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December 29, 2025

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VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Chief Counsel
December 29, 2025
Part of
Public Record

Re: Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control –
Norfolk & Portsmouth Belt Line R. Co., FD No. 36836

Dear Chief of Case Administration:

Enclosed for filing in the above-captioned docket is Norfolk Southern Corporation's and Norfolk Southern Railway Company's Motion to Strike Comments filed by Virginia Port Authority and Virginia International Terminal. If there are any questions about this matter, please contact me directly, either by telephone at 202-663-7823 or by e-mail at wmullins@mullinslawgroup.net. If I am unavailable, you may contact John V. Edwards, who can be reached at (202) 663-7853 or by e-mail at jedwards@mullinslawgroup.net.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

Enclosures
cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

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

**MOTION TO STRIKE COMMENTS FILED BY
VIRGINIA PORT AUTHORITY AND
VIRGINIA INTERNATIONAL TERMINALS**

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**Attorneys for Norfolk Southern
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Company**

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**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
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SUMMARY OF ARGUMENT

Norfolk Southern Corporation & Norfolk Southern Railway Company (collectively, “NS”), respectfully move the Surface Transportation to strike the evidence and argument (“VPA/VIT Comments”) submitted on December 23, 2025 by the Virginia Port Authority (“VPA”) and Virginia International Terminals (“VIT” and, collectively with VPA, “VPA/VIT”). That evidence and argument consists of an impermissible reply to a reply. Even if not considered an impermissible reply to a reply, it was filed out of time and in total disregard for the procedural schedule imposed in this proceeding and the regulations governing the Board's authority and fairness principles. Acceptance into the record of the VPA/VIT Comments by the Board would be highly disruptive of the procedural schedule and prejudicial to NS. The VPA/VIT Comments must be stricken from the record.

PRELIMINARY MATTER

Despite repeated claims to the contrary,¹ VPA and VIT are “parties” to this proceeding. It is not clear whether they are collectively a “party” or individually separate “parties” (sometimes VPA and its wholly-owned subsidiary file separately, but lately they have submitted evidence and argument collectively), but what is absolutely clear is that they are a party to this proceeding² and must therefore follow the Board's regulations and comply the procedural schedule. It has not done so, apparently under the guise that, as a “non-party,” VPA/VIT believes it can simply file a comment whenever it wants to, without any citation to a single regulatory or procedural rule providing such non-parties with such a right. Either VPA/VIT are not parties and thus not entitled to file comments in this proceeding, or they are a party, which NS believes they clearly are, in which case they must abide by the Board’s procedural rules and schedule. VPA/VIT cannot have it both ways.

ARGUMENT

VPA/VIT once again “dropped into” this proceeding to provide evidence and argument essentially focusing on the capacity at NIT and, to a much more limited degree, VIG. VPA/VIT has done so in a manner that threatens to upset the entire procedural schedule. The so-called Clarifying Comments must be stricken to preserve procedural integrity because VPA/VIT

¹ VPA/VIT Comments at 2 (referring to the claim that “they have not been a party to this proceeding”). See also, Letter, filed August 18, 2025, concerning discovery (“Neither VPA nor VIT consent to becoming a party to this proceeding”); Virginia Port Authority and Virginia International Terminals, LLC Opposition to Motion to Compel and Motion for Protective Order, filed August 27, 2025 at 8. If they are truly a non-party, VPA/VIT are not entitled to file evidence and comment. Yet, VPA and VIT have now filed evidence and argument in response to NS’s Comments in Opposition to CSX Transportation, Inc.’s Responsive Application for Terminal Trackage Rights

² The December filing is not VPA/VIT’s only filing. VPA has been actively involved since March 5, 2025, when it submitted comments and evidence regarding whether the transaction proposed by NS should be considered a minor or a significant transaction.

attempts to introduce additional evidence (1) far outside of the time permitted; (2) in a pleading not contemplated or permitted by the current procedural schedule; and (3) at a time that does not permit the testing of the strength and accuracy of the asserted facts, even as VPA/VIT have failed to complete discovery production on other matters long pending.³ Acceptance of the VPA/VIT submission would substantially and unfairly prejudice⁴ NS unless NS is permitted an opportunity to conduct discovery on the new evidence, and file a response, which in turn would wreak havoc on the procedural schedule in this case – one that already has been the subject of significant extensions and modifications.

