

CSXT-16

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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
August 7, 2025
Part of
Public Record

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 REDESIGNATE THE CONFIDENTIALITY DESIGNATION
OF CERTAIN DOCUMENTS PRODUCED BY NS

EXPEDITED HANDLING REQUESTED

John P. Patelli
Steven C. Armbrust
Jason M. Marques
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Peter W. Denton
Anthony J. LaRocca
Molly Bruder Fox
Linda Stein
Sally Mordi
Steptoe LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for CSX Transportation, Inc.

Dated: August 7, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
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INTRODUCTION & SUMMARY

Pursuant to Paragraph 11 of the Protective Order governing this proceeding (“Protective Order”), CSX Transportation, Inc. (“CSXT”), for the reasons explained below, respectfully files this Motion asking the Surface Transportation Board (“STB” or “Board”) to order Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”) and Norfolk & Portsmouth Belt Line Railroad (“NPBL”) to redesignate materials from a related district court proceeding¹ as public. This Motion is necessary because of NS’s over-designation of non-commercially sensitive material as “highly confidential” under the Protective Order. As described below, these documents, ranging from eight to 26 years old, do not meet the definition of confidential or highly confidential information in the Protective Order and should be available for public review prior to the August 27 deadline for comments on NS’s application in this proceeding.

¹ *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530-MSD (E.D. Va. Oct. 4, 2018).

Under the discovery rules that govern Board proceedings, protective orders providing for confidentiality designations are available under certain circumstances, 49 C.F.R. § 1114.21(c), but are designed to prohibit disclosure of *confidential* information to third parties. And such confidentiality designations must be tailored to “properly designated” material—not applied in a “blanket” manner. *See Oversight Pertaining to Union Pac. R.R. Co.’s Embargoes (UP Embargoes Hearing)*, EP 772, slip op. at 2 (STB served May 15, 2023) (party’s request to use “blanket” designations “for all information submitted” denied; public versions of documents must redact “only that information properly designated” as confidential). Moreover, information previously filed under seal may be made public where “declassification would assist a party in making its case,” “to argue an appeal adequately, or to satisfy a statutory goal.” *The Cent. Il. R.R. Co.—Lease & Operation Exemption—Lines of the Burlington N. & Santa Fe Ry. Co. at Chicago, Cook Cnty., Il.*, FD 33960, slip op. at 1-2 (STB served Mar. 15, 2001).

Such guardrails for confidentiality designations are crucial because “the general public has an interest in Board proceedings being as open and transparent as possible.” *Urgent Issues in Freight Rail Serv.—R.R. Reporting*, EP 770 (Sub-No. 1), slip op. at 5 (STB served Mar. 14, 2024) (quoting *UP Embargoes Hearing*, EP 772, slip op. at 5 & n.11); *see also Ind. R.R. Co.—Petition for Exemption—Acquisition & Operation—Il. Cent. R.R. Co.—Line Between Sullivan, IN & Browns, Il. v. Ind. R.R. Co.—Trackage Rts. Exemption—Il. Cent. R.R. Co. and Ind. HI-Rail Corp.*, FD 31472, 1990 WL 288047, at *1 (ICC May 9, 1990) (“[T]here is a public interest in knowing the financial condition or viability of petitioner.”). To this end, the Board has made clear that confidentiality designations must balance legitimate access versus protection. *See Cent. Or. & Pac. R.R., Inc. —Abandonment, and Discontinuance of Service—In Coos, Douglas, and Lane Cntys. OR*, AB 515 (Sub-No. 2), slip op. at 4 (STB served Aug. 15, 2008).

