

SERVICE DATE – JULY 25, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36836

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

Decision No. 8

Decided: July 25, 2025

Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS or Applicants) seek Board review and authorization pursuant to 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 of their acquisition of control of Norfolk & Portsmouth Belt Line Railroad Company (NPBL). This decision grants a restated and amended motion to compel filed by CSX Transportation, Inc. (CSXT).

BACKGROUND¹

On February 14, 2025, Applicants filed a submission, styled as an application for a “minor” transaction, seeking the Board’s authorization of their acquisition of control over NPBL. NPBL is a terminal switching company, currently owned by NS (57.14%) and CSXT (42.86%). (Prefiling Notification 12.)² NPBL operates approximately 36 miles of rail line from Portsmouth, Va., to Norfolk, Va. (the NPBL Line), and approximately 27 miles of trackage rights over NS track from Norfolk to Chesapeake, Va. (the NPBL Trackage Rights). (*Id.* at 12-13, 42.) The NPBL Line connects with CSXT at Portsmouth, with NSR and the Chesapeake and Albemarle Railroad at Chesapeake, and with the Buckingham Branch Railroad at Norfolk. (*Id.* at 58.)

The NPBL Trackage Rights facilitate NPBL’s access to the Norfolk International Terminal (NIT). (*Id.* at 58.) NIT is the larger of the two primary container terminals at the Port of Virginia (POV) in or about the Hampton Roads area. (*Id.* at 51-52, 60; Appl. 61.) The NSR

¹ For a more detailed discussion of the procedural history and background of this proceeding, see Norfolk Southern Corp.—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad (Decision No. 7), FD 36836, slip op. at 2-5 (STB served July 10, 2025).

² Applicants’ February 14, 2025 submission will be referred to as the Prefiling Notification. Citations to pleadings on the record will reference the cumulative page numbers contained therein to the extent they are available.

track over which the NPBL Trackage Rights run connects directly to NIT.³ (Prefiling Notification 58.) According to Applicants, other rail carriers can access NIT by interchanging with NSR or arranging for a switch move involving NPBL. (*Id.*) CSXT also conducts drayage operations to NIT from a nearby yard. (*Id.* at 32, 66.) The other, smaller container terminal at POV in or about the Hampton Roads area is the Virginia International Gateway, which both NSR and CSXT access through the Commonwealth Railway, a subsidiary of Genesee & Wyoming Inc. (*Id.* at 60.)

By decision served March 14, 2025, and published in the Federal Register on March 17, 2025 (90 FR 12440), the Board found that the transaction should be classified as a “significant” transaction. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 7 (STB served Mar. 14, 2025). The Board therefore treated the submission as a prefiling notification for a significant transaction and stated that Applicants could perfect their application by supplementing the February 14, 2025 submission. *Id.* at 7-8.

On April 9, 2025, CSXT filed a motion asking the Board to compel NS and NPBL to either produce seven categories of documents from a related district court proceeding or, alternatively, consent to use of those documents in this proceeding.⁴ (CSXT Mot. to Compel 1, 8-9, 20, Apr. 9, 2025.) The seven categories of information include (1) documents that NS and NPBL produced in the district court proceeding, (2) documents NS and NPBL filed in the district court proceeding, (3) NS’s and NPBL’s initial disclosures from the district court proceeding, (4) deposition records from the district court proceeding, (5) declarations, affidavits, or other sworn statements NS and NPBL made relating to the district court proceeding, (6) expert reports NS and NPBL disclosed in the district court proceeding, and (7) NS’s and NPBL’s responses and objections to written discovery in the district court proceeding. (*Id.* at 8-9.)

On April 18, 2025, CSXT filed a second motion to compel, seeking an order compelling NS to produce certain additional information. According to CSXT, its second set of requests expands upon its discovery requests from the district court proceeding to include later years and seeks information about traffic data, rates, and competition. (CSXT Second Mot. to Compel 4, Apr. 18, 2025.)

By decision served April 24, 2025, a housekeeping stay tolling the deadlines for replies to CSXT’s two motions to compel was issued to allow the Board to consider a petition for reconsideration and a petition for stay related to discovery in this case. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 2 (STB served

³ The NPBL Trackage Rights connect the main body of NPBL’s system to its line extending from West Junction to NIT. (See Appl. 101); see also NPBL Reply 1-2, June 24, 2025, Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223.

