

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Office of Chief Counsel
August 27, 2025
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**NORFOLK SOUTHERN CORPORATION & NORFOLK SOUTHERN RAILWAY
COMPANY – ACQUISITION OF CONTROL – NORFOLK & PORTSMOUTH BELT
LINE RAILROAD COMPANY**

Finance Docket No. 36836

**VIRGINIA PORT AUTHORITY AND VIRGINIA INTERNATIONAL TERMINALS, LLC
OPPOSITION TO MOTION TO COMPEL AND MOTION FOR PROTECTIVE ORDER**

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Dated: August 27, 2025

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The Virginia Port Authority (“VPA”) and Virginia International Terminals, LLC (“VIT”) respond to the motion to compel filed by Norfolk Southern Corporation and Norfolk Southern Railway Company (the “Applicants”) in this proceeding on August 15, 2025. Further, VPA and VIT are not parties to this proceeding and are not subject to a subpoena duces tecum issued by the Board as required by Board precedent. Further, the Board precedent shows that the discovery standard for non-parties is more stringent and is not met here. VPA and VIT hereby move for a protective order pursuant to 49 C.F.R. 1114(c) to provide relief from the onerous discovery improperly served upon them by Applicants. Pursuant to Section 1114(c)(1), the protective order should limit VPA and VIT to producing only the discovery materials produced in the district court litigation, which they are prepared to do. To the extent more is required, the protective order should provide for Applicants to reimburse costs incurred pursuant to Section 1114(c)(3).

BACKGROUND

On February 14, 2025, Applicants filed an application for a “minor” transaction.¹ On March 5, 2025, VPA submitted a letter to the Board “regarding the proper classification of the transaction proposed.”² The VPA Letter explained that VPA and VIT were independent legal entities (with VIT being wholly owned by VPA) and that “[t]ogether, VPA and VIT do business as The Port of Virginia.” VPA Letter, at 1.

¹ Applicants’ Application for a “Minor” Transaction, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB filed Feb. 14, 2025).

² VPA Letter, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, at 1 (STB filed Mar. 5, 2025) (hereinafter “VPA Letter”). Counsel for VPA was added to the service list for this proceeding based on this letter alone, but was not removed before a proceeding started on June 13, 2025 – although she should have been.

By decision issued on March 14, 2025, the Board rejected Applicant’s application for a “minor” transaction.³ The Board permitted Applicants to consider their February 14 “minor” application filing as the pre-filing notice required for a “significant” transaction.

On June 13, 2025, Applicants filed their application for a “significant” transaction.⁴ The Board accepted the Application on July 10, 2025, and established a deadline for parties of interest to file such a notice by July 23, 2025.⁵

On July 11, 2025, CSX Transportation, Inc. (“CSX”) served on each of VPA and VIT very limited discovery -- two (2) limited discovery requests to produce documents already produced in the district court litigation and deposition transcripts (and exhibits) from that litigation. See Exhibit A (CSX discovery requests of VPA); Exhibit B (CSX discovery requests of VIT). On July 25, 2025, VPA and VIT individually responded to that discovery by objecting on multiple grounds, including that they are not parties to this proceeding and that no subpoena duces tecum had been issued. VPA and VIT did not object on the grounds that CSX served the wrong parties because CSX served its discovery separately on each of VPA and VIT.

On Monday, July 21, 2025, Applicants served discovery on the “Port of Virginia” (“POV”) – a “doing business as” name, not an independent business entity – and not on VPA or on VIT.⁶ See Exhibit C (Applicants discovery requests on POV). That discovery included forty-

³ *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB Decided Mar. 14, 2025).

⁴ Applicants’ Application for a “Significant” Transaction, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB filed June 13, 2025) (hereinafter “Application”).

⁵ *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB Decided July 7, 2025).

⁶ VPA and VIT are separate legal entities. Applicants served discovery on POV only, but POV is not a legal entity. In addition Applicants tried to sweep in other entities through its

seven (47) (excluding subparts) separate, onerous discovery requests and an interrogatory. On August 6, 2025, VPA and VIT objected to discovery from Applicants on the grounds that Applicants had served discovery on POV and not on VPA and VIT. VPA and VIT each asserted that it was not a party to the litigation and that no subpoena duces tecum had been issued and therefore no further response was required. Given Applicants procedural errors, VPA and VIT were not required to provide written objections to the individual requests, but VPA and VIT each generously responded to each request, including objections based on burden and relevance.

On July 25, 2025, the Board ruled CSX’s motion to compel filed against Applicants and ordered Applicants to produce materials from the district court litigation. The Board 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.”⁷ The Board found that “[b]oth the issues presented before the district court and the issues presented to the Board relate to control of NPBL and the associated competitive impacts.” Discovery Decision, at slip op. 4. That decision expressly did not apply to any entity other than the Applicants and NPBL and did “not order the disclosure of any third-party information.” *Id.* at fn.6.

CSX Counsel called to VIT’s attention the alleged fact (which Applicants have not refuted) that Applicants submitted highly confidential filings to the Board that did not redact VIT’s confidential material from the district court litigation that was subject to the district court’s protective order.

definitions, which is improper. NS’s definitions attempted to include “Virginia International Terminals, Inc.” as part of POV, but that is not VIT’s name. (Ex. C ¶ 5).

⁷ *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, Decision No. 8 at slip op. 5 (STB Decided July 25, 2025) (hereinafter “Discovery Decision”).

After VIT was made aware of NS's failings, VIT wrote to the Board regarding the parties' confusion over the treatment of VIT's materials from the district court litigation cited or quoted in documents in parties' possession including deposition transcripts of VIT's employee.⁸ VIT noted that: "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 expressly stated that "VIT does not consent to becoming a party to this proceeding by the filing of this clarifying letter" (VIT Letter at 2) and filed that letter as an "Other Filing" and not a "Formal Filing."⁹ The Board, on its own accord and in disregard of VIT's disclaimer, nevertheless added counsel for VIT to the Board's service list for this proceeding.

On August 15, 2025, Applicants re-served their onerous discovery requests on VPA and VIT separately (hereinafter "corrected discovery"). See Exhibit E (Applicants discovery requests on VPA); Exhibit F (Applicants discovery requests on VIT). VPA and VIT served on Applicants responses to that corrected discovery on August 25, 2025, within ten (10) days, as requested by Applicants.

⁸ VIT Letter, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, at 2 (STB filed Aug. 13, 2025) (hereinafter VIT Letter, attached as **Exhibit D**).

⁹ Because it was not a Formal Filing, VIT did not serve anyone on the Board's service list or the Administrative Law Judge ("ALJ"). VIT only served other parties and the ALJ after being instructed by Board staff to do so. VIT still contends such service was not required for a "Other Filing."

Also on August 15, 2025, Applicants filed the motion to compel that is at issue here without meeting-and-conferring with VPA or VIT. That motion was limited to two grounds only – (1) objections to VPA and VIT’s arguments about procedural deficiencies in attempting to serve discovery rather than seeking a subpoena and (2) VPA and VIT’s status as non-parties to this proceeding. Applicants did not file a motion to compel related to any other objections, including burden or relevance.

Finally, on August 17, 2025, Applicants requested that the Board narrow the scope of discovery permissible in a then-upcoming deposition of Mr. McClellan for fear 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.”¹⁰

On August 27, 2025 (today), the ALJ issued an order that VIT, VPA, and NS meet and confer on or before August 29, 2025, and that VIT and VPA had until September 2, 2025, to file this response to the motion to compel. That order articulated generally applicable discovery principles but did not address the Board precedent on the proper process for seeking discovery from or the Board precedent on the proper scope of discovery of non-parties.

I. ARGUMENT

The Board has in a very few past instances allowed discovery of a non-party after a party to the proceedings obtains a subpoena duces tecum from the Board. The Board also has only allowed discovery of the non-party after the Board has applied a balancing test to limit discovery

¹⁰ NS Letter, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 at 1 (STB filed Aug. 17, 2025).

and prevent burdensome and costly discovery of a non-party. But the Board has also required parties to follow the proper procedures before seeking limited discovery of a non-party.

VPA and VIT are not parties to this proceeding. And the Board has not issued a subpoena duces tecum as to either of them. Yet, Applicants have filed 47 (excluding subparts) wide-ranging document requests on each of VPA and VIT, including some with many subparts, that are onerous and burdensome and add little to the documents produced in the district court litigation. Applicants did so despite that fact that they, and CSX, have ample data and documents related to the issues in this case themselves, having litigated in federal court for years, including taking discovery from VIT and deposing a VIT employee, Mr. Capozzi. Application at 9-10, 12 (documenting the extensive court proceedings and appeals).¹¹

VPA and VIT do not object to reproducing materials produced in the district court litigation, subject to a protective order that protects such materials which contain confidential and business sensitive information, because: (1) “[b]oth the issues presented before the district court and the issues presented to the Board relate to control of NPBL and the associated competitive impacts” (Discovery Decision, at slip op. 4) and (2) the burden to reproduce such materials is modest.

