communications between You and NPBL relating to any rate or service proposal made to NPBL by CSXT from January 1, 2018-present.

38. All Documents relating to the analysis of NS's capacity to meet future demand for rail service to intermodal shippers moving in or out of any East Coast Port from January 1, 2018-present.

39. All Documents relating to the analysis of competition among various modes of inland transportation, including rail, truck, or barge operations, to serve shippers of intermodal freight moving in or out of any East Coast Port from January 1, 2018-present.

40. All Documents relating to the comparative advantages that NS or NPBL may possess at any East Coast Port from January 1, 2018-present.

41. All Documents and Communications relating to the quality of NS's performance pursuant to any contract whose subject matter involves or relates to the movement of intermodal traffic in or out of any East Coast Port from January 1, 2018-present.

42. All Documents and Communications relating to the quality or price of CSXT's services in the movement of intermodal freight in or out of any East Coast Port from January 1, 2018-present.

43. All Documents relating to business relationships concerning intermodal transportation services that were acquired by You after being held by CSXT, including all analyses of the reasons why You were able to acquire the business, from January 1, 2018-present.

44. All Documents and Communications relating to any proposed or contemplated expansion of terminal capacity, or intermodal freight-handling capacity, at NIT, VIG, or PMT from January 1, 2018-present.

45. All Documents relating to contracts between You and CWRY from January 1, 2018-present.

46. All Documents and Communications concerning NS's use of drayage or trucking services at any East Coast Port, including without limitation any Documents or Communications pertaining to the comparative advantages or disadvantages of drayage or trucking services versus on-dock rail services from January 1, 2018-present.

47. All Documents relating to Your analysis of opportunities to compete with CSXT for the business of ocean shippers seeking rail transportation of intermodal containers, including your assessment of any wins or losses of business for which you competed against CSXT, involving any East Coast Port, from January 1, 2018-present.

48. All Documents relating to Your analysis of opportunities to compete with transportation providers other than CSXT, including railroad companies, trucking companies, barge companies, and other providers, for the business of ocean shippers seeking rail transportation of intermodal containers in or out of any East Coast Port, including your assessment of any wins or losses of business for which you competed against such providers, from January 1, 2018-present.

49. All Documents and Communications between You and NPBL relating to any evaluation or analysis of the capacity of the railroad infrastructure located within the Cities of Norfolk, Portsmouth, or Chesapeake, regardless of its ownership, to carry current or projected volumes of intermodal freight traffic passing through NIT, VIG, or PMT, from January 1, 2018-present.

50. All route maps for NS intermodal container transport, including inland ports operated by NS from January 1, 2018-present.

51. All Documents relating to actual or contemplated additions to or reductions from available NS intermodal or container transportation routes from January 1, 2018-present.

52. All Documents and Communications between or among any or all of You, NPBL, and the Commonwealth of Virginia concerning planned or potential intermodal freight operations by NS or CSXT through NIT, VIG, or PMT from January 1, 2018-present.

53. All Documents and Communications between You and the Commonwealth of Virginia concerning planned or potential future expansion of rail infrastructure, including the projected cost of such expansion, at the Port of Hampton Roads from January 1, 2018-present.

Traffic Requests

54. Produce all Documents, including databases, data warehouses, and computer programs (with all documentation related to these databases and computer programs), in a computer-readable format, that include the information

listed below for each movement handled by NS for any portion of the through movement, loaded or empty, that moved in or out of any East Coast Port by any means of transportation (including by drayage or other railroad) for each year or partial year during the Relevant Period.

- a. Name of the consignee, shipper, payee, and customer for each shipment record;
- b. Commodity Code (seven-digit Standard Transportation Commodity Code “STCC”);
- c. Toxic Inhalation Hazard/Poisonous Inhalation Hazard (“TIH/PIH”) Commodity Identifier;
- d. Origin station, State or Province, Standard Point Location Code (“SPLC”), and Freight Station Accounting Code (“FSAC”);
- e. Origin date and time;
- f. Destination station, State or Province, SPLC, and FSAC;
- g. Destination date and time;
- h. For shipments NS received in interchange, including in an origin switch, the on-junction location station, State or Province, SPLC, FSAC, and the railroad received from;
- i. For shipments given in interchange, including in a terminal switch, off-junction location station, State or Province, SPLC, FSAC, and the railroad given to;
- j. Full route interchange and carriers;
- k. Number of rail cars;
- l. Number of intermodal containers or trailers;
- m. Tons (Net);
- n. Rail car tare weight;
- o. Intermodal container or trailer tare weight;