⁴ In 2018, CSXT filed a complaint in federal district court against NS and NPBL, alleging in part violations of federal antitrust laws and state conspiracy laws in connection with switching service that NPBL makes available to CSXT at NIT. (Prefiling Notification 11.) That case, including all appeals, has since concluded. See CSX Transp., Inc. v. Norfolk S. Ry., 2025 U.S. Lexis 1619 (S. Ct. 2025) (denying CSXT’s petition for certiorari).

Apr. 24, 2025).⁵ On June 13, 2025, in a decision denying the petitions for reconsideration and stay, the Board lifted the housekeeping stay, directed the parties to meet and confer on discovery issues, and set deadlines for CSXT to inform the Board of any remaining discovery issues and for Applicants to reply on those issues. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 7 (STB served June 13, 2025).

Applicants supplemented their February 14, 2025 submission on June 13, 2025. By decision served and published in the Federal Register on July 10, 2025 (90 FR 30763), the Board accepted NS's application and adopted a procedural schedule for its consideration. Decision No. 7, FD 36836, slip op. at 7-10.

CSXT filed a restated and amended motion to compel on June 20, 2025. According to CSXT, the parties met and conferred on June 17, 2025. (CSXT Restated Mot. to Compel 10, June 20, 2025.) CSXT states that the parties have reached an impasse on CSXT's first motion to compel and that one request from CSXT's second motion to compel, relating to customer negotiations at East Coast ports (Request No. 20), remains at issue. (Id. at 1 & n. 2, 4.) Applicants replied in opposition to CSXT's restated and amended motion to compel on June 25, 2025, on the ground that the discovery requests at issue go beyond the proper scope of discovery in this proceeding and on other grounds as discussed below.

DISCUSSION AND CONCLUSIONS

In Board proceedings, parties are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). Information is relevant when it “might be able to affect 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). It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 49 C.F.R. § 1114.21(a)(2). Under 49 C.F.R. § 1114.21(c), however, discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought. See, e.g., FMC Wyo. Corp. v. Union Pac. R.R., NOR 42022, slip op at 5 (STB served Feb. 5, 1998) (finding that, when the production of certain evidence is burdensome on its face, a substantial showing of relevance and need is necessary to outweigh the burden of producing evidence).

District Court Litigation Documents. As noted above, CSXT seeks a Board order compelling Applicants and NPBL to produce or consent to the use of seven categories of documents related to the district court litigation, including but not limited to documents that were produced in discovery during that litigation and documents that were submitted to the district court. According to CSXT, these documents are relevant because the issue before the Board is the same issue that was before the district court: “the anticompetitive effects of NS's control over

⁵ Applicants filed a letter on June 6, 2025, discussing additional discovery requests served on them by CSXT. On June 9, 2025, NPBL filed a letter discussing the same. CSXT replied to those letters on June 9, 2025. The additional discovery discussed in NS's and NPBL's letters are not the subject of any of CSXT's motions to compel.

NPBL.” (CSXT Restated Mot. to Compel 13, June 20, 2025.) Accordingly, CSXT argues that what it calls the “record” from the district court proceeding “overlaps completely with the statutory review standard in this control proceeding.” (*Id.* at 12.) CSXT further argues that NS itself has acknowledged the relevance of the district court record in its filings, stating that the district court proceeding record is “known by all and ready for presentation and argument,” (*id.* at 14 (quoting NS Reply to Pet. to Reject 35, Mar. 7, 2025)), and has relied on materials from the district court litigation that CSXT cannot review in its filings before the Board, (CSXT Restated Mot. to Compel 14-15, June 20, 2025 (citing Appl. 122-137)).

On reply, Applicants argue that not all discovery from the district court case is relevant. Applicants argue that the district court proceeding focused on different statutes and laws than the Board proceeding will; according to Applicants, the district court proceeding was concerned with past actions whereas Applicants’ submission to the Board pertains to future control of NPBL. (NS Reply to Restated Mot. to Compel 8, June 25, 2025.) Applicants further argue that CSXT’s aggregated request shields the underlying discovery requests from scrutiny and would broaden the issues before the Board. (*Id.* at 12-13, 15.) According to Applicants, CSXT should identify the documents it wants Applicants to produce. (*Id.* at 16.) Applicants also argue that CSXT is not entitled to relitigate the same issues before the Board that it litigated in district court and that they have not conceded, in prior statements on the record, that the entire district court record is relevant. (*Id.* at 19-20, 26-27.) Lastly, Applicants argue that CSXT’s aggregated requests would violate the protective order entered in the district court proceeding, which Applicants state was “carefully negotiated” by NS, CSXT, and NPBL. (*Id.* at 27.)

