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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

CSX TRANSPORTATION, INC.'S
MOTION TO COMPEL THE APPEARANCE AND TESTIMONY
OF CANNON MOSS

EXPEDITED HANDLING REQUESTED

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Attorneys for CSX Transportation, Inc.

Dated: July 31, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

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NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
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CSX TRANSPORTATION, INC.'S
MOTION TO COMPEL THE APPEARANCE AND TESTIMONY
OF CANNON MOSS

CSX Transportation, Inc. (“CSXT”) moves to compel the appearance and testimony of Cannon Moss, President of Norfolk & Portsmouth Belt Line Railroad (“NPBL”) at a time and place mutually agreed upon by the NPBL and CSXT, but no later than August 22, 2025. This motion is necessary because of NPBL’s repeated and categorical refusal to produce Mr. Moss for a deposition at any time or place suggested by CSXT. As described below, Mr. Moss has relevant knowledge of information central to this proceeding.

Under the discovery rules that govern STB proceedings, “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21. “The testimony of any person, including a party, may be taken by deposition” provided that the party requesting to take the deposition provides notice and “set[s] forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition will be taken.” 49 C.F.R. § 1114.22. The Board has explained that “[a]ll discovery requests entail the balancing of the relevance of the information

sought against the burden of producing that information.” *Ballard Terminal R.R. Co., L.L.C.—Acquisition and Operation Exemption—Woodinville Subdivision (Ballard)*, AB 6 (Sub-No.465X) (STB served May 17, 2013) (citing *Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 4 (STB served June 25, 2012)).

NPBL has repeatedly ignored or rebuffed CSXT’s attempts to schedule the deposition of Cannon Moss and has now categorically objected to producing Mr. Moss for a deposition.

On July 2, 2025, counsel for CSXT emailed NPBL about scheduling the deposition of Mr. Moss at the end of July should the Board accept NS’s revised application. After ignoring four emails from CSXT on this topic that were sent on July 2nd, July 10th, July 16th, and July 21st, counsel for NPBL finally responded on July 22nd asserting that NPBL did not see a need or justification for CSXT to depose Mr. Moss. NPBL noted that if CSXT were to serve a notice of deposition with an explanation of the cause or reason for the deposition, then NPBL “will then decide how to respond accordingly.” Ex. 1.

On July 24, 2025, CSXT served its Notice of the Deposition of Cannon Moss. Ex. 2. CSXT explained that, as President and General Manager of NPBL, Cannon Moss has knowledge regarding CSXT’s Rate and Service Proposal and Governance Proposal from 2024, both of which are central to this proceeding. Moreover, NPBL has already produced numerous communications sent or received by Mr. Moss. These include Mr. Moss’s external communications with the Virginia Port Authority and Virginia International Terminals regarding Norfolk International Terminals’ operations and NPBL’s interoperability with the Port of Virginia. They also include Mr. Moss’s external communications with CSXT employees regarding trackage rights negotiations, as well as information about the NPBL Board of Directors.

CSXT should be able to question Cannon Moss about these and other documents and topics that are clearly relevant to the disputes in this proceeding.

On July 29, 2025, counsel for NPBL emailed counsel for CSXT stating categorically that “NPBL is not agreeable to producing Cannon Moss for deposition.” Ex. 3. NPBL further stated that it intended to file a motion for protective order with the Board regarding the matter. *Id.*

NPBL has attempted to justify their refusal to produce Mr. Moss for deposition on various grounds, all of which are unconvincing.