But, VPA and VIT individually and respectfully request that the Board issue a protective order pursuant to 49 C.F.R. §1114.21(c) providing that (a) discovery other than materials from

¹¹ See CSX Letter, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 at *2-3 (STB filed Mar. 10, 2025) (explaining that “CSXT identified evidence from that lawsuit in its Petition about the effects of NS’s and NPBL’s exclusionary conduct on shippers, including higher prices to ocean carriers who relied on NIT” and discussing the district court proceeding). See also CSX’s Opposition to Motion for Summary Judgment, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB filed Aug. 4, 2025) (including a table of exhibits from the district court litigation, including Mr. Capozzi’s deposition and citing VPA and VIT documents).

the district court litigation not be had and that (b) discovery of materials other than those produced in the district court litigation may be had only upon terms and conditions that “insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred.” See 49 C.F.R. §1114.21(c)(3). VPA and VIT hereby file a motion for the entry of such protective order, which is attached hereto.

A. APPLICANTS INITIAL DISCOVERY REQUESTS WERE PROCEDURALLY DEFECTIVE

Applicants initial discovery requests were procedurally defective because they served them on POV – rather than VPA, or VIT, or both -- and sought discovery from an entity that does not exist – Virginia International Terminals, Inc.¹² VPA and VIT generously interpreted the requests as being served on them and responded with objections.¹³ Applicant did not call VPA or VIT to discuss and instead filed this motion to compel and later served the corrected discovery on each of VPA and VIT. Given that Applicants corrected their initial errors in serving and naming the wrong entities, VPA and VIT each omitted that objection when they served responses to the Applicants’ corrected discovery within the Applicants’ requested ten days.

¹² Applicants could have avoided their mistake if they had read carefully what they call the “quoted representations made to the STB” prior to serving the initial discovery because those quoted representations made clear that VPA and VIT are separate entities, VIT is an LLC, and “[t]ogether, VPA and VIT do business as The Port of Virginia.” Motion to Compel at 8. After all, CSX properly served VPA and VIT separately and by their correct names.

¹³ Naming the wrong party and serving the wrong entities are not mere technicalities as Applicants would like to claim. Motion to Compel at 10. The law requires proper service upon the proper party. See *e.g.*, *Ciotte v. Ulrich*, 267 Mich. 136 (Mich. 1934); *Proctor v. The Wells Bros. Co. of New York*, 262 Ill. 77 (104 N.E. 186 (Ill. 1914) (holding that where there are two corporations of similar names and one of them is named defendant . . . the suit is not commenced against the other . . . until the issuance of a new summons . . . and it is immaterial that plaintiff intended to sue the second party in the first instance.”).

B. VPA AND VIT ARE NOT PARTIES

VPA and VIT are strangers to this proceeding and are not parties to it.

VIT has not appeared before the Board in this proceeding except to file, as an “Other Filing,” the VIT Letter. It did so after being alerted that Applicants had submitted to the Board, in a highly confidential filing, VIT’s unredacted confidential information that was subject to a court-issued protective order. Filing a letter regarding the mistreatment of its own confidential material does not make VIT a party to this proceeding. VIT filed nothing else, including not filing a notice of intent to participate by the Board-established deadline of July 23, 2025.

Likewise, VPA is not a party. By statute, a proceeding begins with an application – not a pre-filing notice. 49 U.S.C. 11324(a) (“The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority.”). No proceeding began for non-parties until Applicants filed the Application on June 13, 2025. That was more than three months after VPA’s letter to the Board, which was filed on March 5, 2025, in response to Applicant’s application for a “minor” transaction that the Board rejected. VPA has not filed anything since Applicants’ filed the Application, including not filing a notice of intent to participate.

The best Applicants can do is provide a copy of the service list from the Board’s website. Motion to Compel, Ex. E. But that list does not determine who is a party. Indeed, the VIT Letter, which was not filed as a “Formal Filing,” expressly stated that “VIT does not consent to becoming a party to this proceeding by the filing of this clarifying letter.” VIT Letter at 2. Nevertheless, the counsel who signed the letter was added to the service list for VIT for this proceeding. The Board’s service list is hardly evidence of status as a party.¹⁴

¹⁴ VPA and VIT request that the Board correct its service list for this proceeding.

Applicants also allege that “VPA and VIT have a direct interest in the outcome of this proceeding” as a rationale for demanding discovery of it. Motion to Compel at 7. No doubt, VPA and VIT and their customers would benefit from competition where there is only one railroad today. But the fact that the fight among other parties would have a downstream effect on others does not drag those others into the litigation as parties without their consent.

**C. DISCOVERY OF NON-PARTIES, IF PERMITTED AT ALL, IS PROPERLY
EFFECTUATED THROUGH A LIMITED, NARROWLY-TAILORED SUBPOENA
DUCE TECUM.**

The fact that Applicants seek material from VPA and VIT does not obviate the need to do so properly. The Board has directed discovery of a non-party only upon its issuance of a subpoena duces tecum. After receiving a request for such a subpoena, which can be challenged, the Board applies a balancing test between “the relevance of the information sought and the burden of producing,” which the Board has said “hinges on the nonparty's relationship to the proceeding,” to determine whether to issue it at all or to establish the limited scope of such a subpoena. *Ballard Terminal R.R. Co, L.L.C. – Acquisition and Operation Exemption – Abandonment Exemption – In King County, Wa.*, FD 35731, 2013 STB LEXIS 156 at *5-6 (STB served May 17, 2013) (citing *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557, 2012 STB LEXIS 239 (STB served June 25, 2012) (hereinafter “*Coal Dust II*”)) (hereinafter “*Ballard*”). The more tenuous the non-party’s relationship is to the litigation, the greater the required justification is for the discovery. Non-party discovery can also affect and require adjustments to the procedural schedule.

**1. ONLY THE BOARD MAY ISSUE A SUBPOENA DUCES TECUM FOR NON-PARTY
DISCOVERY AND ONLY WHEN IT IS NARROWLY-TAILORED**

At the Board, the proper procedure to seek discovery from a non-party is for Applicants to seek a subpoena duces tecum, which a non-party may oppose. See *Wisconsin Power and*

Light Co. v. Union Pac. R.R. Co., NOR 42051, 2000 STB LEXIS 218, (STB Decided Apr. 18, 2000); *Public Service Co. of Colo. d/b/a Xcel Energy v. The Burlington N. and Santa Fe Ry Co.*, STB Docket No 42057, 2002 STB LEXIS 85, at *6 (STB Decided Jan. 31, 2002); *Ballard*, at 1. Even in the *Coal Dust II* and *NAFCA*, cases cited by Applicants (Motion to Compel at 14), the issue was about the Board issuing a subpoena to a non-party. *Coal Dust II*, at *20; *NAFCA, et.al v. UP*, NOR 42144, 2016 STB LEXIS 305 at *1 (STB served Oct. 13, 2016) (hereinafter “*NAFCA*”).

The Board has issued such a subpoena only when a party seeking discovery of a non-party has demonstrated a strong foundation for seeking such discovery compared to the burden of the requests, which is a standard that is more burdensome the more of a stranger to the proceeding the non-party is. *Ballard*, at *4-6; *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557, 2012 STB LEXIS 239 at *3 (STB served Feb. 27, 2012) (hereinafter “*Coal Dust I*”). Indeed, “where the information is sought from a nonparty, greater weight [is] given to the burden and thus a stronger showing of relevance is required.” *Coal Dust II*, at *10-11. When there is no strong foundation, the Board declines to subpoena a stranger to the proceeding. *Asphalt Supply & Serv., Inc. v. Union Pac. R.R.*, NOR 40121, slip op. at 1-2 (ICC served Mar. 1, 1988) (ALJ denying subpoena duces tecum to compel documents from a non-party); see also *Otter Tail Power Co. v. The Burlington N. and Santa Fe Ry. Co.*, STB Docket No. 42071, 2002 STB LEXIS 692, at *10-11 (STB Decided Nov. 15, 2002) (hereinafter “*Otter Tail*”) (denying subpoena duces tecum where burden of producing the information sought outweighs its asserted impeachment value). Finally, when the party seeks a subpoena because a non-party filed a letter, the subject matter of the discovery requests effectuated by the subpoena must be “tailored to matters raised” in the letter. *Ballard*, at *7.

2. THE BOARD HAS NOT ISSUED A SUBPOENA DUCES TECUM TO EITHER VPA OR VIT

Here, the Board has not granted a subpoena duces tecum as to either VPA or VIT.

Nevertheless, Applicants have sought to circumvent the requirement to seek a subpoena duces tecum (which exists to prevent parties from seeking onerous and burdensome discovery of non-parties), by serving on each of VPA and VIT 47 discovery requests (excluding sub-parts). In *Coal Dust I*,¹⁵ the Board addressed the concern of overbroad and burdensome requests and limited the scope of discovery requests to non-parties. *Coal Dust I*, at *7-8. Clearly, enforcing the subpoena duces tecum process has the benefit of forcing the party seeking discovery to tailor its requests to that which is needed. *See Otter Tail*, at *10 (noting that BNSF narrowed its request in response to opposition to the subpoena duces tecum). That would especially be the case here where Applicants seek 47 categories (excluding subparts) of materials.