- p. Total freight revenues from origin to destination, each railroad's share of the total freight revenues in the event that railroad was not the sole carrier for a particular movement, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- q. Fuel surcharge;
- r. Haulage fees;
- s. Total freight cost;
- t. The contract, agreement, tariff, or other pricing authority that the shipment is billed under including the amendment and item numbers;
- u. Unique Waybill number and Waybill date;
- v. Car/trailer/container initial and number for each car/trailer/container used to move the shipment;
- w. The unique train identification initial and number of all trains used to move the shipment;
- x. Total loaded movement miles;
- y. Total loaded miles on NS's System;
- z. AAR car-type code;
- aa. Provider of car and container/trailer (railroad-owned, railroad-leased, shipper or foreign road);
- bb. Total empty movement miles;
- cc. Total empty miles on NS's System; and
- dd. Intermodal service plan code and the intermodal line of business code for each intermodal shipment.

55. All Documents relating to studies or analyses of transit and/or cycle times for any intermodal railroad train movements in or out of any East Coast Port for each year or partial year during the Relevant Period. For each study or analysis,

responsive information includes, but is not limited to, the following categories:
commodity classification, geographic regions, and line segment.

56. All Documents relating to the projected and actual transit and/or cycle times, and the standard or expected or contractual transit and/or cycle time for each intermodal movement in or out of any East Coast Port during the Relevant Period. Produce documents, to the extent available, in a computer readable format.

57. All operating timetables, station lists, station books, track charts, and condensed profiles for the NS System for any subdivision that includes Norfolk, VA that were prepared, considered, or in effect during the Relevant Period. If current versions of any of the requested documents are not available, produce the most recent versions that are available.

58. All Documents relating to forecasts or projections prepared by NS or for NS, relating to future traffic volumes and/or revenues for International Intermodal freight traffic in or out of any East Coast Port.

59. All workpapers and filings relating to this Action that NS submitted to the Board.

60. All Documents concerning NS's projected growth and investment needs in Virginia.

61. All Documents concerning NPBL's projected growth and investment needs in Virginia.

Rates, Costs & Competition Requests

62. Communications relating to railroad rates for International Intermodal freight traffic moving to or from all East Coast Ports. You may exclude documents of a routine transactional nature (e.g., waybills), provided that You identify the categories of documents so excluded.

63. All Documents relating to studies or analyses of traffic volumes, railroad rates, or railroad costs for any intermodal railroad train movements in or out of any East Coast Port.

64. All Documents relating to studies or analysis of railroad rates for International Intermodal freight traffic moving to or from all East Coast Ports.

65. All Documents relating to traffic that could be moved by CSXT on NPBL.

66. All Documents relating to studies, analyses, and reports relating to rates that CSXT has charged or could charge for traffic moving on NPBL.

67. All Documents relating to the actual, estimated, hypothetical or proposed railroad rates for traffic moving via the NPBL System.

68. All Documents relating to the actual, estimated, hypothetical or proposed railroad costs for traffic moving via the NPBL System.

69. All Documents relating to studies, analyses, and reports relating to railroad traffic moving to or from all East Coast Ports that could be originated or terminated by either NS or CSXT.

70. All Documents relating to the use of truck transportation for freight traffic moving in or out of any East Coast Ports.

71. All Documents, including studies, analyses, and reports, relating to the market for waterborne container ship transportation, including rates and fees, distance, and transit times, for freight traffic moving in or out of any East Coast Ports.

72. All Documents relating to competition for intermodal traffic to or from all East Coast Ports, including competition between CSXT and NS and competition between freight rail transportation, truck transportation, and alternative ports.

73. All written railroad policies, protocols, instructions, and other documents relating to the terms and rates of NS intermodal service, including Documents relating to how such rates should be determined.