VPA/VIT's submission was filed far outside of the time permitted. There is a procedural order in this case.⁵ That procedural order permits parties to file, by November 20, 2025, a response to CSXT's opposition comments, and NS timely filed that response. That procedural order permits parties to file, also by November 20, 2025, a response to CSXT's terminal trackage rights application, and NS timely filed that response. If VPA/VIT had anything to say about

³ VPA/VIT have still failed to complete its discovery obligations. VPA/VIT have produced documents – page after page of almost completely redacted documents without any attempt to justify the redactions other than to imply some privilege (not tied to individual redactions or even documents) and the claim that produced documents are supposedly non-responsive except for a line or two here and there.

⁴ A party is not entitled to produce new evidence and argument in its brief. Carolina Power & Light v. Norfolk S. Ry. Co., Docket No. 42072 (STB served May 12, 2003) (rejecting a table submitted by NS in its brief because “new evidence in briefs is prohibited; the parties are simply to summarize the evidence already in the record and direct our attention to the issues the parties deem critical”). Overcoming the strict rule of submitting evidence after the time anticipated by the governing procedural order requires a substantial showing that VPA/VIT did not, and could not, meet. Id., slip op. at 1-2 (“If a party wishes to introduce further material at a later state, it must file a petition to supplement the record [demonstrating] that the information sought to be introduced is central to the petitioning party’s case, could not reasonably have been introduced earlier, and would materially influence the outcome of the proceeding”).

⁵ See Norfolk Southern Corporation and Norfolk Southern Railway Company—Acquisition Of Control—Norfolk & Portsmouth Belt Line Railroad Company, STB Docket No. FD 36836 (STB served November 17, 2025) (“Decision No. 12”).

capacity at VIG or NIT, it should have filed its Clarifying Comments and evidence at that time, but VPA/VIT did not do so. The procedural order also permits parties to file, by December 19, 2025, a rebuttal in support of CSXT’s terminal trackage rights application.⁶ VPA/VIT may have been forgiven if it had attempted to file comments at that time, but it did not do so. VPA/VIT missed all of those deadlines.

Instead, VPA/VIT waited over 30 days to review NS’s November 20 reply in response to CSXT’s opposition comments and NS’s reply comments in opposition to the terminal trackage rights application to then file what it characterizes as “Clarifying Comments.” These are not merely “clarifying comments” attempting to “clarify” something that VPA/VIT had previously filed. They are directly aimed at replying to NS’s arguments and evidence regarding operations at NIT and the capacity of VIG and NIT to handle additional intermodal containers. Indeed, VPA/VIT flat out state that the “Clarifying Comments” are filed “in response to the Norfolk Southern Corporation’s and Norfolk Southern Railway Company’s (collectively herein, “NS”) Comments in Opposition to CSX Transportation, Inc.’s Responsive Application for Terminal Trackage Rights filed on November 20, 2025, in this proceeding.” Clarifying Comments at 2. The Board's rules of practice, aimed at safeguarding the Board’s authority to manage proceedings before it and the fairness of those proceedings to participating parties explicitly state: “[a] reply to a reply is not permitted.”⁷ As such, it must be stricken to preserve procedural integrity from the record.⁸

⁶ *Id.*

⁷ 49 C.F.R. §1104.13(c).

