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September 15, 2026

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By E-Filing

Hon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423**ENTERED**
Office of Chief Counsel
September 15, 2026
Part of
Public RecordRE: Docket No. FD 36873, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*

Dear Judge Soulikias:

NS¹ submits this letter in response to two items in the motion to compel submitted by CSX Transportation, Inc. (“CSXT”) dated as of September 10, 2026 (CSXT-26). Those two items are directed to NS.²

Documents produced in FD 36500

CSXT’s claim that NS can reproduce all the documents that it produced in the CP-KCS merger proceeding “at the push of a button” is wrong. That merger proceeding concluded over three and a half years ago, and NS’s discovery productions in that proceeding were made well over four years ago. NS no longer has the production volumes that it assembled in response to discovery in that proceeding, and it could not re-assemble those production volumes without essentially re-doing the discovery from FD 36500 by reviewing the requests served back in 2022 and doing new searches to identify responsive documents. To produce them again, NS would be obligated to, in essence, re-run the entirety of the discovery served on them in that proceeding, which would be a substantial burden to undertake. While theoretically possible, that would require NS to go through the discovery docket – instructions, interrogatories, requests for admission, and document requests, all objections, hearings and the like – and hope that the resulting assembly of discovery was what actually was produced in FD 36500. Such a process would be extraordinarily burdensome and would not be likely to lead to any unique relevant information. CSXT’s argument that some of the documents produced in FD 36500 may also be relevant to issues in this proceeding is unavailing. To the extent that any documents produced in

¹ Norfolk Southern Corporation and Norfolk Southern Railway Company are referred to collectively as “NS”.

² These two items specifically are in response to CSXT’s First Set of Discovery Requests, Requests Nos. 18 and 19, but for ease of reference are subtitled in this response just as CSXT subtitled those requests in its Motion to Compel.

FD 36500 are responsive to other requests posed in this proceeding, they would be identified by NS's extensive existing searches. Further, all of this discovery took place largely in 2021 and 2022, and so naturally dealt with documents before that time period. The substantial majority of which are documents that are dated well before the 2021/2022 period.

Documents produced from Various NPBL-Related Proceedings

CSXT next seeks all of the documents produced in a number of NPBL-related proceedings. This request should be denied for several reasons. First, the UP-NS merger approval proceeding is not an opportunity for CSXT to revive NPBL-related claims that it lost after years of STB proceedings and antitrust district court litigation. Second, the documents from these proceedings have no relevancy to the foreclosure theory that CSXT seeks to prove, and CSXT has access to numerous other means by which to make its case. Third, the documents are beyond the timeframes applicable to this proceeding. Finally, discovery in this docket complicates, confuses, and interferes with numerous other pending proceedings. The Board's broad discovery standard does not eliminate the requirements of relevance and proportionality, and it does not entitle a party to substitute entire prior productions for transaction-specific discovery.

First, CSXT is trying to relitigate claims that it lost in the merits, which is not an appropriate justification for discovery here.³ CSXT claims that it "demonstrated" in FD 36836 that NS has used its control of NPBL to impose artificial operating barriers and that CSXT is somehow at a competitive disadvantage due to that control. CSXT-26 at 3. But the STB's decision in FD 36836 establishes that CSXT did not "demonstrate" anything of the kind, and certainly not that NS's control of NPBL results in competitive harm to intermodal shippers or CSXT. The STB found just the opposite: as a result of the STB granting NS control of NPBL, "there is not likely to be a substantial lessening of competition, the creation of a monopoly, or restraint of trade in freight transportation service," not only at the Port of Virginia, but also "in any region of the United States as a result of this transaction." FD 36836, slip op. at 22. The same applies to the other proceedings targeted by CSXT.⁴

Second, the documents have no relevance to this proceeding. The UP/NS proceeding will not alter the STB's conclusions in the NPBL proceeding. UP will be bound by the conditions

³ Litigation, relitigation, and relitigation again, pursued over and over again until one obtains the result it seeks, is not appropriate and should not be enabled through the discovery that CSXT seeks in this proceeding. Res judicata and collateral estoppel preclude CSXT from reasserting claims it had a full and fair opportunity to litigate. See, Parklane Hosiery Co. v. Shore, 438 U.S. 322, 332-33 (1979). See also, Montana v. U.S., 440 U.S. 147, 153 (1979); 212 Marin Boulevard, LLC – Petition for Declaratory Order, FD 35825 (STB served August 11, 2014); and See Norfolk and W. Ry. Co. and New York, Chicago and St. Louis R. Co. – Merger, FD 21510 (Sub-No. 6), slip. op. at 5 (STB served Dec. 3, 1996).