NPBL asserts that it is not an applicant in this proceeding and that Mr. Moss did not provide a verified statement for the application. But this argument sidesteps the fact that NPBL is a central figure in this proceeding and a Party of Record. NPBL is listed as “Party of Record” in the service list for this docket on the Board’s website, and NPBL recently complied with the Board’s instruction to “[e]ach Party of Record” to serve their prior filings upon all other Parties of Record. *Norfolk S. Corp. and Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Ports-mouth Belt Line R.R. Co. (Decision No. 7)*, FD 36836, slip op. at 11 (STB served July 10, 2025); (NPBL Certificate of Service, July 16, 2025.) Moreover, even if NPBL were not a party in this proceeding, this argument falls flat in light of prior Board precedent explaining that even for nonparties, the Board’s balancing test “hinges upon the nonparty’s relationship to the proceeding.” *Ballard*, FD 35731, slip op. at 3. In *Ballard*, the Board found that where a nonparty “has a clear interest in the proceeding and will be directly affected by its outcome, then a very strong foundation as to relevance is not a prerequisite to the issuance of the subpoena.” *Id.* Here, NPBL clearly has a strong interest in this proceeding, which centers around NS’s unauthorized control of NPBL. It is not overly oppressive or burdensome to direct Mr. Moss, as the President of NPBL, to provide testimony on the highly relevant topics outlined in CSX’s Notice of Deposition.

NPBL also points out that CSXT has already sought access to the transcript for Mr. Moss's deposition testimony in the federal district court litigation. But this argument also misses the mark. Mr. Moss's prior deposition testimony in the district court litigation is highly relevant but is not a substitute for CSXT's ability to depose Mr. Moss in this proceeding. Contrary to NPBL's claims, CSXT is not merely seeking to rehash Mr. Moss's prior testimony, but intends to focus Mr. Moss's deposition on events that occurred after his deposition was taken in 2020 in the district court litigation, including the topics described above related to CSXT's 2024 Rate and Service Proposal and Governance Proposal and Mr. Moss's more recent communications.

Due to NPBL's repeated attempts over the past month to stall Mr. Moss's deposition, and given that the procedural deadlines set by the Board are rapidly approaching—including the August 27, 2025 cutoff for filing comments, protests, requests for conditions, and any other evidence and argument in opposition to NS's application—CSXT is left with no choice but to file this Motion to Compel. *Decision No. 7*, FD 36836, slip op. at 1, 15.

For the foregoing reasons, CSXT requests that the Board grant this Motion to Compel and direct Mr. Moss to attend a deposition at a time and place mutually agreed upon by the NPBL and CSXT, but no later than August 22, 2025.

Dated: July 31, 2025

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton

Anthony J. LaRocca

Molly Bruder Fox

Linda Stein

Sally Mordi

Steptoe LLP

1330 Connecticut Ave., NW

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(202) 429-3000

Counsel for CSX Transportation, Inc

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NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

Exhibit 1

July 22, 2025 Email Thread – Deposition Discovery

From: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>
Sent: Tuesday, July 22, 2025 12:01 PM
To: Denton, Peter; Fox, Molly Bruder
Cc: Robert A. Wimbish; Goldschmidt, Lauren; James Chapman; W. Ryan Snow
Subject: [EXTERNAL] RE: Deposition Discovery

Molly and Peter,

While we appreciate your efforts to coordinate scheduling, we do not see a need or justification for a deposition of Cannon Moss. NPBL is not an applicant in the proceeding and had no part in the formation or preparation of the application, and Mr. Moss did not provide a verified statement for the application. CSXT has already served four rounds of extensive discovery on NPBL. And CSXT has sought access to the transcript for Mr. Moss's in-depth deposition by CSXT in the federal district court proceeding. If CSXT does serve a notice of deposition for Mr. Moss, presumably it will endeavor to explain the "cause or reason" for the deposition in accordance with 49 C.F.R. § 1114.22(b)(2). NPBL will then decide how to respond accordingly.

TJL

Thomas J. (T.J.) Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
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(312) 252-1508
tlitwiler@fletcher-sippel.com



From: Denton, Peter <pdenton@step toe.com>
Sent: Monday, July 21, 2025 5:24 PM
To: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>
Cc: Robert A. Wimbish <RWimbish@fletcher-sippel.com>; Goldschmidt, Lauren <lgoldschmidt@step toe.com>; Fox, Molly Bruder <mbfox@step toe.com>
Subject: RE: Deposition Discovery

TJ,

We have repeatedly emailed you concerning the scheduling of Cannon Moss's deposition. You have not replied to our emails in the chain below. If we do not receive a response regarding Mr. Moss's availability by tomorrow morning, we will proceed with serving a deposition notice tomorrow.