74. All Documents that show, reflect, or discuss NPBL's costs, including the following:

- a. Switching Crew;
- b. Yard Staff;
- c. Fuel;
- d. Locomotive Maintenance;
- e. Track Maintenance;
- f. Locomotive Depreciation; and
- g. Track Infrastructure.

75. All Documents relating to electronic workpapers and underlying data used to calculate the "Railway operating expenses" provided in the "Norfolk and

Portsmouth Belt Line Railroad Co. Statement of Income” as reported in the NPBL Annual Report between 2011-2024.

- a. All Documents relating to the categories of expenses included in the field “compensation and benefits,” including documents sufficient to show what is included in this field;
- b. All Documents relating to the categories of the expenses included in the field “Purchased services and rents,” including documents sufficient to show what is included in this field; and
- c. All Documents relating to the categories of the expenses included in the field “materials and other,” including documents sufficient to show what is included in this field.

76. All Documents relating to the costs of an intermodal switch between NPBL and CSXT to NIT during the Relevant Period, including any cost associated with use of NS’s Portlock Yard.

77. All Documents relating to the calculation of costs NPBL would incur to provide switching for CSXT intermodal containers.

78. All Communications between NPBL and VPA or VIT relating to NPBL’s actual or projected operating costs, including costs for switching traffic for other carriers.

79. All Documents relating to railroad costs for traffic moving to or from all East Coast Ports that could be originated or terminated on NS or CSXT railroads. You may exclude documents of a routine transactional nature (e.g., waybills), provided that You identify the categories of documents so excluded.

80. All Communications relating to NPBL's cost for traffic to be handled via the NPBL.
81. All Documents and Communications relating to NPBL's operations or service over NS's track for access to NIT.
82. All Documents and Communications relating to the impact of CSXT's use of NPBL to access NIT.
83. All Documents and Communications relating to the use of NS's Portlock Yard, including the ability to avoid use of Portlock Yard, in the movement of NPBL traffic.
84. All Documents relating to the trackage rights fee charged by NS to NPBL for the use of NS track, including any change in the level of the trackage rights fee.
85. All Documents relating to the use of the CWRV by NS or CSXT to move intermodal freight.
86. All Documents relating to the amounts paid by NS or CSXT to the CWRV for any services.
87. All Documents relating to the CWRV's commercial practices, prices and rates charged, and corporate organization.
88. All Documents relating to the costs of the CWRV for any service provided.
89. All Documents relating to the CWRV as a corporate entity.

Dated: March 26, 2025

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *CSXT's Second 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 26, 2025

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

Exhibit 3

District Court Protective Order, Oct. 29, 2019

**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.

**NORFOLK SOUTHERN RAILWAY)
COMPANY, NORFOLK &)
PORTSMOUTH BELT LINE RAILROAD)
COMPANY, JERRY HALL, THOMAS)
HURLBUT, PHILIP MERILLI, and)
CANNON MOSS,)**

Defendants.

Civil Action No. 2:18-cv-00530-MSD

**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.

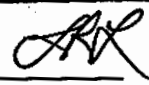
38. If a Receiving Party contests the claim of privilege or other protection in good faith, then within ten (10) business days of receiving the Producing Party's notice, it may move for a ruling that the communication or information is not protected by the attorney-client privilege, work product protection 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/

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**NORFOLK SOUTHERN RAILWAY
COMPANY**

Date: October 25, 2019

By its attorneys,

/s/

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**NORFOLK & PORTSMOUTH BELT
LINE RAILROAD COMPANY**

Date: October 25, 2019

By its attorneys,

/s/

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**JERRY HALL, THOMAS
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Date: October 25, 2019

By its attorneys,

/s/

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CANNON MOSS

Date: October 25, 2019

By his attorneys,

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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

Exhibit 4

CSXT's First RFPs 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

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

Exhibit 5

CSXT's First RFPs 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

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

Exhibit 6

NS's Responses and Objections to CSXT's First Set of RFPs

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

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

**RESPONSE AND OBJECTION TO CSXT’S FIRST SET OF REQUEST
FOR PRODUCTION OF DOCUMENTS TO NORFOLK SOUTHERN CORPORATION
&NORFOLK SOUTHERN RAILWAY COMPANY**

**Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
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**William A. Mullins
Rose-Michele Nardi
John V. Edwards
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7823**

April 3, 2025

**Attorneys for Norfolk Southern
Corporation and Norfolk Southern Railway
Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

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

**RESPONSE AND OBJECTION TO CSXT’S FIRST SET OF REQUEST
FOR PRODUCTION OF DOCUMENTS TO NORFOLK SOUTHERN CORPORATION
&NORFOLK SOUTHERN RAILWAY COMPANY**

Pursuant to 49 C.F.R. 1114.21, Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “Norfolk Southern”) hereby provide Objections to CSXT’s First Set of Requests for Production of Documents to Norfolk Southern Corporation & Norfolk Southern Railway Company (“Requests”), which was served on March 19, 2025.

GENERAL OBJECTIONS

Norfolk Southern’s General Objections, set forth herein, apply to each one of the CSXT’s Requests. Norfolk Southern’s General Objections shall not waive, limit, or prejudice any objections it may later assert. Norfolk Southern’s failure to object to a specific Request on a particular ground shall not be construed as a waiver of its right to object in the future on any other ground.

1. Norfolk Southern objects to the Requests, including the Instructions and Definitions, to the extent they impose burdens, obligations, or requirements that are greater than the

requirements or permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board (“Board”) rules or precedents.

2. Norfolk Southern objects to the Requests to the extent they seek identification of “all” or “any” documents, data, or a category of information where the production of a subset of documents, data, or information would be sufficient to respond to the Request, on the basis that such Requests are unduly burdensome.
3. Norfolk Southern objects to the Requests to the extent that they seek information or documents that constitute or disclose confidential or proprietary information, including third-party proprietary information, or other sensitive, non-public information that was produced in other courts of jurisdictions or other legal proceeding and are under confidentiality orders of that court or other legal proceeding.
4. Norfolk Southern objects to the Requests to the extent they seek documents, data, or information in a form not maintained by Norfolk Southern in the regular course of business or not available in the form requested by CSXT, where such documents, data, or information could be developed, if at all, only through the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and Norfolk Southern by its responses does not unless otherwise noted, undertake to prepare or produce any special studies. Any production by Norfolk Southern of information or documents in this category shall not be considered a waiver of this objection
5. Norfolk Southern objects to the Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, any applicable common interest or joint defense privilege, or any other applicable

privilege, doctrine, statute, regulation, agreement, or protective order. If any such privileged, protected, or exempt information is unintentionally produced or provided, Norfolk Southern reserves all rights under applicable law to demand and/or require the return of all copies thereof and non-use by Norfolk Southern or any other person or entity in this or any other proceeding.

6. Norfolk Southern objects to the Requests, including the Instructions and Definitions, to the extent a particular Request, Definition, or Instruction is vague or ambiguous.
7. Norfolk Southern reserves the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the Requests. To the extent that Norfolk Southern produces responsive information or Documents, Norfolk Southern does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of Norfolk Southern's objections to any of the Requests.
8. Norfolk Southern objects to the Requests to the extent that they seek information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation.
9. Norfolk Southern objects to the Requests, including the Instructions and Definitions, to the extent they seek information that is already in CSXT's possession, custody, or control, or that is obtainable from publicly available sources, or from another source that is more convenient, less burdensome, or less expensive, including, without limitation, by other means of discovery.

10. Norfolk Southern objects to the Requests to the extent that they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.
11. Norfolk Southern's General Objections and responses are based upon information presently known to it. Norfolk Southern reserves the right to rely upon facts, Documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections and to supplement or amend these responses pursuant to 49 C.F.R. § 1114.29 at any time as this proceeding continues.
12. Norfolk Southern objects to the Requests to the extent they seek information protected from disclosure by confidentiality or nondisclosure agreements with third parties, as well as disclosure of non-public, financial, or otherwise confidential or commercially sensitive information.
13. Norfolk Southern objects to the Requests to the extent they seek information that Norfolk Southern is prohibited from disclosing under 49 U.S.C. § 11904.
14. By responding to the Requests, Norfolk Southern does not concede or adopt any misleading statement, misleading definition, inaccurate assumption, and/or mischaracterization of the facts or the position that Norfolk Southern has taken in this case contained in any Request.
15. Norfolk Southern objects to the Requests to the extent that they seek information or documents that are not in Norfolk Southern's possession, custody, or control, or otherwise kept by Norfolk Southern in the ordinary course of business.
16. Norfolk Southern objects to the Requests to the extent that the Requests are irrelevant, overly broad, unduly burdensome, untimely, and unlikely to lead to the discovery of

admissible evidence beyond the scope of Norfolk Southern's Significant Application, if and when it is filed.

