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Office of Chief Counsel
August 18, 2025
Part of
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August 17, 2025

NS-23

VIA E-FILING AND EMAILChief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001Administrative Law Judge Soulikias
Surface Transportation Board
395 E Street, SW
Washington, DC 20434-0001
Email: alj.soulikias.inbox@stb.govRe: FD 36836, Norfolk S. Corp. & Norfolk S. Ry. Co. – Acquisition of
Control – Norfolk & Portsmouth Belt Line Rr. Co.

Dear Sir or Madam:

Norfolk Southern Corporation and Norfolk Southern Railway Company (“NS”) hereby submit this brief letter regarding the scope of a scheduled deposition of NS’s corporate deponent, Michael McClellan. This letter is necessitated by the unique discovery approach employed by CSX Transportation, Inc. (“CSXT”) whereby CSXT sought, and was granted, the production of documents and depositions produced in an alleged related Federal district court proceeding. The STB has permitted CSXT to proceed with that unique discovery approach, but that approach opens up the very distinct possibility that CSXT may seek to re-examine Mr. McClellan on matters that (a) he was deposed on in the district court proceeding and (b) pre-date the filing of the control application, which should not be permitted as a matter of fairness, prejudice, and judicial economy.

Mr. McClellan’s deposition is scheduled for August 18, 2025. NS plans to proceed with this deposition as scheduled. However, NS wishes to renew its objection to testimony on issues previously litigated and or decided in an alternative forum.¹ While NS previously raised this

¹ On June 20, 2025, CSXT filed CSXT-11, a Restated and Amended Motion to Compel Production of Documents by NS and NPBL. In that CSXT-11, CSXT argued that “[t]he district court proceeding involved *precisely the same issue* that is the focus of this proceeding...” CSXT-11 at 3 (emphasis added). NS, in its response, NS-15, filed five days later, explained, among other things, that the whole-sale importation of the district court’s record, including the importation of Mr. McClellan’s deposition, is not justified because, based on settled Supreme Court precedent, “parties cannot seek to relitigate the same issue they previously had a full and fair opportunity to litigate.” NS-15, at 16 (citing Parklane Hosiery v. Shore, 439 U.S. 322, 332-333 (“Parklane”).

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objection, the Board has yet to address it in any decisions.² If you have any questions concerning this letter, please feel free to contact me by email at jedwards@mullinslawgroup.net or by telephone at (202) 663-7853.

Sincerely,

//s// John V. Edwards

John V. Edwards

cc: Parties of Record

² The Board served Decision No. 8 on July 25, 2025, wherein it ruled on many, but not all, of the issues raised in CSXT's Restated and Amended Motion to Compel, CSXT-11, and NS's response thereto, NS-15. The Board did not, however, specifically address the res judicata and collateral estoppel issues raised by NS-15, due to the narrowness of the decision the Board made in Decision No. 8 to permit the unique discovery approach that CSXT was advancing. Parklane provides instruction on how to deal with the results of that unique discovery approach that CSXT chose to follow.