Regards,
Peter

Peter W. Denton
Partner

Step toe

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From: Fox, Molly Bruder <mbfox@step toe.com>

Sent: Wednesday, July 16, 2025 5:26 PM

To: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>

Cc: Robert A. Wimbish <RWimbish@fletcher-sippel.com>; Denton, Peter <pdenton@step toe.com>; Goldschmidt, Lauren <lgoldschmidt@step toe.com>

Subject: RE: Deposition Discovery

TJ,

I haven't heard back from you regarding my July 2 and July 10 emails regarding deposing Cannon Moss in the control proceeding. Please let me know Mr. Moss's availability for a deposition.

Regards,
Molly

Molly Bruder Fox
Partner

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From: Fox, Molly Bruder <mbfox@step toe.com>

Sent: Thursday, July 10, 2025 12:30 AM

To: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>; Robert A. Wimbish <RWimbish@fletcher-sippel.com>

Cc: Denton, Peter <pdenton@step toe.com>

Subject: RE: Deposition Discovery

TJ,

Given that the Board is issuing its decision tomorrow accepting NS's significant application for consideration, CSXT would like to move forward with scheduling a deposition of Cannon Moss in connection with the Control Proceeding. Can you please provide availability for a deposition of Cannon Moss between July 21-August 7?

Regards,
Molly

From: Fox, Molly Bruder <mbfox@steptoe.com>

Sent: Wednesday, July 2, 2025 3:29 PM

To: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>; Robert A. Wimbish <RWimbish@fletcher-sippel.com>

Cc: Denton, Peter <pdenton@steptoe.com>

Subject: Deposition Discovery

TJ,

We would like to move forward with scheduling a deposition of Cannon Moss in connection with the Control Proceeding. If NS's petition is accepted next week, CSXT could have a very compressed window of time to conduct deposition discovery, depending on the schedule entered by the Board. While CSXT stands by its petition to reject the NS application, we propose working on scheduling this deposition towards the end of July, in case the application is accepted.

Can you please provide availability for a deposition of Cannon Moss between July 17-31?

CSXT reserves all of its rights with respect to deposition discovery, including the right to seek additional deposition testimony.

Regards,
Molly

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Exhibit 2

July 24, 2025 – Notice of Deposition of Cannon Moss

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NOTICE OF DEPOSITION OF CANNON MOSS

Counsel for CSX Transportation, Inc. (“CSXT”), pursuant to 49 C.F.R. § 1114.22, will depose Cannon Moss, President, Norfolk & Portsmouth Belt Line Railroad (“NPBL”), 1340 Truxton Street, Chesapeake, VA 23324. The deposition will occur on Monday, August 11, 2025, at 9:00 am EDT and continue until it is completed. The deposition will take place in person at the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, D.C. 20036 or another location mutually agreed upon by the parties.

Under the discovery rules that govern STB proceedings, “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.”

49 C.F.R. § 1114.21. The deposition of Cannon Moss will be taken on the grounds and for the reason that Mr. Moss will give evidence material to the above-captioned proceeding. NPBL has already produced numerous communications sent or received by Mr. Moss, including external communications with the Virginia Port Authority and Virginia International Terminals regarding Norfolk International Terminals’

operations and NPBL's interoperability with the Port of Virginia, and external communications with CSXT employees regarding trackage rights negotiations, as well as information about the NPBL Board of Directors. As President and General Manager of NPBL, Cannon Moss has knowledge regarding CSXT's Rate and Service Proposal and Governance Proposal from 2024, both of which are central to this proceeding. CSXT should be able to question Cannon Moss about these and other documents and topics that are relevant to the disputes in this proceeding.

Dated: July 24, 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 Notice of Deposition of Cannon Moss to be served electronically or by first-class mail, postage prepaid, on all parties of record in this proceeding.

/s/ Elizabeth Snyder

Elizabeth Snyder
Counsel for CSX Transportation, Inc.