The Protective Order provides that documents “contain[ing] shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information” documents may be designated as “highly confidential.” Ex. 1 at ¶ 7. Implicit in this construction is the understanding that such documents are “competitively sensitive” or otherwise contain “proprietary information.” “Highly confidential” documents are withheld from the public and may be viewed only by outside counsel or consultants, after the recipients sign the necessary undertaking for receiving and handling highly confidential information. *Id.* Thus, to justify “highly confidential” status, a party needs to “do more than simply assert their desire to keep a document confidential.” *Stagecoach Group PLC & Coach USA, Inc., et al.—Acquis. of Control—Twin Am., LLC*, MC-F 21035, slip op. at 6 (STB served Feb. 8, 2011) (declining to hold a document confidential where a party failed to assert any commercial disadvantage if the document were to be made available to the public).

At issue here are documents from a substantially related litigation in federal district court regarding the same anticompetitive effects of NS’s control over NPBL at issue in this proceeding. On July 25, 2025, the Board issued *Decision No. 8* in this proceeding, granting CSXT’s motion to compel production of certain documents from the district court proceeding (“July 25, 2025 Decision”). Through the course of the district court proceeding, NS produced in discovery and/or filed with the court certain documents that were designated as “confidential” or “confidential—attorneys’ eyes only.” In “translating” the confidentiality labels from the district court proceeding to this matter, all such “confidential” or “confidential—attorneys’ eyes only” materials were marked as “highly confidential” under the Protective Order.

However, certain of these documents that NS produced to CSXT as a result of the July 25, 2025 Decision do not meet the Protective Order's definition for "highly confidential." At issue in this Motion are the following documents, none of which appear to contain information prohibited from disclosure under 49 U.S.C. § 11904:

- NSR_00000704 (collection of 2009-10 Board of Director minutes (including salaries), NPBL financial projections/statements and a CSXT memorandum discussing switch rate proposals),
- NSR_00011118 (2009 email regarding dray rates and discussion of competing with CSXT),
- NSR_00084753 (same),
- NSR_00027070 (2009 email regarding switch rate recommendations),
- NSR_00035549 (2009 NS recommendations to the NPBL rate committee regarding tariff rates),
- NSR_00035903 (2009 recap of NPBL rate committee meeting regarding tariff rates),
- NSR_00071344 (2017 email regarding increased CSXT investing in the intermodal market),
- NSR_00084730 (2009 email about CSXT's NIT access),
- NSR_00177916, -917 (2009 email referring to CSXT letters and 2009 attachment regarding CSXT's NIT access),
- NSR_00199532 (1999 email regarding recommended NPBL switch rates),
- NSR_00306367 (1999 email regarding trackage rights), and
- NSR_00306377 (2002 letter from NPBL regarding tariff changes)

(together, "Contested Documents"). Ex. 2 (List of Contested Documents Improperly Designated as "Highly Confidential").

The Contested Documents are very old. At a certain point, information of the type in these documents is no longer commercially sensitive. *See Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La.*, FD 36447, slip op. at 4 n.6 (STB served June 1, 2021) (a party produced responsive information from five years prior after raising objections regarding producing commercially sensitive information). Here, all of the Contested Documents are at least eight years old and 11 of the 12 documents are over 15 years old. There is no reasonable argument that public disclosure of this nature is harmful to NS at this juncture. The Contested Documents are historical in nature, do not appear to contain information prohibited from disclosure under 49 U.S.C. § 11904, and do not involve future forecasts or projections and as such disclosure will not impact future business and competitive opportunities for NS.

In striking the balance between legitimate public access and protection of confidential information, the Board has a responsibility to ensure that the transaction is in the public interest and that all parties have an opportunity to be fairly heard. Over-designating the Contested Documents as “highly confidential” deprives shippers, ocean carriers, the Port of Virginia, and other stakeholders who may be negatively impacted by NS’s unlawful control over NPBL of the opportunity to examine and comment on evidence that shows NS’s anticompetitive conduct. The balance weighs strongly in favor of redesignating these materials as “public” or non-confidential given that the documents in question do not contain any competitively sensitive information and are material to showing the anticompetitive nature of this transaction. For example—