⁴ Norfolk S. Rw. Co. – Petition to Set Trackage Rights Compensation – NPBL, FD 36223, slip op. at 6 (STB served September 25, 2025) (concerning the setting of trackage rights compensation where the STB denied a CSXT motion to dismiss the proceeding because "it is not clear how NSR could use this proceeding to establish trackage rights compensation at a level that harms competition"), and CSX Trans., Inc. v. NS Railway Co., 648 F.Supp.3d 679 (E.D. VA 2023), upheld, 114 F.4th. 280 (4th Cir. 2024), cert. denied, 2025 U.S. Lexis 1619 (S.Ct. 2025) (where the court found that, regionally "CSX and NSR vigorously compete for the domestic rail transportation of international 'intermodal' containers delivered to and from various East Coast ports," at *687-*688, and locally that "CSX remains NSR's active competitor for international intermodal containers arriving at NIT," id. at *701).

imposed in the NS/NPBL proceeding, which were explicitly imposed “to ensure that[, as to the Port of Virginia,] the competitive balance remains the same going forward.” *Id.*, slip op at 23. The conditions are further imposed “to help ensure that NS cannot manipulate NPBL, or otherwise exercise its control, in a way that favors its interests over CSXT”, *id.*, slip op. at 27, and to ensure that “there will be no elimination or foreclosure of an existing transportation option ... and rail access to NIT will be kept open on commercially reasonable terms.” *Id.*, slip op. at 28, note 29. Despite this, CSXT argues that the proposed UP/NS merger creates a foreclosure threat at NPBL and that CSXT should be allowed to present evidence that “Applicants are already abusing their control over [the Port of Virginia] gateways and interchange points.” CSXT-26 at 4. But the underlying assertion – that NS is somehow already abusing its presence at the Port of Virginia – has already been adjudicated by the STB and rejected. Conditions have been put into place to ensure that, now and into the future, CSXT will have the same access to use NPBL and/or drayage for its intermodal moves and without undue interference from NS.⁵ CSXT is not entitled to use this proceeding to obtain discovery from past STB proceedings to challenge the findings that the STB reached in those proceedings.

If CSXT wishes to argue that the conditions that the STB imposed in FD 36836 are somehow inadequate to prevent harm to CSXT from a merged UP and NS, then it can attempt to support that argument based on the extensive data and discovery it has already obtained, through targeted discovery, or any other material it wishes to cite. But CSXT’s apparent desire to relitigate prior STB decisions about NPBL is no basis for requiring wholesale production of the entire discovery record from past NPBL-related proceedings.

Third, the discovery records CSX seeks to introduce are well outside the relevant timeframe for this proceeding. In FD 36836, the NS/NPBL control proceeding and the most recent, CSXT sought documents stretching back to 2007.⁶ The trackage rights compensation proceeding was initiated back in 2018. The FD 36522 proceeding was initiated back in 2021. In fact, much of the Federal District Court proceeding involved actions that took place in 2015 through 2018. This proceeding is based upon a base year of 2023 and projects traffic for three years into the future. Documents from almost a decade ago have no relevance to the projected traffic changes going forward.

Finally, permitting CSXT to import broad discovery concerning NS and NPBL into the UP/NS merger proceeding would create substantial duplication,⁷ inefficiency, and the risk of inconsistent adjudications. The same underlying allegations concerning access to the Port of Virginia, NS’s control of NPBL, and CSXT’s claimed entitlement to terminal trackage rights have already been litigated – or remain pending – in multiple Board proceedings. The UP/NS merger proceeding should remain focused on the competitive effects of the proposed transaction, not become a parallel forum for relitigating longstanding disputes CSXT has had with NS and

⁵ As such, the proposed merger will not foreclose CSXT’s existing routings for intermodal shippers to/from the POV. To the extent CSXT today interchanges POV originated and terminated containers with BNSF, CPKC, or UP, the merger will not foreclose or prevent CSXT from undertaking those same routings in the future.

⁶ CSXT’s First Set of Request for production of Documents to Norfolk & Portsmouth Belt Line Railroad Co., served May 23, 2025, at page 4.

⁷ Indeed, CSXT is trying for at least the third time to obtain the same set of terminal trackage rights that it sought in several other proceedings. Compare FD 36873, CSXT-25, submitted Sept. 9, 2026, at 4, with FD 36836, CSXT-23, submitted Sept. 18, 2025; and FD 36859, CSXT-1, submitted May 20, 2025.

NPBL. Wholesale discovery from the other proceedings would blur the boundaries among separate dockets, expand discovery far beyond the relevant time period, and invite CSXT to relitigate claims that were – or could have been – addressed elsewhere. Any genuinely transaction-specific concern can be tested through targeted discovery concerning the proposed merger not allowing wholesale adoption of discovery from other proceedings.

Sincerely,

/s/ William A. Mullins

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ William A. Mullins