3. THE BURDEN ON VPA AND VIT OF APPLICANTS' 47 DISCOVERY REQUESTS (EXCLUDING SUBPARTS) OUTWEIGHS ANY FOUNDATION – MUCH LESS A “STRONG FOUNDATION”—FOR DOCUMENTS OTHER THAN THOSE PRODUCED IN THE DISTRICT COURT LITIGATION.

Applicants have not filed for a subpoena nor have they moved to compel based on VPA and VIT's objections to the burden of searching for and producing the broad array of documents that NS requests. If the Applicants seek a subpoena duces tecum, then VPA and VIT will address in more detail the burden of producing the materials sought other than those produced in the district court litigation. VPA and VIT are just beginning to understand the burden of actually having to produce the requested materials.

¹⁵ *Coal Dust* involved companies whose trade association was pressing the litigation and therefore they were not strangers to the litigation – unlike VPA and VIT. *Coal Dust I*, FD 35557, 2012 STB LEXIS 239 at *20.

Most obviously, the sheer number of requests is onerous. Applicants served 47 (excluding subparts) document requests reaching back more than seven years on each of VPA and VIT -- compared to CSX serving two (2). Applicants have not requested a meet and confer session in response to VPA's or VIT's objections to the requests based on the burden or vagueness.¹⁶

Initial gross searches of VPA and VIT data systems reveal the following:

- Applicants request all communications with steamship lines. (Request No. 28). To begin this search, a collection of emails to or from VIT with shipping lines *just in the last three months* yields 4 terabytes of data, representing about *10 million emails and documents*.
- Even where the requests are directed specifically at communications with or including CSXT, (e.g., Requests 3, 6, 8, and 19), the vast size of the initial data pull makes these costly and time-consuming to answer.
 - A test for communications with CSX from only Sept 2024 to May 2025 yielded 63,000 emails that include an "@csx.com" address.
 - Applicants' requests for all communications involving CSX (Request 3) will likely result in nearly one-half million emails that would have to be culled to find the ones addressing the specified topics.
- Applicants also seek substantial commercial material to the extent it exists, both from VPA and VIT, requiring broad searches. *See e.g.*, Document Request Nos. 15, 16, 17, 26, 29, 39, and 40.
- At the actual data level, NS's requests are too vague.
 - Request 23 asks for data files from January 1, 2018 through the present covering several categories of information: capacity and freight volumes, drayage of

¹⁶ See *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB Decided June 9, 2025) (directing parties to meet-and-confer); *Consumers Energy Co. v. CSX Transp. Inc.*, NOR 42142, 2015 STB LEXIS at *2 (STB Decided Apr. 2, 2015) ("Because the parties have not yet conferred on the issues raised in Consumers' motion to compel discovery, and because it appears that many of these issues can be resolved without Board intervention, the parties are directed to meet and confer on these discovery issues."); *Omaha Public Power Dist. V. Union Pac. R.R. Co.*, NOR 42173, 2022 STB LEXIS 228 (STB Decided Sept. 15, 2022) (directing parties to meet-and-confer).

intermodal containers; drayage costs per container, container volumes loaded and unloaded (by steamship line, alliance, or both), vessel calls, all rail traffic, and wait times at all VPA terminals.

- In response to initial questions, VPA's information technology department asked Counsel to clarify the scope of the requests: What cargo? Rail only? Imports only? All containerized cargo? What carriers? Rail only? Ocean carriers? Or both? Is "rate" the container unit rate?
- Further issues surround the method and format in which VPA and VIT store data. Drayage "to any intermodal facility *where the containers were loaded on or off trains*" (Request 23.b.) is a challenging electronic search because it requires the use of Boolean connectors, which are limited in VPA/VIT data systems.
 - VIT/VPA do not have in-house data programs that would allow "key term" searches or provide a workable review format for these files.
 - Each search would require manual review to identify "relevant" items, screen out privileged materials, and identify information as "Confidential" or "Highly Confidential."
 - The option of expensive third-party platforms could allow review, but would still require significant employment hours to identify "relevant" materials, and privileged/confidential information.

Moreover, all these requests seek material from the last seven years, which has little bearing on whether Applicants should control NPBL because those materials will only relate to what is occurring during Applicant's unauthorized control of NPBL and not the counterfactual that must be assumed. The analysis that the Board must undertake to determine whether the proposed transaction would result in anticompetitive must assume a world in which Applicants are not unlawfully controlling NPBL.

Finally, even when the Board has issued a subpoena of a limited scope on an entity that is not a party to a proceeding, it has recognized that there can be substantial time involved in complying such that the procedural schedule may need to be adjusted to accommodate that discovery. *Coal Dust*, at *20; *Pyco Indus. Inc. – Feeder Line Application – Lines of S. Plains Switching, Ltd. Co.*, FD 34890, 2006 STB LEXIS 606 at *4-5 (STB served Oct. 5, 2006). Given the breadth and scope of NS's corrected discovery requests, VPA and VIT do not know how long it will take to respond. Production would require VPA and VIT, for example, to search and

review all “documents and communications” on about 40 topics, including all documents and communications with CSX, and to then determine which relate to given topics (*see e.g.*, Exhibit C, Request for Documents 8 and 19). They would also need to compile sought after data.

D. A PROTECTIVE ORDER IS APPROPRIATE TO PROTECT NON-PARTIES, VPA AND VIT, FROM APPLICANTS’ BURDENSOME AND ONEROUS DISCOVERY REQUESTS AND VPA AND VIT HEREBY MOVE FOR ONE

To the extent there should be any discovery of VPA or VIT after a subpoena duces tecum is sought, the Board should enter VPA and VIT’s requested protective order. *See* Motion to Compel at 15 (noting that “[i]n some such instances, third parties and litigants have sought modifications of the protective order . . .”). Applicants discovery requests demonstrate a breadth and scope is burdensome and onerous and irrelevant to the applicable analysis that the Board must undertake. A protective order will not only protect non-parties VPA and VIT from such discovery, but will incentivize Applicants to seek narrowly-tailored discovery.

1. THE BOARD’S RULES PROVIDE FOR PROTECTIVE ORDERS THAT DISALLOW DISCOVERY AND THAT PROVIDE FOR FINANCIAL INDEMNIFICATION OF A NON-PARTY

Part 1114 of 49 C.F.R. provides for protective conditions for discovery. Specifically, Section 1114.21(c) provides:

(c) ***Protective conditions.*** Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following:

(1) That the discovery not be had . . .

(3) That the discovery may be had only upon such terms and conditions as the Board may impose to insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred;

49 C.F.R. §1114.21(c). Clearly, the Board’s rules explicitly provide for a protective order that discovery not be had in whole or in part. 49 C.F.R. § 1114.21(c)(1). Although Applicants contend otherwise (Motion to Compel at 14), the Board’s rules also expressly provide for shifting of discovery costs. 49 C.F.R. § 1114.21(c)(1)(3).

2. IF THE BOARD ALLOWS THIRD-PARTY DISCOVERY, IT SHOULD BE SUBJECT TO A PROTECTIVE ORDER THAT NARROWLY-TAILORS ITS SCOPE AND OTHERWISE PROVIDES FOR REIMBURSEMENT OF EXPENSES AND FEES INCURRED.

Given that Applicants have signaled their intent to pursue broad and onerous discovery requests on non-parties VPA and VIT, the Board should enter a protective order pursuant to 49 C.F.R. §1114.21(c) to head off the onerous and burdensome discovery of non-parties that could require delay in the procedural schedule. Accordingly, VPA and VIT hereby move for a protective order as a “person from whom discovery is sought” that discovery not be had except for all materials that were produced in the district court litigation. 49 C.F.R. § 1114.21(c)(1). For any documents beyond those, VPA and VIT hereby move for a protective order that requires Applicants to assume “financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred,” including reasonable attorneys’ fees and costs, pursuant to 49 C.F.R. § 1114.21(c)(3). Such motion is attached hereto and made a part hereof.

First, the Board should enter a protective order that limits discovery to the materials already produced by VPA and VIT in the district court litigation. VPA and VIT have separately confirmed with counsel in the district court litigation that those records remain reasonably available. Limited discovery that is not burdensome may be appropriate – if pursued through a subpoena duces tecum and subject to the protective order entered in this proceeding on February 19, 2025. This limitation would be reasonable and consistent with the Board’s decision in this

matter of July 25, 2025, in which it ordered Applicants and NPBL to produce documents they had produced in the district court litigation. As the Board found there:

Both the issues presented before the district court and the issues presented to the Board relate to control of NPBL and the associated competitive impacts. In the district court proceeding, CSXT alleged that NS and NPBL conspired to exclude CSXT from competing at NIT. Here, CSXT has alleged that Applicants' control of NPBL has had anticompetitive effects through exclusion of CSXT from on-dock rail access at NIT. The Board previously acknowledged the related nature of the proceedings, stating in 2022 that any future decision by the Board concerning control of NPBL would benefit from the findings of the district court . . . [T]he fact remains that the two proceedings involve the same subject matter and parties, and some overlapping allegations.