- NSR_00306367: {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED] }}
- NSR_00071344: {[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}
 - NSR_00084730: {[REDACTED]
[REDACTED]
[REDACTED] }}
 - NSR_00084753: {[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

NS has rebuffed CSXT’s attempts to negotiate the redesignation of the Contested Documents. On August 4, 2025, counsel for CSXT emailed NS and NPBL to request that they remove the confidentiality designations from the Contested Documents. Counsel for NS declined via email on August 7, 2025, stating that “NS does not support the redesignation of these documents.” Ex. 3. Given NS’s refusal to entertain discussions and the impending August 27 comment deadline, further

conferencing would be futile. *Cf. Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 2 (STB served June 29, 2022) (denying motion to redesignate confidentiality designations because parties had not yet conferred and resolution without Board intervention seemed likely).

The Contested Documents were only made available for use in this proceeding in any capacity on July 29, 2025, with NS providing its consent then pursuant to the district court protective order. The current procedural schedule calls for any stakeholder comments to be filed by August 27, 2025, just 20 days from the date this Motion is filed. Therefore, CSXT is asking for expedited consideration of this Motion. Specifically, CSXT requests that the Board direct NS to respond to this Motion no later than August 11, 2025 and that the Board rule on the Motion no later than August 15, 2025. CSXT believes that expeditious relief is appropriate given the brief period before comments are due and the limited relief sought herein.

* * *

The documents that are subject to this Motion do not meet the definition of “highly confidential” under the Protective Order. Accordingly, consistent with Paragraph 11 of the Protective Order, CSXT is filing this Motion to challenge NS’s designation of the documents set forth in Exhibit 2 and requests the documents be redesignated as public.

Dated: August 7, 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

Washington, DC 20036

(202) 429-3000

Counsel for CSX Transportation, Inc

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CSX TRANSPORTATION, INC.'S
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OF CERTAIN DOCUMENTS PRODUCED BY NS

Exhibit 1

Protective Order

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

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

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers or carriers; confidential financial and cost data; divisions of rates, trackage rights compensation levels and other compensation between carriers; and other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the transaction in STB Finance Docket No. 36836, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 36836 or from any related proceedings before the Board.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to NS of the applicable Undertaking, forms of which are attached as Exhibits A and B to this Protective Order. Confidential Information shall be used solely for the purpose of the Proceedings, and not for any other business, commercial, or other competitive purpose.

3. Personnel of Norfolk Southern Corporation (“NSC”), Norfolk Southern Railway Company (“NSRC”) (collectively, “NS”), and Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”), and their respective subsidiaries, including outside consultants and attorneys for any of them (representatives), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until the Application in the Proceedings is approved.

4. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of NS and NPBL are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995 (ICCTA).

5. If the Application is disapproved by the Board, then all Confidential Documents (other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings) that are exchanged between NS and NPBL and their respective subsidiaries but which are not otherwise available to them as a result of their existing affiliation and pursuant to their reporting responsibilities for securities, tax and other purposes, must be destroyed, with certification that such destruction has been completed, or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents. With respect to parties other than NS and NPBL and their respective subsidiaries, if the Application is disapproved by the Board, withdrawn, or if the Application is approved but not consummated, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings, must be destroyed, with certification that such destruction has been completed, or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

6. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 3 and 4 of this Protective Order.

7. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or

stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 3 and 4 of this Protective Order.

8. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

9. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

10. All parties must file simultaneously a Public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Public and Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Public and Highly Confidential Version) make available to outside counsel for any other party a list of all “highly confidential” information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

11. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

12. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No. 36836, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 36836 and/or with any related proceedings.

13. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

14. No party may include Designated Material in any pleading, brief, discovery request, or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14(a). All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

15. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

16. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

17. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraphs 10 and 14 of this Protective Order.

18. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

19. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

20. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2025, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 36836, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 36836, any related proceedings before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Finance Docket No. 36836 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board. I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that NS, NPBL or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____

Exhibit B

UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2025, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 36836 and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 36836, any related proceedings before the Surface Transportation Board (“Board”), or any judicial review proceedings in connection with STB Finance Docket No. 36836 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me; that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies kept by outside counsel of pleadings and other documents filed with the Board. I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that NS, NPBL, or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____
OUTSIDE [COUNSEL] [CONSULTANT]

Signed: _____

CERTIFICATE OF SERVICE

I certify that, on February 14, 2025, in keeping with 49 CFR §1180.4(c)(5), I have caused to be served a copy of the forgoing Motion for Protective Order upon the Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which NS and NPBL are situated; upon the Secretary of the Department of Transportation, the Attorney General of the United States, and the Federal Trade Commission.

/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
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**CSX TRANSPORTATION, INC.'S
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OF CERTAIN DOCUMENTS PRODUCED BY NS**

Exhibit 2

List of Contested Documents Improperly Designated as “Highly Confidential”

REDACTED - TO BE PLACED ON PUBLIC FILE

**MATERIALS FILED
UNDER SEAL**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

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Exhibit 3

Email Correspondence – FD 36836 Redesignation Request

From: William Mullins <wmullins@mullinslawgroup.net>
Sent: Thursday, August 7, 2025 5:06 PM
To: Denton, Peter; John Edwards
Cc: LaRocca, Anthony; Fox, Molly Bruder; Stein, Linda; Mordi, Sally
Subject: [EXTERNAL] Re: FD 36836 Redesignation Request

Peter, I meant to get back with you yesterday, but the day got away from me. NS does not support the redesignation of these documents. I am unaware of any precedent where internal corporate communications that did not go outside of the companies involved have been designated as public. Indeed, some of the employees noted in these documents still work for Norfolk Southern.



William Mullins
Managing Partner

2001 L Street NW, Suite 720
Washington, DC 20036

202-663-7823 Direct
703-862-0696 Cell
wmullins@mullinslawgroup.net
mullinslawgroup.net

The above message may be privileged, confidential and protected from disclosure by attorney/client work product or other privileges. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.

From: Denton, Peter <pdenton@steptoe.com>
Sent: Monday, August 4, 2025 4:39:07 PM
To: William Mullins <wmullins@mullinslawgroup.net>; John Edwards <jedwards@mullinslawgroup.net>
Cc: LaRocca, Anthony <ALaRocca@steptoe.com>; Fox, Molly Bruder <mbfox@steptoe.com>; Stein, Linda <LStein@steptoe.com>; Mordi, Sally <smordi@steptoe.com>
Subject: FD 36836 Redesignation Request

Bill and John,

CSXT requests that NS remove its confidentiality designations on a number of documents. The documents listed below do not meet the requirements of “Confidential” or “Highly Confidential” documents pursuant to the protective order entered by the STB on February 19, 2025. Moreover, any concern about disclosure of these documents has been obviated by the time has elapsed since the documents were created—as the documents were created from 1999-2017.

Please confirm by Wednesday, August 6, that NS agrees to redesignate the following documents as “Public.” Otherwise, we will file a motion with the Board challenging the designations.

- NSR_00306367
- NSR_00177916
- NSR_00071344
- NSR_00027070

REDACTED - TO BE PLACED ON PUBLIC FILE

- NSR_00084753
- NSR_00199532
- NSR_00084730
- NSR_00011118
- NSR_00306377
- NSR_00035549
- NSR_00035903
- NSR_00000704: Request that the following pages be made public NSR_00000720-23, NSR_00000726, NSR_00000735-36

Regards,
Peter

Peter W. Denton

Partner

Steptoe

Steptoe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036

[+1 202 429 6445](tel:+12024296445) direct | [+1 202 276 2900](tel:+12022762900) mobile | pdenton@steptoe.com | www.steptoelaw.com | [Steptoe Bio](#)

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *CSX Transportation Inc.'s Motion to Redesignate the Confidentiality Designation of Certain Documents Produced by NS* 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.
August 7, 2025