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NS-110

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September 24, 2026

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

ENTERED
Office of Chief Counsel
September 25, 2026
Part of
Public Record

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

Dear Chief of Case Administration:

On September 22, 2026, CSX Transportation Inc. (“CSXT”) sent an email to Judge Soulikias revising its motion to compel that was previously filed, replied to, and argued in front of ALJ Soulikias on September 18, 2026. The email was not served on all parties of record but was served on the parties who had participated in the ALJ discovery conference. By letter dated September 23, 2026, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”) submitted a reply. The reply was served on the ALJ and the same parties as the CSXT email.

In reviewing the record, it appears that on September 23, 2026, CSXT filed the same substance of the email to the Board itself, but this time in letter format and served that letter on all parties for record in the proceeding. NS did not serve its letter reply on all parties of record, viewing it and CSXT’s email as correspondence that does not need to be served on all parties of record. However, given that CSXT has now filed its revised email in letter format with the Board, NS requests the Board, in the interest of a complete record, to accept the attached September 23, 2026 reply into the record. I certify that this letter and the attachment are being served on all parties of record.

Respectfully submitted,

/s/ William A. Mullins

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

Enclosure

cc: Parties of Record

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September 23, 2026

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

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

Dear Judge Soulikias:

NS submits this brief response to CSXT's September 22, 2026 email regarding CSXT's pending motion to compel.

As an initial matter, CSXT's submission is procedurally improper. The ALJ's Discovery Guidelines prescribe letter briefing and scheduled discovery conferences as the process for presenting discovery disputes. June 18, 2026 Discovery Guidelines Decision No. 24 ¶ F. They do not authorize supplemental advocacy by email after briefing and argument have concluded, nor does Section D.1 permit additional argument submitted directly to the ALJ at that stage. Discovery Guidelines Decision No. 24 ¶ D.1.

CSXT's September 22 email is not merely a status update. It seeks to narrow and reformulate the relief requested in CSXT-26 while simultaneously advancing new arguments supporting that revised request. If parties were permitted to continually revise motions and submit additional merits arguments by email after briefing and oral argument have concluded, the orderly dispute-resolution procedures established in the Discovery Guidelines would be rendered meaningless, and no party could have confidence that a discovery dispute was actually submitted for decision once briefing and argument had closed. Accordingly, the submission functions as an unauthorized reply brief submitted after briefing and argument have concluded.

NS respectfully submits that the ALJ should disregard the email and decide CSXT's motion on the record developed under the Discovery Guidelines. If the ALJ nevertheless considers CSXT's revised request and new arguments, NS respectfully requests that the ALJ accept this brief response on the merits.

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CSXT's revised request does not cure the central relevance defect identified in NS's September 15 response. CSXT contends that discovery from prior NPBL proceedings is necessary because UP's acquisition of NS could permit the merged carrier to use its control of NPBL to disadvantage CSXT and foreclose competitive access to the Port of Virginia. But the Board addressed that precise concern when it approved NS's acquisition of control of NPBL, imposing conditions to: (1) prevent the rail carrier controlling NPBL (whether that carrier is NS or a merged UP/NS) from manipulating NPBL or favoring its own interests over CSXT and (2) to preserve commercially reasonable rail access to Norfolk International Terminals. Those binding conditions will continue to apply after the proposed transaction, defeating CSXT's premise that a merged UP/NS could use control of NPBL to foreclose CSXT traffic.

CSXT conflates two distinct theories of competitive harm. If it contends that Port of Virginia customers will lose access to CSXT through NPBL after the transaction, the Board's existing conditions already answer that claim by preserving commercially reasonable access for customers seeking to route traffic over CSXT. If CSXT instead contends that a combined UP/NS might decline to interchange certain traffic with CSXT, that is not an NPBL-access claim. It is a gateway-foreclosure theory concerning the merged carrier's future interchange and routing decisions. That theory turns on the gateway protections proposed here—not on historical NPBL access disputes—so discovery from the prior NPBL proceedings sheds little, if any, light on it. Under either theory, CSXT's requested NPBL discovery is misdirected: the alleged harm is either addressed by binding NPBL conditions or concerns a different issue governed by the gateway protections and competitive safeguards proposed in this proceeding.

The requested materials are therefore not merely old – for example, one going back to March 31, 2008¹ – going well beyond the 2023 base year used in the Application; they additionally are irrelevant to CSXT's asserted competitive theory. Existing NPBL conditions preserve commercially reasonable access for customers seeking to use CSXT. Any challenge to a combined UP/NS's future interchange decisions instead concerns gateway protections—not years of historical NPBL litigation and discovery.

Nor does CSXT's characterization of the requested materials as the "actual STB evidentiary record" alter the analysis. The relevant question is not whether documents happened to be cited or used in prior proceedings.² The relevant question is whether the requested materials are

¹ See, STB-NS-0014867, submitted in Volume II of NS-32, a filing in the NS/NPBL Control Proceeding, and entitled "Filings and Decisions in the District Court Proceeding". Some "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," as requested by CSXT, date back decades earlier than 2008.

² Although CSXT implies in its email that it is omitting discovery produced in the District Court Proceedings, that demonstrably is not the case, as is demonstrated by the referenced Volume II of NS-32 in the NPBL Control Proceeding.

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relevant and proportional to the issues presented in this proceeding. Although the Board's rules permit broad discovery, they do not authorize wholesale importation of evidentiary records from separate proceedings in place of transaction-specific discovery. CSXT remains free to pursue targeted and timely discovery directed to the competitive issues actually presented by the proposed transaction. Indeed, in response to a prior targeted discovery request, NS has already produced current contracts governing NS relationships with its intermodal shipping line customers.

Finally, CSXT's email confirms that it seeks these materials not because they are transaction-specific, but to revisit long-running disputes concerning NPBL and the Port of Virginia. This proceeding should remain focused on the proposed transaction's competitive effects. Discovery aimed at relitigating issues the Board has already examined and addressed through protective conditions serves no legitimate purpose here.

Accordingly, NS respectfully submits that the ALJ should disregard CSXT's September 22 email and deny CSXT's revised document discovery request. If the ALJ nevertheless considers the revised request and accompanying arguments, NS respectfully requests that this response be accepted into the record.

Respectfully submitted,

/s/ William A. Mullins

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

cc: Discovery Parties of Record