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CSXT-30

September 23, 2026

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By E-Filing

Hon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Chief Counsel
September 23, 2026
Part of
Public Record

Re: Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.

Dear Judge Soulikias,

We write to apprise the Court of a development with respect to CSXT's motion to compel (CSXT-26, filed Sept. 10, 2026) since last Friday's hearing, and a narrowing of CSXT's request for relief.¹ During the hearing, NS' counsel represented NS was open to a compromise that would narrow the scope of CSXT's requested NPBL-related discovery, much the way NS and CSXT had compromised regarding other materials sought in its motion. CSXT's counsel has now reviewed the parties' correspondence and our notes of meet and confer discussions on this issue. While we have been unable to identify any compromise proposal made at any point by NS related to NPBL-related discovery, in that spirit of compromise, CSXT has since proposed a compromise of its own:

- CSXT's motion had previously asked the ALJ to compel NS to produce its full productions in three STB proceedings and one federal lawsuit related to NPBL;
- CSXT would now instead be willing to limit NS' production to NS' materials reflected in briefings and other documents submitted to the STB in the three STB proceedings, including any NS materials relied on or cited in those submissions—*i.e.* the actual STB evidentiary record in those proceedings;
- In return, CSXT would be willing to forego production of the broader NS' discovery productions in those STB proceedings, and to forego NS' productions in the federal litigation in their entirety; and

¹ Please note that CSXT does not understand this to be a "reply-to-a-reply," given that CSXT is updating the ALJ on developments in its good faith effort to narrow the issues in dispute, and is narrowing the relief requested in its motion. But to the extent it is construed as such, CSXT requests leave to submit it.

- All covered material would be afforded the same confidentiality designations NS made in the STB proceedings in a manner consistent with the protective order governing this case (*i.e.* any materials designated Highly Confidential in those proceedings would be treated as Highly Confidential under the protective order entered here).

NS' counsel responded that it would refuse to consider this or any other compromise at this point. Even though NS has rejected this offer of compromise, CSXT nonetheless is willing to narrow its motion to compel to seek only those materials encompassed within its compromise proposal, above, namely to seek only the NS-produced materials that were submitted to or relied on in submissions to the STB. This subset of material would provide CSXT—and the Port of Virginia—discovery needed to support their forthcoming responsive applications in this proceeding, *see* CSXT-25 and Filing ID 312257, at zero burden to NS. And NS of course would retain the ability to make its arguments, *e.g.* that CSXT is seeking to relitigate issues that have already been resolved. CSXT of course disagrees; the competitive impacts of UP acquiring control over NPBL were not addressed in prior proceedings. But in any event, NS would remain free to raise such merits arguments when the time comes for it to respond to CSXT's comments and conditions requests.

Thank you.

Sincerely,

Eric Fanchiang

Attorney for CSX Transportation, Inc.

cc: Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September 2026, I have caused the foregoing document to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

Eric Fanchiang

Attorney for CSX Transportation, Inc.