17. Norfolk Southern objects to CSXT's definition of "Action" in Definition No. 1 as referring to a proceeding that is not yet filed.

18. Norfolk Southern objects to CSXT's definition of "Norfolk Southern," "you," "your," or "NS" means Norfolk Southern Railway Company and Norfolk Southern Corporation as overly broad, unduly burdensome, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence to the extent that CSXT seeks to include (1) all Norfolk Southern affiliates and subsidiaries, (2) any joint venture to which they (an undefined term) are a party, and (3) employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, who would neither have information that is relevant nor proportional to the needs of the proceeding, and would be unduly burdensome to produce.

19. Norfolk Southern objects to CSXT's definition of "NPBL" to mean Norfolk & Portsmouth Belt Line Railroad Company as overly broad, unduly burdensome, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence including but not limited to with regard to privileged attorney-client communications and attorney work product, and as including predecessors and successors in interest, present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, areas offices, and regional offices and all Persons acting or purporting to act on the behalf of the foregoing.

20. Norfolk Southern objects to CSXT's definition of "Relating to" with reference to a subject as ambiguous to the extent that it includes "compromising" the subject and to the extent that it would be "in any way logically or factually connected with the matter discussed." Norfolk Southern further objects to that definition to the extent that it is overly broad and unduly burdensome.

SPECIFIC OBJECTIONS

Norfolk Southern's Specific Objections, set forth herein, apply to each one of the CSXT's Requests and shall not waive, limit, or prejudice any objections it may later assert. Norfolk Southern's failure to object to a specific Request on a particular ground shall not be construed as a waiver of its right to object in the future on any other grounds.

1. Norfolk Southern objects to CSXT's definition of "Document" to the extent it is overly broad, unduly burdensome, and seeks information that is not proportional to the needs of the proceeding, including that it seeks production of documents other than final versions of responsive documents.
2. Norfolk Southern objects to CSXT's definition of "Relating to" to the extent it is overly broad, unduly burdensome, and seeks information that is outside the scope of this proceeding.
3. Norfolk Southern objects to CSXT's Instruction No. 3 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence given the subject matter and temporal scope of the to-be-filed Significant Application.
4. Norfolk Southern objects to CSXT's Instruction No. 4 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence given the subject matter and temporal scope of the to-be-filed Significant Application.

5. Norfolk Southern to CSXT's Instruction No. 5 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence given the subject matter and temporal scope of the to-be-filed Significant Application.
6. Norfolk Southern objects to CSXT's Instruction No. 6 to the extent that it seeks a response with regard to a Significant Application that has yet to be filed.
7. Norfolk Southern objects to CSXT's Instruction No. 7 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence given the subject matter and temporal scope of the to-be-filed Significant Application.
8. Norfolk Southern objects to CSXT's Instruction No. 8 as overbroad, unduly burdensome, seeks information not within the knowledge and awareness of Norfolk Southern, and not reasonably calculated to lead to the discovery of admissible evidence given the subject matter and temporal scope of the to-be-filed Significant Application.
9. NS objects to CSXT's Instructions Nos. 9 and 10 to the extent that the production of electronically stored information ("ESI") would subject NS to unreasonable and undue annoyance, burden, and expense. NS reserves the right to supplement this response and/or negotiate an ESI protocol at a later time as appropriate.
10. Norfolk Southern objects to CSXT's Instruction No. 12 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence given the subject matter and temporal scope of the to-be-filed Significant Application.