July 24, 2025

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Exhibit 3

July 29, 2025 Email Thread – NPBL Discovery Responses

From: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>
Sent: Tuesday, July 29, 2025 10:39 AM
To: Denton, Peter
Cc: Fox, Molly Bruder; Mordi, Sally; William Mullins; Sarah McCoy; Robert A. Wimbish; James Chapman; W. Ryan Snow; R. Paul DeRosa; Mackenzie Pensyl
Subject: [EXTERNAL] RE: FD 36836 - NPBL Discovery Responses

Follow Up Flag: Follow up
Flag Status: Flagged

Peter,

This is to confirm that NPBL, in response to CSXT's first set of document production requests, consents to disclosure of the district court proceeding materials under the terms of the STB's protective order in Docket No. FD 36836. As the STB directed in Decision No. 8, materials from the district court proceeding with any form of confidentiality designation should be treated as "highly confidential" under the STB's protective order.

We are also in receipt of Molly's July 24th letter with follow-up regarding NPBL's responses to CSXT's second set of document production requests. We are reviewing those items and will provide a further response shortly. We can then have a meet and confer if needed to further address those matters.

Finally, NPBL is not agreeable to producing Cannon Moss for deposition. We intend to file a motion for protective order with the STB regarding that matter this week.

Kind regards.

TJL

Thomas J. (T.J.) Litwiler
Fletcher & Sippel LLC
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tlitwiler@fletcher-sippel.com



From: Denton, Peter <pdenton@steptoe.com>
Sent: Friday, July 25, 2025 3:32 PM
To: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>
Cc: Fox, Molly Bruder <mbfox@steptoe.com>; Mordi, Sally <smordi@steptoe.com>; William Mullins <wmullins@mullinslawgroup.net>; Sarah McCoy <smccoy@portofvirginia.com>; Robert A. Wimbish <RWimbish@fletcher-sippel.com>; James Chapman <jchapman@cwm-law.com>; W. Ryan Snow <wrsnow@cwm-law.com>; R. Paul DeRosa <rpderosa@cwm-law.com>; Mackenzie Pensyl <mpensyl@cwm-law.com>
Subject: RE: FD 36836 - NPBL Discovery Responses

TJ,

In response to CSXT's first set of RFPs to NPBL in STB FD 36836, which related to the district court proceeding records, NPBL responded as follows:

Notwithstanding this objection, the Belt Line has indicated its willingness to consent to confidential disclosure under the terms of the STB protective order entered in Decision No. 1 in this proceeding, provided that CSXT first obtains consent from Norfolk Southern or an order from the STB since the vast majority of the confidential documents that CSXT seeks relate to either Norfolk Southern or CSXT. If any of the documents in the Eastern District of Virginia case were marked or withheld as privileged for any reason, the Belt Line reserves all the same privileges in this proceeding.

Given the STB's decision today granting CSXT's motion to compel, please confirm that NPBL will produce the documents requested by CSXT in our first set of RFPs, or otherwise consent to confidential disclosure of those documents under the terms of the STB protective order in this proceeding.

Thanks,
Peter

Peter W. Denton
Partner

Step toe

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From: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>

Sent: Tuesday, July 1, 2025 1:17 PM

To: Denton, Peter <pdenton@step toe.com>; Fox, Molly Bruder <mbfox@step toe.com>

Cc: Mordj, Sally <smordj@step toe.com>; William Mullins <wmullins@mullinslawgroup.net>; Sarah McCoy <smccoy@portofvirginia.com>; Robert A. Wimbish <RWimbish@fletcher-sippel.com>; James Chapman <jchapman@cwm-law.com>; W. Ryan Snow <wrsnow@cwm-law.com>; R. Paul DeRosa <rpderosa@cwm-law.com>; Mackenzie Pensyl <mpensyl@cwm-law.com>

Subject: [EXTERNAL] FD 36836 - NPBL Discovery Responses

Peter and Molly,

Attached are NPBL's Response and Objections to CSXT's First Set of Requests for Production of Documents. NPBL expects to provide responses to the remaining CSXT discovery to NPBL (the second and third set of document production requests and the first set of interrogatories) tomorrow.

Kind regards.

TJL

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *CSX Transportation Inc.'s Motion to Compel Appearance and Testimony of Cannon Moss* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Jensen Matsuda
Jensen Matsuda
Counsel for CSX Transportation, Inc.
July 31, 2025