Both the issues presented before the district court and the issues presented to the Board relate to control of NPBL and the associated competitive impacts. In the district court proceeding, CSXT alleged that NS and NPBL conspired to exclude CSXT from competing at NIT. See CSX Transp., Inc. v. Norfolk S. Ry., 114 F.4th 280, 282 (4th Cir. 2024). Here, CSXT has alleged that Applicants’ control of NPBL has had anticompetitive effects through exclusion of CSXT from on-dock rail access at NIT. (See, e.g., CSXT Pet. CSXT-1-4 to CSXT-1-5, Feb. 27, 2025; CSXT Pet. to Reject CSXT-10-37, June 20, 2025.) The Board previously acknowledged the related nature of the proceedings, stating in 2022 that any future decision by the Board concerning control of NPBL would benefit from the findings of the district court. Norfolk S.—Pet. for Declaratory Ord., FD 36522, slip op. at 1 (STB served June 17, 2022), aff’d sub nom. Norfolk S. Ry. v. STB, 72 F.4th 297 (D.C. Cir. 2023), cert. denied, 144 S. Ct. 1343 (2024). Although the district court did not make extensive merits findings, see CSX Transp. v. Norfolk S. Ry., 114 F.4th 280 (4th Cir. 2024) (dismissing complaint as untimely and on other jurisdictional grounds), the fact remains that the two proceedings involve the same subject matter and parties, and some overlapping allegations. Accordingly, under the Board’s broad discovery standard, the seven categories of documents requested by CSXT fall within the permissible scope of discovery in this proceeding. This determination applies solely for purposes of discovery at this early stage of the proceeding and is not indicative of what the Board might ultimately find relevant, persuasive, or admissible when reaching its conclusions on the application. Nor does this decision define the scope of the Board’s review. Rather, the relevance determination in this order, for purposes of discovery, is based on the issues that have been raised in this proceeding and that are therefore before the Board for consideration.

Applicants argue that disclosure of many of the requested documents would violate the protective order issued by the district court. The district court protective order clearly restricts a *receiving* party from disclosing a producing party's materials; however, Applicants fail to point to any provision of the district court protective order that restricts the *producing* party from disclosing its own information in another proceeding.⁶ (See CSXT Restated Mot. to Compel 16-17; *id.*, Ex. 3 ¶¶ 5-6.)

Additionally, Applicants and NPBL note differences between the protective orders issued by the district court and by the Board regarding their provisions governing confidential treatment of disclosed documents. (See NS Reply to Restated Mot. to Compel 29 n.48, June 25, 2025; see also CSXT Mot. to Compel, Ex. 1 at 1-2, Apr. 9, 2025.) The protective order issued by the district court restricts access to protected material to no more than two business personnel employed by the receiving party, whereas the protective order adopted by the Board contains no such limitation for material designated "confidential." (See CSXT Restated Mot. to Compel, Ex. 3 ¶ 11(b)); Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 1), FD 36836, slip op. at 5 (STB served Feb. 19, 2025). Given the differences in the terms of the protective orders issued in the two cases and given the sensitivity of the information involved, for the purposes of this production, any information designated "confidential" or "confidential-attorneys eyes only" in the district court proceeding is deemed to be "other competitively sensitive or proprietary information" under paragraph 7 of the protective order adopted in this proceeding and therefore shall be designated "highly confidential" in this proceeding. See Decision No. 1, FD 36836, slip op. at 4.

Although this production would encompass a large number of documents, the burden on Applicants and NPBL to produce the information would be low, to the extent there is any burden at all. The responsive documents have already been produced and a copy of the documents are being maintained in a litigation database by the firm that represented CSXT in district court. (See CSXT Mot. to Compel 8, Apr. 9, 2025.) With Applicants' and NPBL's consent, CSXT's counsel in the Board proceeding could access the applicable materials with minimal additional effort by any party.⁷ (See *id.*) Additionally, treating any information designated "confidential" or "confidential-attorneys eyes only" in the district court proceeding as "highly confidential" in the Board proceeding minimizes the potential burden on Applicants related to confidentiality designations.⁸

⁶ CSXT states that three third parties produced documents in the district court proceeding. To be clear, this order applies only to documents produced by Applicants and NPBL and does not order the disclosure of any third-party information.