RESPONSES AND OBJECTIONS TO REQUESTS

1. All Documents You produced in the District Court Proceeding.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to Request No. 1 to the extent that the Request is overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

2. All pleadings and filings You filed in the District Court Proceeding.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to Request No. 2 to the extent that the request is overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

3. Your initial disclosures in the District Court Proceeding.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to Request No. 3 as overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

4. All deposition records from the District Court Proceeding, including but not limited to, transcripts of each deposition, corresponding exhibits, video recordings, and errata.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to

Request No. 4 as overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

5. All declarations, affidavits, or other sworn statements You made relating to the District Court Proceeding.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to Request No. 5 as overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

6. All expert reports You disclosed in the District Court Proceeding.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to Request No. 6 as overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

7. All Your responses and objections to written discovery in the District Court Proceeding, including requests for production, interrogatories and requests for admissions.

RESPONSE:

Subject to and without waiving the General Objections and Specific Objections set forth above, specifically General Objection No. 3 and Objection No. 5. Norfolk Southern objects to Request No. 7 as overly broad, unduly burdensome, untimely, and not reasonably calculated to lead to the discovery of relevant information.

Respectfully submitted,

/s/ William A. Mullins

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Hanna M. Chouest
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April 3, 2025

Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I certify that I have caused this 3rd day of April Norfolk Southern's Response to "CSXT's First Set of Request for Production of Documents" to be served upon counsel for CSXT and all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

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

Exhibit 7

NPBL Discovery Letter, Apr. 3, 2025

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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Suite 800
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Phone: (312) 252-1500
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www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

April 3, 2025

VIA ELECTRONIC MAIL

Peter W. Denton, Esq.
Steptoe LLC
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795

Re: **Docket No. FD 36836**
Norfolk Southern Corporation and Norfolk Southern
Railway Company – Acquisition of Control –
Norfolk and Portsmouth Belt Line Railroad Company

Dear Peter:

I am responding on behalf of Norfolk and Portsmouth Belt Line Railroad Company (“NPBL”) to the First Set of Requests for Production Documents dated March 19, 2025 from CSX Transportation, Inc. (“CSXT”) to NPBL in the above-captioned proceeding at the Surface Transportation Board. CSXT’s discovery requests seek various NPBL documents from the judicial proceedings in *CSX Transportation, Inc. v. Norfolk Southern Railway Company and Norfolk & Portsmouth Belt Line Railroad Company*, No. 2:18-cv-00530 (E.D. Va.) (the “District Court Proceeding”). My understanding is that CSXT is already in possession of the documents sought in its discovery requests as a result of its own participation in the District Court Proceeding.

As CSXT indicated in its CSXT-4 filing at the Board dated March 20, 2025, however, significant portions of the record in the District Court Proceeding are designated as confidential under the Stipulated Protective Order in the District Court Proceeding attached to the CSXT-4 filing and can only be used “solely for the purpose of [the District Court Proceeding].” Stipulated Protective Order, ¶ 5. As CSXT also noted in its CSXT-4 filing, a party may consent to disclosure of material it has designated as confidential “beyond the terms of this Protective Order” Stipulated Protective Order, ¶ 24. We understand CSXT’s document production requests to NPBL to effectively seek such consent for those materials from the record in the District Court Proceeding already in CSXT’s possession.

NPBL would be willing to provide such consent, provided the confidentiality of any responsive NPBL material in the District Court Proceeding record would be treated with a

FLETCHER & SIPPEL LLC

Peter W. Denton, Esq.
April 3, 2025
Page 2

comparable confidentiality designation under the protective order issued by the Board in Decision No. 1 in this proceeding. Norfolk Southern Railway Company (“NS”), however, has indicated to NPBL that it “objects to NPBL producing any documents that include or refer to any NS documents or deposition that was part of the court case below and remains subject to the court’s Attorney’s Eyes Only Protective Order.” The CSXT-4 filing anticipated a discovery dispute between NS and CSXT along similar lines. It would be exceedingly burdensome, if possible at all, for NPBL to parse out which of its responsive documents in the District Court Proceeding fall within the scope of NS’s objection. NPBL is thus withholding its consent to disclosure of the documents sought in CSXT’s document production requests to NPBL until such time as the Board resolves the relevant discovery matter between NS and CSXT. NPBL will proceed promptly upon issuance of such a Board decision, and in accordance with its guidance.

