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ENTERED
Office of Chief Council
August 13, 2025
Part of
Public Record

August 12, 2025

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
Washington, DC 20423-0001

Re: FD 36836 and Treatment of Non-Party Information

Dear Chief:

In its decision issued on July 25, 2025, the Board granted a motion to compel filed by CSX Transportation, Inc. *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, Decision No., 8 (STB decided July 25, 2025) (hereinafter “Decision”). The Board ordered Applicants to produce materials from the district court litigation and concluded that doing so would not violate “any provision of the district court’s protective order that restricts the producing party from disclosing its own information in another proceeding.” Decision at 5.

In footnote 6 of the Decision, however, the Board specifically restricted the application of its order to Applicants and Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”): “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.*” Decision at fn.6.

Footnote 6 prevents Applicants from disclosing third-party information from the district court proceeding. Virginia International Terminals, LLC (“VIT”) is not a party to this proceeding. Rather, it is a third-party referenced in footnote 6 and is covered by the protective order entered in the district court proceeding. VIT’s employee, Thomas Capozzi, was deposed in the district court proceeding.

Counsel for CSX informed VIT on August 11, 2025, that it had redacted references to Mr. Capozzi’s deposition and to exhibits to his deposition from CSX’s highly confidential filing at the Board of district court materials. However, he further informed VIT that Norfolk Southern may not have redacted those materials in filings made to the Board on August 5, 2025. As a non-party, VIT does not have access to the parties “highly confidential” filings and cannot verify for itself whether VIT’s materials were properly redacted. Clearly, the various confidentiality orders from the Board and the court, which are different (Decision at 5), may have resulted in inconsistent treatment of VIT information.

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VIT seeks to do whatever best assists the Board. For clarity, VIT consents to Applicants and CSX using and providing to the Board: (1) documents referring to or quoting from Mr. Capozzi's deposition and associated deposition exhibits, and (2) Mr. Capozzi's deposition and deposition exhibits – provided that those materials shall be covered by the Board protective order entered in this proceeding and will be designated as “highly confidential” pursuant thereto.

VIT's commitment here is the same as the one made by its prior counsel (Ms. Jennifer Eaton) in an email to counsel for Norfolk Southern (Mr. William Mullins) on July 16, 2025: “VIT/VPA take no issue with CSX and/or NS's release and use of the deposition of Mr. Capozzi taken on January 22, 2021 in both his individual and 30(b)(6) capacity so long as the parties agree that the information and related exhibits will be covered by the STB Protective Order and the district court protective order to the extent it still applies. This transcript and any exhibit thereto should be treated as HIGHLY CONFIDENTIAL.”

If there are any questions, please feel free to contact me. VIT does not consent to becoming a party to this proceeding by the filing of this clarifying letter.

Regards,

GENTRY LOCKE

A handwritten signature in black ink, appearing to read "Noah P. Sullivan", with a stylized, cursive script.

Noah P. Sullivan

cc: Peter Denton, counsel for CSXT
William Mullins, counsel for Applicants

NPS:kmw



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Dear Chief:

Although VIT is not a party to this proceeding, at the request of Board staff, we have served all parties of record with the letter dated August 12, 2025. Accordingly, I hereby certify that I have caused the letter filed by non-party Virginia International Terminals, LLC, which was filed in Finance Docket No. 36836 on August 12, 2025, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding and ALJ Soulikias.

Regards,

GENTRY LOCKE

Noah P. Sullivan

NPS:kmw

cc: Thomas J. Litwiler (*via email*)
Peter W. Denton (*via email*)
Sally Mordi (*via email*)
John V. Edwards (*via email*)
Crystal M. Zorbaugh (*via email*)
William A. Mullins (*via email*)
Sarah McCoy (*via email*)
Administrative Law Judge Jenifer Soulikias (*via email*)