

SERVICE DATE AUGUST 27, 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

**ORDER DENYING CSXT’S MOTION TO REDESIGNATE THE CONFIDENTIALITY
DESIGNATION OF CERTAIN DOCUMENTS PRODUCED BY NS**

Decided: August 27, 2025

This discovery matter is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision No. 9 (Aug. 8, 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).¹ On August 7, 2025, CSX Transportation, Inc. (CSXT), filed a motion to redesignate as public certain documents produced by NS. CSXT requested expedited handling of that motion. On August 11, NS submitted a letter objecting to CSXT’s request for expedited handling.

On February 19, 2025, a Protective Order was entered in this proceeding. In relevant part, the Protective Order provides that:

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,

¹ For 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).

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.

(Emphasis added.) The Protective Order includes that any party may challenge a designation as “confidential” or “highly confidential.” Protective Order at ¶ 11. The Protective Order also governs the filing of “confidential” and “highly confidential” documents and information during the proceeding. See Protective Order ¶ 10. In that regard, CSXT and NS submitted public and highly confidential versions of the Motion and letter, respectively.

CSXT argues that NS produced certain documents in discovery that NS marked “Highly Confidential”; however, CSXT requests those documents be redesignated under the Protective Order as “public.” Motion at 1. CSXT argues that there are several reasons that documents should be public. Blanket designations are not appropriate, on balance the public has a right to see them, and NS must do more than assert that a document is confidential. Motion at 2-3. Further, CSXT argues that the documents were produced in a related federal district court case pursuant to an order compelling discovery. Motion at 3. CSXT complains that the produced documents all became “highly confidential.” Id.

This is not a “blanket” designation. Rather, that improper designation would be all documents are “highly confidential” without any discernment. There is no such argument in this proceeding. See generally Motion.

The public’s right to viewing the documents must be balanced against NS’s right to protect its sensitive and confidential information. Thus, the Protective Order was entered. See 49 C.F.R. § 1114.21(c)(8) (relief through a protective order may include that commercial information not be disclosed or be disclosed only in a designated way). Further, the Protective Order requires a redacted public filing simultaneously with the filing of any “confidential” or “highly confidential” information. Protective Order ¶ 10. Thus, the public is aware of the filing, even though it cannot see the precise document or information. Therefore, the Protective Order strikes the balance of informing the public and protecting the information.

While the documents were produced in prior litigation and years old, CSXT has not explained why this information is not “highly confidential” any longer. CSXT has not shown that this information has been made publicly available since the documents’ creation. Instead, in the federal litigation, the documents were marked “confidential” or “confidential—attorneys’ eyes only” subject to that protective order. Motion at 3.

In this proceeding, the Protective Order’s definition of “highly confidential” controls. CSXT identified the contested documents by the bates numbers and provided a summary (available in its public filing):

- 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).

Motion at 4. CSXT's publicly-filed summary shows that the "highly confidential" designation is appropriate. Protective Order ¶ 7 (highly confidential designation applies to "shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information").

CSXT also argues that documents should be redesignated as public, because the documents "are material to showing the anticompetitive nature of this transaction." Motion at 5. That does not take the documents outside of the "highly confidential" nature. Instead, it demonstrates that those documents were properly designated.

I have reviewed each of the contested documents. On its face, each document demonstrates that it meets the definition of "highly confidential" within the Protective Order.

This ruling does not prevent CSXT from presenting the documents to the Board. CSXT must comply with the Protective Order's provisions. Ultimately, the Board will determine the materiality of any documents. This ruling only addresses whether the contested documents remain "highly confidential" and subject to the provisions of the Protective Order in this proceeding.

For these reasons, the undersigned **DENIES** CSXT'S Motion to Redesignate the Confidentiality Designation of Certain Documents Produced by NS.²

² CSXT's request to expedite is moot.

It is ordered:

1. Motion to Redesignate the Confidentiality Designation of Certain Documents Produced by NS is Denied.

2. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.