Discovery Decision, at slip op. 4 (cleaned up and citations omitted). Based on this finding, the documents VPA and VIT already produced in the district court litigation should be sufficient. VPA and VIT's information produced in the district court litigation should also be subject to the protective order entered in this proceeding on February 19, 2025.

Second, the Board should enter a protective order requiring Applicants to pay the financial expenses that VPA and VIT might incur in the event that discovery in addition to that produced in the district court litigation is ordered by the Board after applying the proper balancing test applicable to requests for discovery from a non-party (*see infra* at Section II.C.1)—and considering what is required to perform the counterfactual analysis. Specifically, the protective order should provide that the party seeking such discovery shall pay all reasonable costs, including attorneys' fees, incurred to respond to such discovery, which will "insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred." 49 C.F.R. §1114.21(c)(3). Such material should also be subject to the protective order entered in this proceeding on February 19, 2025.

The protective order sought by VPA and VIT will limit discovery to that which is essential. *See Otter Tail*, at *10 (noting that BNSF narrowed its request in response to

opposition to the subpoena duces tecum). It is not different than what Applicants themselves have recently requested from the Board with regard to a deposition of Mr. Michael McClellan. On August 17, 2025, Applicants requested that the Board narrow the scope of discovery permissible in a then-upcoming deposition of Mr. McClellan for fear 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.”¹⁷

II. CONCLUSION AND REQUEST

Because Applicants have signaled through discovery requests and interrogatories without a subpoena duces tecum that it intends expansive, costly, and burdensome discovery of VPA and VIT. To the extent the Board allows discovery of them as non-parties at all, VPA and VIT respectfully request that the Board enter a protective order to limit that discovery to materials produced in the district court litigation. VPA and VIT further request that to the extent they are required to conduct discovery for materials in addition to those produced in the district court litigation, the Board enter a protective order pursuant to 49 C.F.R. §1114.21 (c)(3) requiring Applicants must reimburse VPA and VIT for reasonable expenses, including attorneys’ fees, incurred to respond..

Respectfully submitted,

¹⁷ NS Letter, *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control— Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 at 1 (STB filed Aug. 17, 2025).

/s/ Kathleen L. Wright

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*Attorneys for Virginia Port Authority and
Virginia International Terminals, LLC*

Dated: August 27, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

Finance Docket No. 36836

MOTION FOR PROTECTIVE ORDER

For the reasons set forth in Virginia Port Authority (“VPA”) and Virginia International Terminals, LLC (“VIT”) Opposition to Motion to Compel and Motion for Protective Order filed on this same date, VPA and VIT hereby move for the entry of the following protective order:

PROTECTIVE ORDER

1. For purposes of this Protective Order:

- (a) “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, data, communications, and all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both),

and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

- (b) “Non-Party” means an entity that is not a Part of Record and includes the Petitioners.
 - (c) “Party of Record” means a party to the Proceedings.
 - (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.
 - (e) “Respond” means preparing and submitting written responses to requests for Documents or interrogatories, engaging in meet and confer communications and conducting meet and confer sessions, responding to motions to compel, conducting searches for relevant Documents and interrogatory answers, drafting interrogatory answers, reviewing relevant Documents for responsiveness, classifying Documents pursuant to the protective order entered in the Proceedings on February 14, 2025, preparing responsive Documents and data for production including redaction, production of such documents, and all other activities necessary to respond to requests for Documents and interrogatories.
2. Discovery in the Proceedings of a Non-Party is limited to Documents produced in *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).
 3. To the extent Applicants or any other Party of Record in the Proceedings seeks discovery of VPA and VIT in addition to the materials specific in paragraph 2 above, the Party of Record seeking discovery under paragraph 2 of this Protective Order shall pay the costs, including reasonable attorneys’ fees, incurred by the Non-Party to Respond to the requests.

CERTIFICATE OF SERVICE

I hereby certify that I have served by email a true and correct copy of the foregoing on the ALJ in this matter and all persons listed on the service list for this proceeding, or their attorney of record, as follows:

William Mullins
Mullins Law Group PLLC
2001 L. St., N.W.
Washington, D.C. 20036
wmullins@mullinslawgroup.net

Peter Denton
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Thomas J. Litwiler
Fletcher & Sippel
29 N. Wacker Drive, Suite 800
Chicago, IL 60606-3208
tlitwiler@fletcher-sippel.com

on this 27th day of August, 2025.

/s/ Kathleen L. Wright

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*Attorney for Virginia Port Authority and
Virginia International Terminals, LLC*

EXHIBIT A – CSX discovery requests of VPA

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

**CSXT's First Set of Requests for Production of Documents
to Virginia Port Authority**

Pursuant to 49 C.F.R. § 1114.30, CSX Transportation, Inc. ("CSXT") hereby requests Virginia Port Authority ("VPA") produce all documents responsive to the requests below (the "Requests," and each a "Request") to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 15 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. "Action" shall mean Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Belt Line Railroad Company, FD 36836, filed before the Surface Transportation Board.

2. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

3. "CSX Transportation, Inc." or "CSXT" shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

4. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

5. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

6. “Including” shall mean “including, without limitation” and “including but not limited to.”

7. “VIT” shall mean the Virginia International Terminals.

8. “VPA” shall mean Virginia Port Authority and any predecessors, successors, parents, subsidiaries, and affiliates.

9. “You” and “Your” shall refer to VPA as defined above.

INSTRUCTIONS

The following Instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of VPA, which includes in VPA’s actual or constructive possession or control, including, without limitation, Documents,

tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media.

2. If there is no Document responsive to a particular Request, VPA shall so state in writing.

3. If any Document or Communication called for by any Request is withheld because VPA claims that it is privileged or otherwise protected from disclosure, VPA must identify the Document or Communication so withheld and the privilege or doctrine VPA claims. In the case of Documents of Communications that VPA claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether VPA considers the entire Document to be relevant or responsive to these Requests. If VPA has redacted any portion of a Document for privilege, stamp the word "redacted" on each page of the Document which VPA has redacted, identifying the basis for such redaction.

5. VPA must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If VPA objects to any Request or part of a Request, set forth the basis for VPA's objection with particularity and respond to all parts of the Request to which VPA does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under VPA's obligation to supplement VPA's production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation

Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information (“ESI”).

10. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 TIFFs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named “TEXT” directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.
- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. “slipsheet”). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating “This document was produced in Native format.” Group native files within incrementally named “NATIVE” directories; separate from images directories.

- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

11. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All Documents You produced in the District Court Proceeding.
2. The deposition transcript, exhibits, and errata for the following depositions:
 - a. VPA 30(b)(6) deposition held on January 19, 2021 and February 5, 2021.

Dated: July 11, 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 *CSXT's First Set of Requests for Production of Documents to Virginia Port Authority* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Elizabeth Snyder

Elizabeth Snyder
Counsel for CSX Transportation, Inc.

July 11, 2025

EXHIBIT B – CSX discovery requests of VIT

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

**CSXT's First Set of Requests for Production of Documents
to the Virginia International Terminals**

CSX Transportation, Inc. ("CSXT") requests that the Virginia International Terminals ("VIT") voluntarily consent to produce all documents responsive to the requests below (the "Requests," and each a "Request") to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 15 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. "Action" shall mean Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Belt Line Railroad Company, FD 36836, filed before the Surface Transportation Board.

2. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

3. "CSX Transportation, Inc." or "CSXT" shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

4. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

5. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

6. “Including” shall mean “including, without limitation” and “including but not limited to.”

7. “VIT” shall mean the Virginia International Terminals.

8. “VPA” shall mean Virginia Port Authority and any predecessors, successors, parents, subsidiaries, and affiliates.

9. “You” and “Your” shall refer to VIT as defined above.

INSTRUCTIONS

The following Instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of VIT, which includes in VIT’s actual or constructive possession or control, including, without limitation, Documents,

tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media.

2. If there is no Document responsive to a particular Request, VIT shall so state in writing.

3. If any Document or Communication called for by any Request is withheld because VIT claims that it is privileged or otherwise protected from disclosure, VIT must identify the Document or Communication so withheld and the privilege or doctrine VIT claims. In the case of Documents of Communications that VIT claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether VIT considers the entire Document to be relevant or responsive to these Requests. If VIT has redacted any portion of a Document for privilege, stamp the word "redacted" on each page of the Document which VIT has redacted, identifying the basis for such redaction.

5. VIT must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If VIT objects to any Request or part of a Request, set forth the basis for VIT's objection with particularity and respond to all parts of the Request to which VIT does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under VIT's obligation to supplement VIT's production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation

Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information (“ESI”).

10. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 TIFFs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named “TEXT” directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.
- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. “slipsheet”). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating “This document was produced in Native format.” Group native files within incrementally named “NATIVE” directories; separate from images directories.

- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

11. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All Documents You produced in the District Court Proceeding.
2. The deposition transcript, exhibits, and errata for deposition of Tom Capozzi, VIT, held on January 22, 2021.

Dated: July 11, 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 *CSXT's First Set of Requests for Production of Documents to the Virginia International Terminals* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Elizabeth Snyder

Elizabeth Snyder
Counsel for CSX Transportation, Inc.