Please feel free to contact me if you have any questions regarding this matter. Kind regards.

Very truly yours,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler

TJL/tl

cc: William A. Mullins, Esq.

FLETCHER & SIPPEL LLC

Peter W. Denton, Esq.

April 3, 2025

Page 3

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

Exhibit 8

CSXT Discovery Letter, June 17, 2025

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

June 17, 2025

VIA E-MAIL

William A. Mullins
Mullins Law Group PLLC
2001 L Street NW, Suite 720
Washington, DC 20036

Re: Discovery in Acquisition of Control Proceeding (FD 36836)

Dear Bill,

Thank you for meeting with us today. Below is a summary of our discussion this morning. Please reach out as soon as possible if the summary below is inaccurate.

District Court Record

As we discussed, the parties are at an impasse with respect to the production of the District Court record, which is the subject of NS's first set of requests for production, served on March 19, 2025. As outlined in CSXT's motion to compel (CSXT-6), these records are relevant to the issues before the Board with respect to NS's application for control. Our understanding is that NS objects to producing the district court records on the grounds of relevance. We will inform the Board of this impasse on Friday, June 20, 2025, as the Board directed.

Had NS been willing to produce the District Court record, CSXT was prepared to significantly limit our requests in our second set of requests for production of documents (served March 26, 2025). Given NS's position that it is not willing to produce the District Court record, we did not explore this option at any length during our discussion today.

Objections Resolved

We discussed certain requests upon which NS is willing to produce responsive documents. Below is a summary of the requests for which we understand that NS will search for and produce responsive, non-privileged documents. All numbered requests below are from CSXT's second set of requests for production of documents, unless otherwise stated.

It is our understanding that NS agreed to produce documents responsive to the following requests: Nos. 3, 4, 5, 15, 17, 18, 19, 21, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 44, 49, 50, 51, 52, 53, 58, 63, 64, 65, 66, 67, 68, 72, 74, 77, 78, 81, 82, 83, 84.

As for Request No. 27, you agreed to produce documents sufficient to show NS's capacity through NIT, VIG, and PMT from January 1, 2018-present.

As for Request No. 43, you agreed to produce all Documents relating to business relationships concerning intermodal transportation services at the Port of Virginia that were acquired by You after being held by CSXT, including all analyses of the reasons why You were able to acquire the business, from January 1, 2018-present.

As for Request No. 54, you agreed to produce the data requested for the period from January 1, 2018 to December 31, 2024. You agreed to produce all the data fields listed in Request No. 54 and the additional data fields requested in Request No. 90 from CSXT's third set of requests for production of documents served on NS on June 6, 2025. For ease of reference, attached as an appendix to this letter is the complete request, as modified.

Customer Negotiations – Proposed Compromise

Request No. 20 asks for "All Documents and Communications between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port, including any requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements, and any related communications from January 1, 2018-present."

NS proposed narrowing this request to the Port of Virginia. CSXT does not accept this modification. Customer negotiations and agreements at other East Coast ports is clearly relevant to NS's Application. NS's Supplement and Perfection of Application (filed June 13, 2025) suggests that the Port of Virginia faces "robust competition from other East Coast ports" and that numerous east coast ports compete against the Port of Virginia to attract international shipping companies. *See, e.g.*, NS-13 at 18-19, 29, 34, 47.

We propose the following modification, which would also replace Request Nos. 91 and 92 from CSXT's third set of requests for production of documents (served June 6, 2025):

Proposed compromise for No. 20: All requests for proposals, responses to requests for proposals, term sheets, draft or final contracts or agreements exchanged between NS and any actual or potential customer for whom NS or CSXT moves freight through any East Coast Port from January 1, 2018-present.

Please let us know NS's position on this proposal by 5pm on Thursday, June 19, 2025.

Requests Requiring NS Follow-up

NS has agreed to follow up on the below requests and to provide its position.

- No. 25: CSXT understands that NS is going to get back to us about whether it will produce documents that it has provided to the U.S. Department of Justice, Federal Trade

William A. Mullins

June 17, 2025

Page 3

Commission or any other administrative agency concerning any allegations of anticompetitive conduct by NS from 2018-present.

