

SERVICE DATE – AUGUST 21, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36836

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

**ORDER GRANTING IN PART CSXT’S MOTION TO COMPEL APPEARANCE AND
TESTIMONY OF CANNON MOSS**

Decided: August 21, 2025

This discovery matter is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision No. 9 (Aug. 8, 2025).

Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS or Applicants) seek Board review and authorization pursuant to 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 of their acquisition of control of Norfolk & Portsmouth Belt Line Railroad Company (NPBL).¹ On July 31, 2025, CSX Transportation, Inc. (CSXT), filed a motion to compel the appearance and testimony of Cannon Moss, President of NPBL, no later than August 22, 2025. NPBL replied to CSXT’s motion on August 5, 2025.

The Surface Transportation Board regulations provide for broad discovery. These regulations provide that “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). The Board has recognized that this regulation allows for broad discovery. See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery “[b]roadly”); CSX Transp. & Del. & Hudson Ry.—Joint Use Agreement, FD 35348, slip op. at 3 (STB served Aug. 16, 2010) (parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding and relevance means that information might be able to affect the outcome of a proceeding) (citing 49 C.F.R. § 1114.21).

Despite this broad language, the Board has slightly restricted discovery where it seeks extraordinarily sensitive commercial, competitive, or confidential materials. The Board has held

¹ For detailed discussion of the procedural history and background of this proceeding, see Norfolk Southern Corp.—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad (Decision No. 7), FD 36836, slip op. at 2-5 (STB served July 10, 2025).

that the “[d]isclosure of extraordinarily sensitive information should not be required without a careful balancing of the seeking party’s need for the information, and its ability to generate comparable information from other sources, against the likelihood of harm to the disclosing party.” CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., FD 33388, slip op. at 3 (STB served Nov. 10, 1997).

The Board’s regulations provide that the “testimony of any person, including a party, may be taken by deposition upon oral examination.” 42 C.F.R. § 1114.22(a). Under 49 C.F.R. § 1114.21(c), however, discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought.

CSXT seeks to depose Cannon Moss, the President and General Manager of NPBL and no later than August 22, 2025. NPBL argues that there is no need for Mr. Moss’s deposition, because NPBL has produced extensive discovery, Mr. Moss was previously deposed in the district court litigation, and NPBL is not a “party.” Reply at 1-5.² NPBL argues if Mr. Moss must be deposed, his deposition should be limited to particularized topics for two hours and be conducted in Norfolk, Virginia. Reply at 5 & n.3.

In the reverse order, the Board’s regulation provides for the deposition of any person, regardless of whether a party or non-party. See 42 C.F.R. § 1114.22(a). NPBL argues that it has “nominal participant status[,]” Reply 4, because it did not assist with filing the Application, seek to intervene, or file a notice of intent to participate. Reply at 3-4. Rather, NPBL is only listed on the Board’s service list as a party. Reply at 3.

On the other hand, in response to the Board’s decision on CSXT’s motion to compel (Decision 8), NPBL produced “some 1,500 pages of documents” and Mr. Moss’s prior deposition in the district court litigation that “lasted seven and a half hours, and produced a 294-page transcript with 43 marked exhibits.” Reply at 2. NPBL concedes that the Board found the district court litigation case directly relevant to this proceeding. Id.

NPBL argues that documents and agreements speak for themselves. Reply at 3. The four corners of the agreements and documents do not limit the scope of discovery. See 49 C.F.R. § 1114.21(a)(1). NPBL’s Reply states that it is not clear why Mr. Moss’s deposition is needed, because he is not a stranger or what will be asked. Reply at 3. NPBL has not demonstrated that Mr. Moss’s deposition should not be taken in this proceeding where he is a signatory to relevant agreements and documents that have been produced in discovery already.

This is not a case where a non-party’s connection is tenuous at best. NPBL’s relevance to this proceeding is readily apparent. NPBL voluntarily produced discovery, including Mr. Moss’s prior deposition transcript in the district court litigation. Mr. Moss’s deposition in the district court litigation occurred on February 14, 2020. Reply at 2. Thus, it was necessarily limited in

² The Board’s decision served July 25, 2025, discusses the district court litigation in the context of CSXT’s restated and amended motion to compel. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 3-5 (STB served July 25, 2025).

time. NPBL has not explained why Mr. Moss should not be deposed about topics since 2020. See Reply.

The undersigned will not limit the timing to a certain number of hours or to particularized topics at this time. Rather, the Board's discovery is necessarily limited to the subject matter and issues raised in this proceeding. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 6-7 (STB served July 25, 2025).

The Board will ultimately determine whether his testimony is relevant and admissible before the Board, but that is a far different issue than the scope of what is discoverable through his deposition.

For these reasons, the undersigned **GRANTS IN PART** CSXT'S Motion to Compel Appearance and Testimony of Cannon Moss. Mr. Moss's deposition must occur **no later than Monday, August 25, 2025**, absent agreement.³ Mr. Moss's deposition, per Board regulations, must occur in the city or municipality where deponent is located, absent agreement. See 42 C.F.R. § 1114.22(a).

It is ordered:

1. CSXT's motion to compel the appearance and testimony of Cannon Moss is granted as discussed in this decision.
2. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.

³ CSXT argues this date is necessitated by the current procedural deadlines. There is a pending motion to extend those deadlines that is not referred to this ALJ. Given the service date of this order, I am extending the deadline for the deposition to occur no later than Monday, August 25, 2025, absent agreement.