July 11, 2025

EXHIBIT C – Applicants' Discovery Request of POV

**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**

**NS's First Set of Requests for Production of Documents and Interrogatories
to Port of Virginia**

Pursuant to 49 C.F.R. § 1114.30 Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “NSR”) hereby requests Port of Virginia (“POV”) produce all documents responsive to the requests below (the “NSR’s First Set of Requests,” and each a “Request”) to the offices of Mullins Law Group, PLLC, 2001 L St. NW, Suite 720, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 15 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board (“Board” or “STB”).

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. “Action” shall mean *Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Belt Line Railroad Company*, FD 36836, filed before the Surface Transportation Board.

2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

3. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.

4. “Norfolk Southern” or “NS” shall mean Norfolk Southern Corporation, Norfolk Southern Railway Company and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

5. “Port of Virginia” or “POV” shall mean The Port of Virginia, Virginia International Terminals, Inc. (“VIT”), Virginia Port Authority (“VPA”), and their predecessors

and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

6. “CSX Transportation, Inc.” or “CSXT” shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

7. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

8. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

9. “Including” shall mean “including, without limitation” and “including but not limited to.”

10. “NPBL” shall mean Norfolk & Portsmouth Belt Line Railroad Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

11. “Relating to” as used herein with reference to a subject shall mean both of the following:

a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and

b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

12. “Relevant Period” shall refer to the period of time from January 1, 2018 through the Present, unless otherwise specified. If a Request does not specify a date range, the Relevant Period applies.

13. “You” and “Your” shall refer to POV as defined above.

14. “Identify” shall mean disclosure of any responsive individual’s name, job title, and capacity in which they contributed to POV’s responses.

15. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

The following Instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of POV, which includes in POV’s actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media. Furthermore, a Document does not have to have been dated or created during the Relevant Period in order to be responsive to a Request. The Document merely must have been sent, analyzed, discussed, or otherwise used during the Relevant Period. This Instruction applies unless otherwise stated in the individual Request.

2. If there is no Document responsive to a particular Request, POV shall so state in writing.

3. If any Document or Communication called for by any Request is withheld because POV claims that it is privileged or otherwise protected from disclosure, POV must identify the Document or Communication so withheld and the privilege or doctrine POV claims. In the case of Documents of Communications that POV claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether POV considers the entire Document to be relevant or responsive to these Requests. If POV has redacted any portion of a Document for privilege, stamp the word “redacted” on each page of the Document which POV has redacted, identifying the basis for such redaction.

5. POV must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or

containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If POV objects to any Request or part of a Request, set forth the basis for POV's objection with particularity and respond to all parts of the Request to which POV does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under POV's obligation to supplement POV's production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information ("ESI").

10. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 TIFFs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named "TEXT" directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.
- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special

presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. "slipsheet"). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating "This document was produced in Native format." Group native files within incrementally named "NATIVE" directories; separate from images directories.

- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

11. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All contracts, agreements, or memoranda of understanding with or relating to CSXT from the Relevant Period.
2. All Documents and Communications from the Relevant Period relating to any contracts, agreements, or memoranda of understanding with or relating to CSXT.
3. All Communications, including but not limited to emails and letters, sent to and received from CSXT from the Relevant Period.
4. All Documents and Communications from the Relevant Period relating to the Virginia Port Authority's March 5, 2025 letter to Cynthia T. Brown, Chief, Section of Administration, Surface Transportation Board, relating to STB Docket No. FD 36836.
5. All Documents and Communications from the Relevant Period relating to STB Docket No. FD 36836.

6. All Communications with or among CSXT, NPBL, or NSR regarding access to NIT by rail from the Relevant Period.
7. All Documents relating to CSXT's ability to access NIT by rail from the Relevant Period.
8. All Communications with CSXT regarding CSXT's use of, or access to, terminal facilities other than NIT, including, but not limited to, Richmond Marine Terminal, Portsmouth Marine Terminal, and Virginia International Gateway terminal from the Relevant Period.
9. All Communications and Documents relating to the switching rate charged by NPBL from the Relevant Period.
10. All studies or reports, including Communications and Documents relating thereto from the Relevant Period, relating to CSXT's ability or inability to access NIT.
11. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for drayage of containers to or from NIT from the Relevant Period.
12. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at NIT from the Relevant Period.
13. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT and/or NPBL for rail transport to and from NIT from the Relevant Period.
14. All Documents and Communications evidencing or describing any subsidies, discounts, incentive payments, or other inducements offered or given to CSXT for drayage of containers to or from VIG from the Relevant Period.
15. All Documents and Communications evidencing or describing any subsidies, discounts, incentive payments, or other inducements offered or given to CSXT for rail transport of containers to or from VIG from the Relevant Period.
16. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at VIG from the Relevant Period.
17. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at PMT from the Relevant Period.
18. All Documents and Communications, including notes, memorandums or records of meetings, discussing or pertaining to CSXT's access to NIT from the Relevant Period.
19. All Communications with CSXT about John Reinhart's April 13, 2018 letter to NPBL.

20. All Communications with CSXT about NPBL's April 19, 2018 letter to John Reinhart.
21. All drafts of John Reinhart's April 13, 2018 letter to NPBL, including any comments on such drafts, whether from internal or external sources.
22. Documents sufficient to show intermodal port and rail infrastructure in and around Hampton Roads, Virginia.
23. Data files, from the Relevant Period, for the following:
 - a) The capacity and freight volumes for both rail and trucks by carrier, port of origin, destination, and rates for freight shipped through NIT, VTG, and PMT;
 - b) Drayage of intermodal containers to or from NIT, VIG, and PMT to any intermodal facility where the containers were loaded on or off trains;
 - c) The costs of drayage per container at NIT, VIG, and PMT;
 - d) Container volumes loaded and unloaded from vessels at NIT, VIG, and PMT, by steamship line, alliance, or both;
 - e) Vessel calls at NIT, VIG, and PMT;
 - f) All rail traffic, including double-stack rail traffic into or out of NIT, VIG, and PMT; and
 - g) Wait times or other measures of congestion at NIT, VIG, and PMT.
24. Documents sufficient to show the drayage capacity of NIT, VIG, and PMT for the Relevant Period.
25. Documents sufficient to show the intermodal container capacity at NIT, VIG, and PMT for the Relevant Period.
26. Documents reflecting Your policies or practices with respect to making payments and/or providing subsidies towards drayage costs for intermodal freight out of NIT for the Relevant Period.
27. All Documents and Communications between You and any party, including any shipping lines, concerning the assignment of vessels to NIT, VIG, or PMT, including Documents showing how vessels are assigned to each Port of Virginia terminal for the Relevant Period.
28. All Communications between You and any steamship lines regarding rail access at NIT or the issues in this Action for the Relevant Period.
29. All Documents and Communications showing rates or fees charged by VPA or VIT to rail carriers at NIT, including, but not limited to, intraplant switch rates and container lift charges for the Relevant Period.

30. All Documents and Communications concerning VPA or VIT's acquisition of property from NPBL for the Relevant Period.
31. All Documents and Communications concerning any acquisition or potential acquisition of any property for rail access at NIT, PMT, or VIG for the Relevant Period.
32. All Documents concerning dual rail access at NIT, including any market studies or analyses regarding any benefit to the Port of Virginia as a result of multiple rail carriers having access to NIT as well as all Documents concerning your representations that dual rail access is available at NIT for the Relevant Period.
33. All Documents concerning the "Smart Stack" rail strategy, or any other strategy implemented by You regarding connections between NIT, VIG, and PMT and any railroad or railroad network for the Relevant Period.
34. All Documents and Communications related to the Master Rail Plan for the Port of Virginia for the Relevant Period.
35. All Documents comparing the volumes of intermodal freight by truck and rail in and out of the Port of Virginia with the volumes of intermodal freight by truck and rail in and out of other East Coast Ports for the Relevant Period.
36. All Documents concerning switching rates of NPBL, Commonwealth Railway, or any other terminal switching railroads for the Relevant Period.
37. All Documents showing the travel times of containers out of VIG, NIT, or PMT to the Midwest for the Relevant Period.
38. All Documents and Communications from the Relevant Period between You and CSXT about CSXT's proposal to instill a representative from the Port of Virginia as a Director on the NPBL Board of Directors.
39. All Contracts that existed during the Relevant Period between POV and CSXT that govern drayage subsidies that POV gave to CSXT in order for CSXT to dray containers from NIT to CSXT's railyard.
40. All Documents and Communications from the Relevant Period relating to competitive alternatives for customers shipping cargo through NIT, VIG, and PMT.
41. Documents sufficient to show capacity shipped by CSXT through NIT, VIG, and PMT from the Relevant Period.
42. All Documents and Communications from the Relevant Period relating to any proposed or contemplated expansion of terminal capacity, or intermodal freight-handling capacity, at NIT, VIG, or PMT.
43. All Documents from January 1, 2018 through the Present relating to studies or analyses of traffic volumes, railroad rates, or railroad costs for any intermodal railroad train movements in or out of any East Coast Port.