- No. 59: CSXT understands that NS is going to look for the work papers prepared in support of the white paper that is attached as Exhibit C to NS's June 13, 2025 Supplement and Perfection of Application.

We ask that you provide NS's position on these items by 5pm on Thursday, June 19, 2025.

Timing of Production

As we emphasized on the call today, time is of the essence for us to receive NS's production. NS has had the second set of requests since late March.

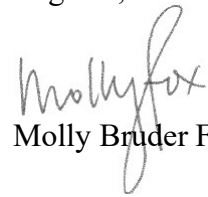
We ask that you produce the traffic data as outlined in the attached Appendix no later than one week from today, June 24, 2025. Please let us know as soon as possible if this timeline is not possible.

Additionally, we ask that your document production be completed by Friday, July 18, 2025, so that CSXT can access the discovery materials before its submission is due. As we discussed, you will produce documents on a rolling basis.

* * *

CSXT reserves all rights, including but not limited to, the right to seek further discovery in the Control Proceeding.

Regards,



Molly Bruder Fox

APPENDIX: Traffic Data Request

Modified Request No. 54, together with Request No. 90:

Produce all Documents, including databases, data warehouses, and computer programs (with all documentation related to these databases and computer programs), in a computer-readable format, that include the information listed below for each movement handled by NS for any portion of the through movement, loaded or empty, that moved in or out of any East Coast Port by any means of transportation (including by drayage or other railroad) for each year or partial year from January 1, 2018 to December 31, 2024.

- a. Name of the consignee, shipper, payee, and customer for each shipment record;
- b. Commodity Code (seven-digit Standard Transportation Commodity Code “STCC”);
- c. Toxic Inhalation Hazard/Poisonous Inhalation Hazard (“TIH/PIH”) Commodity Identifier;
- d. Origin station, State or Province, Standard Point Location Code (“SPLC”), and Freight Station Accounting Code (“FSAC”);
- e. Origin date and time;
- f. Destination station, State or Province, SPLC, and FSAC;
- g. Destination date and time;
- h. For shipments NS received in interchange, including in an origin switch, the on-junction location station, State or Province, SPLC, FSAC, and the railroad received from;
- i. For shipments given in interchange, including in a terminal switch, off-junction location station, State or Province, SPLC, FSAC, and the railroad given to;
- j. Full route interchange and carriers;
- k. Number of rail cars;
- l. Number of intermodal containers or trailers;
- m. Tons (Net);
- n. Rail car tare weight;
- o. Intermodal container or trailer tare weight;
- p. Total freight revenues from origin to destination, each railroad’s share of the total freight revenues in the event that railroad was not the sole carrier for a particular movement, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- q. Fuel surcharge;
- r. Haulage fees;
- s. Total freight cost;
- t. The contract, agreement, tariff, or other pricing authority that the shipment is billed under including the amendment and item numbers;
- u. Unique Waybill number and Waybill date;
- v. Car/trailer/container initial and number for each car/trailer/container used to move the shipment;
- w. The unique train identification initial and number of all trains used to move the shipment;
- x. Total loaded movement miles;
- y. Total loaded miles on NS’s System;

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- z. AAR car-type code;
- aa. Provider of car and container/trailer (railroad-owned, railroad-leased, shipper or foreign road);
- bb. Total empty movement miles;
- cc. Total empty miles on NS's System;
- dd. Intermodal service plan code and the intermodal line of business code for each intermodal shipment;
- ee. Origin Street Time;
- ff. Origin Terminal Time;
- gg. Destination Terminal Time;
- hh. Destination Street Time;
- ii. Trains Used;
- jj. Transit Time;
- kk. Terminal Variable costs;
- ll. Terminal Fixed costs;
- mm. Terminal Ownership costs;
- nn. Terminal Operations and Maintenance costs;
- oo. Any other cost categories not otherwise provided;
- pp. Additional trucking costs before or after rail move; and
- qq. Additional trucking miles before or after rail move.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *CSX Transportation Inc.'s Restated and Amended Motion to Compel Production of Documents by Norfolk Southern Corporation and Norfolk Southern Railway Company and 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.
June 20, 2025