⁷ NPBL has stated that it "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 comparable confidentiality designation under the protective order issued by the Board." (CSXT Mot. to Compel, Ex. 1 at 1-2, Apr. 9, 2025.)

⁸ Applicants also argue that the discovery requests are unduly burdensome because Applicants' counsel in this proceeding would have to undertake "a special study" to review the discovery record in the district court proceeding. (See NS Reply to Restated Mot. to Compel 18, June 25, 2025.) However, producing the district court discovery record would not require a

For these reasons, Applicants will be directed to produce the seven categories of documents requested by CSXT related to the district court proceeding.

Request No. 20. In its second set of requests for production, CSXT's Request No. 20 sought the production of "[a]ll 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." (CSXT Restated Mot. to Compel, Ex. 2 at 10.) According to CSXT, during the meet-and-confer process, it proposed narrowing its request to "[a]ll 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." (*Id.* at 11.) CSXT states that Applicants rejected CSXT's proposal and instead proposed producing "[a]ll 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." (*Id.*)

CSXT argues that the information it requests regarding Applicants' negotiations with potential and actual customers is "essential to assess NS's claims regarding the competitive landscape." (*Id.* at 19.) According to CSXT, because Applicants suggest that the relevant market for the Board's analysis should include all East Coast ports, Applicants have "put[] at issue the competitive landscape for intermodal traffic at those ports." (*Id.*) CSXT asserts that, under Applicants' proposal to provide final contracts only, it would be unable to assess Applicants' assertion that POV faces robust competition from other East Coast ports and that other East Coast ports compete against POV to attract international shipping companies. (*Id.* at 11.)

On reply, Applicants argue that CSXT's request is "extraordinarily broad" and would require production of "essentially the entirety of all negotiation files when all that is relevant is the rate and market shares of NS and CSXT for intermodal containers at the East Coast Ports." (NS Reply to Restated Mot. to Compel 29, June 25, 2025.) Applicants argue that final contracts, together with other data (e.g., waybill data) and CSXT's own negotiation files, would provide sufficient information for CSXT to assess Applicants' assertions. (*Id.* at 30-31.)

The information CSXT seeks in discovery is relevant to the subject matter and issues

special study. The requested information includes existing documents that were previously produced by Applicants. Compare CSX Transp., Inc.—Joint Use Agreement, FD 35348, slip op. at 4 (STB served Aug. 16, 2010) (finding that producing records of fees and charges presumably kept in ordinary course of business was not a special study), with PPL Mont., LLC v. Burlington N. & Santa Fe Ry., NOR 42054, slip op. at 2-3 (STB served Nov. 9, 2000) (denying a request to compel defendant carrier to perform a special study to collect fuel consumption data that did not already exist). And Applicants have otherwise not shown that the need to coordinate litigation efforts among counsel in different proceedings, which is not unusual, constitutes an undue burden here.

raised in this proceeding. Applicants have repeatedly asserted that POV faces robust competition from other East Coast ports. (See, e.g., Prefiling Notification 61-64; Appl. 7, 47.) Documents concerning Applicants' negotiations with potential and actual customers shipping through East Coast ports might inform the Board's understanding of the relevant market(s) and the competitive options. For these reasons, Applicants will be directed to produce the discrete documents CSXT seeks in its revised Request No. 20: "[a]ll 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." Production of this information should not unduly burden Applicants. Notably, CSXT's revised request no longer seeks "[a]ll Documents and Communications" or "any related communications" concerning Applicants' negotiations with actual or potential customers.⁹

It is ordered:

1. CSXT's restated motion to compel is granted as discussed in this decision.
2. This decision is effective on the date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

⁹ Applicants argue that the information requested is "extremely commercially sensitive." (NS Reply to Restated Mot. to Compel 30, June 25, 2025.) Any commercially sensitive information can be protected through the protective order previously issued by the Board in this proceeding. See Decision No. 1, FD 36836, slip op. at 3-9.