44. All Documents from January 1, 2018 through the Present relating to studies or analysis of railroad rates for International Intermodal freight traffic moving to or from all East Coast Ports.
45. All Documents from January 1, 2018 through the Present relating to competition for intermodal traffic to or from all East Coast Ports, including competition between CSXT and NS and competition between freight rail transportation, truck transportation, and alternative ports.
46. All Communications from January 1, 2018 through the Present between NPBL and VPA or VIT relating to NPBL's actual or projected operating costs, including costs for switching traffic for other carriers.
47. All Documents and Communications sent, analyzed, discussed, or otherwise used from January 1, 2018 through the present relating to the use of NS's Portlock Yard, including the ability to avoid use of Portlock Yard, in the movement of NPBL traffic.

INTERROGATORIES

1. Identify all persons who have contributed to the information contained in the POV submissions in this proceeding.

Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208

July 21, 2025

Respectfully submitted,

//s// William A. Mullins
William A. Mullins
Rose-Michele Nardi
Crystal M. Zorbaugh
John V. Edwards
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7823

Attorneys for Norfolk Southern Corporation and
Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *NS's First Set of Requests for Production of Documents and Interrogatories to Port of Virginia* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ William Mullins

William Mullins
*Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

July 21, 2025

EXHIBIT D – VIT Letter to STB (August 13, 2025)

Kathleen L. Wright

wright@gentrylocke.com

P: 540.983.9360

F: 540.983.9400

August 18, 2025

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

Re: FD 36836 NS Motion to Compel Against a Non-Party

Dear Chief:

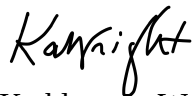
The Virginia Port Authority (“VPA”) and Virginia International Terminals, LLC (“VIT”), both non-parties to *Norfolk Southern. Corp. and Norfolk Southern. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, received a motion to compel filed by Applicants on August 15, 2025. Although NS would like VPA and VIT to respond within ten (10) days (Motion at 6), Board rules provide VPA and VIT twenty (20) days to respond to a motion. 49 C.F.R. § 1104.13. VPA and VIT intend to respond within the timeline allotted to them by rule.

Further VIT has received a set of discovery served on it by Applicants on August 15, 2025, requesting a response within ten (10) days. VIT will respond to that set of discovery within the requested timeframe.

Neither VPA nor VIT consent to becoming a party to this proceeding by the filing of this letter.

Sincerely,

GENTRY LOCKE



Kathleen L. Wright

*Counsel for Virginia Port Authority and
Virginia International Terminals, LLC*

cc The Honorable Jenifer Soulikias, ALJ
William A. Mullins, Esq.
John V. Edwards, Esq.
Crystal M. Zorbaugh, Esq.
Peter W. Denton, Esq.

Chief of Case Administration
August 18, 2025
Page 2

Sally Mordi, Esq.
Thomas J. Litwiler, Esq.
Noah P. Sullivan, Esq.
Sarah McCoy, Esq.

EXHIBIT E – Applicants’ Corrected Discovery Request of VPA

**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**

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND FIRST SET
OF INTERROGATORIES TO VIRGINIA PORT AUTHORITY
D/B/A PORT OF VIRGINIA**

**Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208**

**William A. Mullins
Rose-Michele Nardi
John V. Edwards
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7823**

August 15, 2025 (Date Re-Served)

**Attorneys 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
--ACQUISITION OF CONTROL--
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND FIRST SET
OF INTERROGATORIES TO VIRGINIA PORT AUTHORITY
D/B/A PORT OF VIRGINIA**

Pursuant to 49 C.F.R. § 1114.30 Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “Norfolk Southern”) hereby requests the Virginia Port Authority d/b/a Port of Virginia (“VPA”) to produce all documents responsive to the below requests to the offices of Mullins Law Group PLLC, 2001 L Street NW, Suite 720, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below, and within 10 days¹ or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board (“Board” or “STB”).

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. “Action” shall mean *Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Belt Line Railroad Company*, FD 36836, filed before the Surface Transportation Board.

2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

¹ Due to VPA alleging Norfolk Southern improperly served it on July 21, 2025, Norfolk Southern is re-serving this discovery and requests that VIT respond within 10 days. Norfolk Southern has simultaneously filed a motion to compel related to the discovery previously served on July 21, 2025. It is pending before the administrative law judge and the Board.

3. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.

4. “Norfolk Southern” or “NS” shall mean Norfolk Southern Corporation, Norfolk Southern Railway Company and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

5. “Virginia Port Authority d/b/a Port of Virginia” or “VPA” shall mean the Virginia Port Authority, operating as itself or the Port of Virginia operating on VPA’s behalf and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

6. “CSX Transportation, Inc.” or “CSXT” shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

7. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

8. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether

formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

9. “East Coast Port” shall mean all ocean ports and marine terminals on the Atlantic and Gulf coasts in the United States located east of the Mississippi River that handle intermodal containers, including terminals located in the Port of New Orleans, Port of New York/New Jersey, Port of Baltimore, Port of Charleston, Port of Savannah, Port of Mobile, Port of Wilmington, Port of Jacksonville, Port of Virginia (VIG and NIT).

10. “Including” shall mean “including, without limitation” and “including but not limited to.”

11. “International Intermodal freight” shall mean freight that is transported via ocean vessel and rail or truck in standardized 20-foot or 40-foot containers.

12. “NIT” shall mean Norfolk International Terminals, located in Norfolk, Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

13. “NPBL” shall mean Norfolk & Portsmouth Belt Line Railroad Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

14. “PMT” shall mean Portsmouth Marine Terminal, located in Portsmouth, Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

15. “Relating to” as used herein with reference to a subject shall mean both of the following:

- a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

16. “Relevant Period” shall refer to the period of time from January 1, 2018, through the Present, unless otherwise specified. If a Request does not specify a date range, the Relevant Period applies.

17. “VIG” shall mean Virginia International Gateway, located in Portsmouth, Virginia, formerly known as APM Terminals Virginia, and all Persons acting on its behalf at any

point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

18. “You” and “Your” shall refer to VPA as defined above.

19. “Identify” shall mean disclosure of any responsive individual’s name, job title, and capacity in which they contributed to VPA’s responses.

20. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

The following instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of VPA, which includes in VPA’s actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media. Furthermore, a Document does not have to have been dated or created during the period of January 1, 2018, through present, to be responsive to a Request. The Document merely must have been sent, analyzed, discussed, or otherwise used during the period of January 1, 2018, through present. This Instruction applies unless otherwise stated in the individual Request.

2. If there is no Document responsive to a particular Request, VPA shall state so in writing.

3. If any Document or Communication called for by any Request is withheld because VPA claims that it is privileged or otherwise protected from disclosure, VPA must identify the Document or Communication so withheld and the privilege or doctrine VPA claims. In the case of Documents of Communications that VPA claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether VPA considers the entire Document to be relevant or responsive to these Requests. If VPA has redacted any portion of a Document for privilege, stamp the word “redacted” on each page of the Document which VPA has redacted, identifying the basis for such redaction.

5. VPA must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If VPA objects to any Request or part of a Request, VPA must set forth the basis for such objections with particularity and respond to all parts of the Request to which VPA does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under VPA's obligation to supplement VPA's production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information ("ESI").

10. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 TIFFs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named "TEXT" directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.

- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. “slipsheet”). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating “This document was produced in Native format.” Group native files within incrementally named “NATIVE” directories; separate from images directories.
- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location of the document and, where applicable, the natural Person in whose posses it was found.

11. Each Request shall be construed according to its own terms subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All contracts, agreements, or memoranda of understanding with or relating to CSXT from January 1, 2018, through present.

2. All Documents and Communications from January 1, 2018, through present, relating to any contracts, agreements, or memoranda of understanding with or relating to CSXT.

3. All Communications, including but not limited to emails and letters, sent to and received from CSXT from January 1, 2018, through present.

4. All Documents and Communications from the January 1, 2018, through present, relating to the Virginia Port Authority's March 5, 2025, letter to Cynthia T. Brown, Chief, Section of Administration, Surface Transportation Board, relating to this proceeding.

5. All Documents and Communications from the January 1, 2018, through present relating to STB Docket No. FD 36836.

6. All Communications with or among CSXT, NPBL, or NS regarding access to NIT by rail from January 1, 2018, through present.

7. All Documents relating to CSXT's ability to access NIT by rail from January 1, 2018, through present.

8. All Communications with CSXT regarding CSXT's use of, or access to, terminal facilities other than NIT, including, but not limited to, Richmond Marine Terminal, Portsmouth Marine Terminal, and Virginia International Gateway terminal from January 1, 2018, through present.

9. All Communications and Documents relating to the switching rate charged by NPBL from January 1, 2018, through present.

10. All studies or reports, including Communications and Documents relating thereto from January 1, 2018, through present, relating to CSXT's ability or inability to access NIT.

11. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for drayage of containers to or from NIT from January 1, 2018, through present.

12. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at NIT from January 1, 2018, through present.

13. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT and/or NPBL for rail transport to and from NIT from January 1, 2018, through present.

14. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for drayage of containers to or from VIG from January 1, 2018, through present.

15. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for rail transport of containers to or from VIG from January 1, 2018, through present.

16. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers to or from VIG from January 1, 2018, through present.

17. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at PMT from January 1, 2018, through present.

18. All Documents and Communications, including notes, memorandums or records of meetings, discussing or pertaining to CSXT's access to NIT from January 1, 2018, through present.

19. All Communications with CSXT regarding John Reinhart's April 13, 2018, letter to NPBL.

20. All Communications with CSXT regarding NPBL's April 19, 2018, letter to John Reinhart.

21. All drafts of John Reinhart's April 13, 2018, letter to NPBL, including any comments on such drafts, whether from internal or external sources.

22. Documents sufficient to show intermodal port and rail infrastructure in and around Hampton Roads, Virginia.

23. Data files from January 1, 2018, through present for the following:

- a) The capacity and freight volumes for both rail and trucks by carrier, port of origin, destination, and rates for freight shipped through NIT, VIG, and PMT;
- b) Drayage of intermodal containers to or from NIT, VIG, and PMT to any intermodal facility where the containers were loaded on or off trains;
- c) The costs of drayage per container at, to or from NIT, VIG, and PMT;
- d) Container volumes loaded onto and unloaded from vessels at NIT, VIG, and PMT, by steamship line, alliance, or both;
- e) Vessel calls at NIT, VIG, and PMT;
- f) All rail traffic, including double-stack rail traffic into or out of NIT, VIG, and PMT; and
- g) Wait times or other measures of congestion at NIT, VIG, and PMT.

24. Documents sufficient to show the drayage capacity of, at, to or from NIT, VIG, and PMT from January 1, 2018, through present.

25. Documents sufficient to show the intermodal container capacity at NIT, VIG, and PMT from January 1, 2018, through present.

26. Documents reflecting Your policies or practices with respect to making payments and/or providing subsidies towards drayage costs for intermodal freight out of NIT from January 1, 2018, through present.

27. All Documents and Communications between You and any party, including any shipping lines, concerning the assignment of vessels to NIT, VIG, or PMT, including Documents showing how vessels are assigned to each VPA terminal from January 1, 2018, through present.

28. All Communications between You and any steamship lines regarding rail access at NIT or the issues in this Action from January 1, 2018, through present.

29. All Documents and Communications showing rates or fees charged by VPA to rail carriers at NIT, including, but not limited to, intraplant switch rates and container lift charges from January 1, 2018, through the present.

30. All Documents and Communications concerning VPA's or Port of Virginia's acquisition of property from NPBL from January 1, 2018, through present.

31. All Documents and Communications concerning any acquisition or potential acquisition of any property for rail access at NIT, PMT, or VIG from January 1, 2018, through present.

32. All Documents concerning dual rail access at NIT, including any market studies or analyses regarding any benefit to VPA as a result of multiple rail carriers having access to NIT as well as all Documents concerning your representations that dual rail access is available at NIT from January 1, 2018, through present.

33. All Documents concerning the "Smart Stack" rail strategy, or any other strategy implemented by You regarding connections between NIT, VIG, and PMT and any railroad or railroad network from January 1, 2018, through present.

34. All Documents and Communications related to the Master Rail Plan for VPA from January 1, 2018, through present.

35. All Documents comparing the volumes of intermodal freight by truck and rail in and out of VPA with the volumes of intermodal freight by truck and rail in and out of other East Coast Ports from January 1, 2018, through present.

36. All Documents concerning switching rates of NPBL, Commonwealth Railway, or any other terminal switching railroads from January 1, 2018, through present.

37. All Documents showing the travel times of containers out of VIG, NIT, or PMT to the Midwest from January 1, 2018, through present.

38. All Documents and Communications from January 1, 2018, through present between You and CSXT about CSXT's proposal to install a representative from the VPA as a Director on the NPBL Board of Directors.

39. All Contracts that existed from January 1, 2018, through present between VPA and CSXT that govern drayage subsidies that VPA gave to CSXT regarding CSXT drayage of containers between NIT and CSXT's railyard.

40. All Documents and Communications from January 1, 2018, through present relating to competitive alternatives for customers shipping cargo through NIT, VIG, and PMT.

41. Documents sufficient to show volumes and numbers of containers shipped by CSXT to and from NIT, VIG, and PMT from January 1, 2018, through present.

42. All Documents and Communications from January 1, 2018, through present relating to any proposed or contemplated expansion of terminal capacity, or intermodal freight-handling capacity, at NIT, VIG, or PMT.

43. All Documents from January 1, 2018, through present relating to studies or analyses of traffic volumes, railroad rates, or railroad costs for any intermodal railroad train movements into or out of any East Coast Port.

44. All Documents from January 1, 2018, through present relating to studies or analysis of railroad rates for International Intermodal freight traffic moving to or from all East Coast Ports.

45. All Documents from January 1, 2018, through present relating to competition for intermodal traffic to or from all East Coast Ports, including competition between CSXT and NS and competition between freight rail transportation, truck transportation, and alternative ports.

46. All Communications from January 1, 2018, through present between NPBL and VPA relating to NPBL's actual or projected operating costs, including costs for switching traffic for other carriers.

47. All Documents and Communications sent, analyzed, discussed, or otherwise used from January 1, 2018, through the present relating to the use of NS's Portlock Yard, including the ability to avoid use of Portlock Yard, in the movement of NPBL traffic.

INTERROGATORIES

1. Identify all persons who have contributed to the information contained in VPA's submissions in this proceeding.

Respectfully submitted,

//s// William A. Mullins

Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208

August 15, 2025 (Date Re-Served)

William A. Mullins
Rose-Michele Nardi
John V. Edwards
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7823

Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I certify that I have caused to have re-served on this 15th day of August 2025, Norfolk Southern's First Set of Requests for Production of Documents and First Set of Interrogatories upon the Secretary of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, counsel for VPA and all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

EXHIBIT F – Applicants’ Corrected Discovery Request of VIT

**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**

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND FIRST SET
OF INTERROGATORIES TO VIRGINIA INTERNATIONAL TERMINALS, LLC
D/B/A PORT OF VIRGINIA**

**Joseph H. Carpenter
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Tel.: (202) 663-7823**

August 15, 2025 (Date Re-Served)

**Attorneys 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
--ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND FIRST SET
OF INTERROGATORIES TO VIRGINIA INTERNATIONAL TERMINALS, LLC
D/B/A PORT OF VIRGINIA**

Pursuant to 49 C.F.R. § 1114.30 Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “Norfolk Southern”) hereby requests the Virginia International Terminals, LLC d/b/a Port of Virginia (“VIT”) to produce all documents responsive to the below requests to the offices of Mullins Law Group PLLC, 2001 L Street NW, Suite 720, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below, and within 10 days¹ or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board (“Board” or “STB”).

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. “Action” shall mean *Norfolk Southern Corporation & Norfolk Southern Railway Company – Acquisition of Control – Norfolk & Portsmouth Belt Line Railroad Company*, FD 36836, filed before the Surface Transportation Board.
2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

¹ Due to VIT alleging Norfolk Southern improperly served it on July 21, 2025, Norfolk Southern is re-serving this discovery and requests that VIT respond within 10 days. Norfolk Southern has simultaneously filed a motion to compel related to the discovery previously served on July 21, 2025. It is pending with the ALJ/Board.

3. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.

4. “Norfolk Southern” or “NS” shall mean Norfolk Southern Corporation, Norfolk Southern Railway Company and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

5. “Virginia International Terminals, LLC d/b/a Port of Virginia ” or “VIT” shall mean the Virginia International Terminals, LLC, operating as itself or the Port of Virginia and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

6. “CSX Transportation, Inc.” or “CSXT” shall mean CSX Transportation, Inc., and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

7. “District Court Proceeding” shall mean *CSX Transportation, Inc. v. Norfolk Southern Railway Company*, No. 2:18-cv-00530 (E.D. Va. Oct. 4, 2018).

8. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any

sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

9. “East Coast Port” shall mean all ocean ports and marine terminals on the Atlantic and Gulf coasts in the United States located east of the Mississippi River that handle intermodal containers, including terminals located in the Port of New Orleans, Port of New York/New Jersey, Port of Baltimore, Port of Charleston, Port of Savannah, Port of Mobile, Port of Wilmington, Port of Jacksonville, Port of Virginia (VIG and NIT).

10. “Including” shall mean “including, without limitation” and “including but not limited to.”

11. “International Intermodal freight” shall mean freight that is transported via ocean vessel and rail or truck in standardized 20-foot or 40-foot containers.

12. “NIT” shall mean Norfolk International Terminals, located in Norfolk, Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

13. “NPBL” shall mean Norfolk & Portsmouth Belt Line Railroad Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies, and all Persons acting or purporting to act on their behalf.

14. “PMT” shall mean Portsmouth Marine Terminal, located in Portsmouth, Virginia, and all persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

15. “Relating to” as used herein with reference to a subject shall mean both of the following:

- a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

16. “Relevant Period” shall refer to the period of time from January 1, 2018, through the Present, unless otherwise specified. If a Request does not specify a date range, the Relevant Period applies.