⁸ See Sunflower State Indus. Ry.--Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025); Consolidated Rail Corp. – Abandonment Exemption – In Hudson County, NJ, AB 167 (Sub-No. 1189X), slip op. at 4, n.7 (STB served July 1, 2016) (striking numerous pleadings as being uninvited, untimely, and/or a prohibited reply to a reply);

The Board has sometimes allowed a reply to a reply “in the interest of a more complete record, and because the proceeding will not be further delayed by the filings,”⁹ but that is not the case here. VPA/VIT have submitted new evidence and argument replying to NS’s comments on capacity at VPA and VIT. VPA/VIT submitted a verified statement to reply to NS’s comments. If that evidence and argument is accepted into the record, NS should be able to explore, through discovery, the basis for the claims, the practicality of the purported claims, and the downstream adverse effects and havoc that the claimed modifications could impose on others. Such a process would delay this proceeding even further contrary to the Board's authority and statutory timeframes. NS does not favor additional delay in this proceeding. Delaying the procedural schedule to permit a whole new round of discovery and response is both unreasonable and unnecessary.

The evidence and argument presented by VPA/VIT should have been presented earlier. VPA/VIT had every opportunity to bring this evidence and argument before the Board at some other, more appropriate, time in the proceeding, but they did not. VPA/VIT cannot present this new evidence and argument into the record without providing NS the opportunity to review and challenge such evidence through additional discovery,¹⁰ which would result in a complete upset

see also, St. Lawrence & Atlantic Railroad Co. Discontinuance of Service Exemption In Cumberland County, ME, STB Docket No. AB 1117X, slip op. at 2 (STB served February 25, 2014); *Central Kansas Railway, L.L.C.--Abandonment Exemption--In Sedgwick County, KS*, STB Docket No. AB-406 (Sub No. 14X), slip op. at 2 (STB served September 28, 2001).

⁹ *Consolidated R. Corp. – Abandonment Exemption – In Hudson County, NJ*, AB 167 (Sub-No. 1189X), slip op. at 4, n.7 (STB served July 1, 2016).

¹⁰ VPA/VIT wants the Board to accept its late filed reply comments knowing full well that there is no time in the schedule for NS to reply to the factual assertions made in that statement or to take the deposition of its fact witness. At the same time, VPA/VIT has failed to complete its discovery obligations, also knowing there is no time for NS to file a motion to compel or request a hearing in front of the ALJ. VPA/VIT should not be rewarded for such egregious conduct by allowing them to file out of time comments and fail to complete its discovery obligations.

of both the existing procedural schedule and the Board's rules of practice – rules designed to both uphold the Board's command over its processes and the fairness of those processes to those involved in proceedings before the Board.

CONCLUSION

VPA/VIT's late submission of evidence and argument that is directly in "response" to NS's November 20 reply comments, a fact that VPA/VIT specifically admit, must be stricken to preserve the procedural integrity of the record. A "response" (which is essentially a "reply") to NS's reply to CSXT's opposition comments and NS's response to the CSXT's terminal trackage rights application is specifically prohibited by the Board's regulations as a reply to a reply. Accepting the VPA/VIT evidence and argument would be highly prejudicial and would require significant delay in the proceeding to permit NS to take discovery of their new evidence and to reply to their new arguments . It is a pleading that is not anticipated by the procedural schedule. VPA/VIT had plenty of time to file this evidence earlier but it did not do so. NS does not support such a delay or extension of the procedural schedule. The Clarifying Comments are nothing more than a reply to reply and therefore should be rejected.

For all of the foregoing reasons, NS respectfully asks the Board to exercise its authority to strike the Clarifying Comment filed by Virginia Port Authority and Virginia International Terminals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 29, 2025, in accordance with 49 CFR 1114.21(f), I have caused to be served a copy of the foregoing Motion of Norfolk Southern Corporation and Norfolk Southern Railway Company to Strike Comments of Virginia Port Authority and Virginia International Terminals upon the Secretary of the Department of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, and upon each Party of Record in these proceedings.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company