17. “VIG” shall mean Virginia International Gateway, located in Portsmouth, Virginia, formerly known as APM Terminals Virginia, and all Persons acting on its behalf at any point in time, including current or former officers, management, directors, employees, agents, attorneys, and representatives.

18. “You” and “Your” shall refer to VIT as defined above.

19. “Identify” shall mean disclosure of any responsive individual’s name, job title, and capacity in which they contributed to VIT’s responses.

20. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

The following instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of VIT, which includes in VIT’s actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media. Furthermore, a Document does not have to have been dated or created during the period of January 1, 2018, through present, in order to be responsive to a Request. The Document merely must have been sent, analyzed, discussed, or otherwise used during the period of January 1, 2018, through present. This Instruction applies unless otherwise stated in the individual Request.

2. If there is no Document responsive to a particular Request, VIT shall state so in writing.

3. If any Document or Communication called for by any Request is withheld because VIT claims that it is privileged or otherwise protected from disclosure, VIT must identify the Document or Communication so withheld and the privilege or doctrine VIT claims. In the case of Documents of Communications that VIT claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether VIT considers the entire Document to be relevant or responsive to these Requests. If VIT has redacted any portion of a Document for privilege, stamp the word “redacted” on each page of the Document which VIT has redacted, identifying the basis for such redaction.

5. VIT must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If VIT objects to any Request or part of a Request, VIT must set forth the basis for such objections with particularity and respond to all parts of the Request to which VIT does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under VIT's obligation to supplement VIT's production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information ("ESI").

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- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location of the document and, where applicable, the natural Person in whose posses it was found.

11. Each Request shall be construed according to its own terms subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

REQUESTS

1. All contracts, agreements, or memoranda of understanding with or relating to CSXT from January 1, 2018, through present.

2. All Documents and Communications from January 1, 2018, through present, relating to any contracts, agreements, or memoranda of understanding with or relating to CSXT.

3. All Communications, including but not limited to emails and letters, sent to and received from CSXT from January 1, 2018, through present.

4. All Documents and Communications from the January 1, 2018, through present, relating to the Virginia Port Authority's March 5, 2025, letter to Cynthia T. Brown, Chief, Section of Administration, Surface Transportation Board, relating to this proceeding.

5. All Documents and Communications from the January 1, 2018, through present relating to STB Docket No. FD 36836.

6. All Communications with or among CSXT, NPBL, or NS regarding access to NIT by rail from January 1, 2018, through present.

7. All Documents relating to CSXT's ability to access NIT by rail from January 1, 2018, through present.

8. All Communications with CSXT regarding CSXT's use of, or access to, terminal facilities other than NIT, including, but not limited to, Richmond Marine Terminal, Portsmouth Marine Terminal, and Virginia International Gateway terminal from January 1, 2018, through present.

9. All Communications and Documents relating to the switching rate charged by NPBL from January 1, 2018, through present.

10. All studies or reports, including Communications and Documents relating thereto from January 1, 2018, through present, relating to CSXT's ability or inability to access NIT.

11. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for drayage of containers to or from NIT from January 1, 2018, through present.

12. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at NIT from January 1, 2018, through present.

13. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT and/or NPBL for rail transport to and from NIT from January 1, 2018, through present.

14. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for drayage of containers to or from VIG from January 1, 2018, through present.

15. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for rail transport of containers to or from VIG from January 1, 2018, through present.

16. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers to or from VIG from January 1, 2018, through present.

17. All Documents and Communications evidencing or describing any subsidies, discounts, cost sharing arrangements, incentive payments, or other inducements offered or given to CSXT for lifts of containers at PMT from January 1, 2018, through present.

18. All Documents and Communications, including notes, memorandums or records of meetings, discussing or pertaining to CSXT's access to NIT from January 1, 2018, through present.

19. All Communications with CSXT regarding John Reinhart's April 13, 2018, letter to NPBL.

20. All Communications with CSXT regarding NPBL's April 19, 2018, letter to John Reinhart.

21. All drafts of John Reinhart's April 13, 2018, letter to NPBL, including any comments on such drafts, whether from internal or external sources.

22. Documents sufficient to show intermodal port and rail infrastructure in and around Hampton Roads, Virginia.

23. Data files from January 1, 2018, through present for the following:

- a) The capacity and freight volumes for both rail and trucks by carrier, port of origin, destination, and rates for freight shipped through NIT, VIG, and PMT;
- b) Drayage of intermodal containers to or from NIT, VIG, and PMT to any intermodal facility where the containers were loaded on or off trains;
- c) The costs of drayage per container at, to or from NIT, VIG, and PMT;

- d) Container volumes loaded onto and unloaded from vessels at NIT, VIG, and PMT, by steamship line, alliance, or both;
- e) Vessel calls at NIT, VIG, and PMT;
- f) All rail traffic, including double-stack rail traffic into or out of NIT, VIG, and PMT; and
- g) Wait times or other measures of congestion at NIT, VIG, and PMT.

24. Documents sufficient to show the drayage capacity of, at, to or from NIT, VIG, and PMT from January 1, 2018, through present.

25. Documents sufficient to show the intermodal container capacity at NIT, VIG, and PMT from January 1, 2018, through present.

26. Documents reflecting Your policies or practices with respect to making payments and/or providing subsidies towards drayage costs for intermodal freight out of NIT from January 1, 2018, through present.

27. All Documents and Communications between You and any party, including any shipping lines, concerning the assignment of vessels to NIT, VIG, or PMT, including Documents showing how vessels are assigned to each VIT terminal from January 1, 2018, through present.

28. All Communications between You and any steamship lines regarding rail access at NIT or the issues in this Action from January 1, 2018, through present.

29. All Documents and Communications showing rates or fees charged by VIT to rail carriers at NIT, including, but not limited to, intraplant switch rates and container lift charges from January 1, 2018, through present.

30. All Documents and Communications concerning VIT's acquisition of property from NPBL from January 1, 2018, through present.

31. All Documents and Communications concerning any acquisition or potential acquisition of any property for rail access at NIT, PMT, or VIG from January 1, 2018, through present.

32. All Documents concerning dual rail access at NIT, including any market studies or analyses regarding any benefit to VIT as a result of multiple rail carriers having access to NIT as well as all Documents concerning your representations that dual rail access is available at NIT from January 1, 2018, through present.

33. All Documents concerning the "Smart Stack" rail strategy, or any other strategy implemented by You regarding connections between NIT, VIG, and PMT and any railroad or railroad network from January 1, 2018, through present.

34. All Documents and Communications related to the Master Rail Plan for VIT from January 1, 2018, through present.

35. All Documents comparing the volumes of intermodal freight by truck and rail in and out of VIT with the volumes of intermodal freight by truck and rail in and out of other East Coast Ports from January 1, 2018, through present.

36. All Documents concerning switching rates of NPBL, Commonwealth Railway, or any other terminal switching railroads from January 1, 2018, through present.

37. All Documents showing the travel times of containers out of VIG, NIT, or PMT to the Midwest from January 1, 2018, through present.

38. All Documents and Communications from January 1, 2018, through present between You and CSXT about CSXT's proposal to install a representative from the VIT as a Director on the NPBL Board of Directors.

39. All Contracts that existed from January 1, 2018, through present between VIT and CSXT that govern drayage subsidies that VIT gave to CSXT regarding CSXT drayage of containers between NIT and CSXT's railyard.

40. All Documents and Communications from January 1, 2018, through present relating to competitive alternatives for customers shipping cargo through NIT, VIG, and PMT.

41. Documents sufficient to show volumes and numbers of containers shipped by CSXT to and from NIT, VIG, and PMT from January 1, 2018, through present.

42. All Documents and Communications from January 1, 2018, through present relating to any proposed or contemplated expansion of terminal capacity, or intermodal freight-handling capacity, at NIT, VIG, or PMT.

43. All Documents from January 1, 2018, through present relating to studies or analyses of traffic volumes, railroad rates, or railroad costs for any intermodal railroad train movements into or out of any East Coast Port.

44. All Documents from January 1, 2018, through present relating to studies or analysis of railroad rates for International Intermodal freight traffic moving to or from all East Coast Ports.

45. All Documents from January 1, 2018, through present relating to competition for intermodal traffic to or from all East Coast Ports, including competition between CSXT and NS and competition between freight rail transportation, truck transportation, and alternative ports.

46. All Communications from January 1, 2018, through present between NPBL and VIT relating to NPBL's actual or projected operating costs, including costs for switching traffic for other carriers.

47. All Documents and Communications sent, analyzed, discussed, or otherwise used from January 1, 2018, through present relating to the use of NS's Portlock Yard, including the ability to avoid use of Portlock Yard, in the movement of NPBL traffic.

INTERROGATORIES

1. Identify all persons who have contributed to the information contained in VIT's submissions in this proceeding.

Respectfully submitted,

//s// William A. Mullins

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August 15, 2025 (Date Re-Served)

Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I certify that I have caused to be have re-served on this 15th day of August 2025, Norfolk Southern's First Set of Requests for Production of Documents and First Set of Interrogatories upon the Secretary of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, counsel for VIT and all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company