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June 21, 2023

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Submitted via e-filing

Re: *New Jersey Transit Corporation - Acquisition Exemption - Norfolk Southern Railway
Company In The Counties Of Morris And Warren, New Jersey, STB Finance Docket No.
36676*

Dear Ms. Brown:

I am attaching for e-filing in the above captioned proceeding New Jersey Transit Corporation's Motion for Expedited Consideration of Its Motion to Dismiss.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Ayelet Hirschhorn

Enclosure

cc: Richard Wisneski, NJ TRANSIT
Vice President, Strategic Planning, Norfolk Southern Corporation
Kean Burenga, Dover and Delaware River Railroad, LLC

**Before the
Surface Transportation Board**

STB Finance Docket No. 36676

**NEW JERSEY TRANSIT CORPORATION
- ACQUISITION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY
IN THE COUNTIES OF MORRIS AND WARREN, NEW JERSEY**

**MOTION OF NJ TRANSIT CORPORATION FOR EXPEDITED CONSIDERATION OF
ITS MOTION TO DISMISS**

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Counsel for New Jersey Transit Corporation

Dated: June 21, 2023

**Before the
Surface Transportation Board**

STB Finance Docket No. FD 36676

**NEW JERSEY TRANSIT CORPORATION
- ACQUISITION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY
IN THE COUNTIES OF MORRIS AND WARREN, NEW JERSEY**

**MOTION OF NJ TRANSIT CORPORATION FOR EXPEDITED CONSIDERATION OF
ITS MOTION TO DISMISS**

NJ Transit Corporation (“NJ TRANSIT”), acting by and through its subsidiary, NJ TRANSIT Rail Operations, hereby files this Motion for Expedited Consideration of its Motion to Dismiss for the above-docketed proceeding. On May 30, 2023, NJ TRANSIT filed a Notice of Exemption and Motion to Dismiss related to its acquisition of the real property and associated trackage on the Washington Secondary Track from MP 48.1 to MP 57.25 in the Counties of Morris and Warren, New Jersey (the “Line”). The objective of the transaction is to sell the Line to NJ TRANSIT while preserving the freight and passenger rail network capacity. The Notice of Exemption explains that NJ TRANSIT and the Norfolk Southern Railroad (“NSR”) have reached an agreement in principle whereby NJ TRANSIT will acquire the real property rights and trackage described above from NSR. The Motion to Dismiss then clarifies that the acquisition will not include the transfer of property or other rights that would allow NJ TRANSIT to conduct common carrier freight rail service or to interfere with common carrier freight rail service currently provided by NSR or the Dover and Delaware River Railroad (“DDRR”) on the subject Line. Therefore, the transaction is outside of the Surface Transportation Board’s (“STB” or the “Board”) jurisdiction. The Board published the Notice of

Exemption on June 15, 2023, and authorized NJ TRANSIT's purchase of the Line after June 29, 2023. Because the parties cannot consummate the transaction without approval of the Motion to Dismiss, NJ TRANSIT respectfully requests that this Board expedite its consideration of the Motion to Dismiss.

Expedited consideration is appropriate because NJ TRANSIT, a non-carrier, has complied with the requirements of the *State of Maine, DOT — Acquisition and Operation Exemption — Maine Central R.R. Co.*, 8 I.C.C. 2d 835 (1991) and related Board decisional law. Following the transaction, NSR will have sufficient property and contract rights to conduct its freight operations and NJ TRANSIT will not have the right or ability to materially or unreasonably interfere with freight operations. *See, e.g., Metro Regional Transit Auth.— Acquisition Exemption — CSX Transportation, Inc.*, STB Finance Docket No. 33838, slip op. at 4 (Service Date Oct. 10, 2003). The deed NSR will tender to NJ TRANSIT allows NSR to retain an “exclusive, perpetual, transferable, assignable and irrevocable retained rail freight rights” on the Line and explicitly provides that NJ TRANSIT “neither has nor will have any right to serve existing or future rail shippers, and will make no attempt to construct additional sidings to serve such shippers for its own account or to circumvent this agreement by other means directly or indirectly.” NJ TRANSIT has no rights to operate freight service on the Line, will acquire none, and is prevented from using any portion of the trackage for freight rail purposes pursuant to the terms and conditions of its agreements with NSR.

Moreover, this transaction and the agreements involved are substantially similar to a prior transaction in which the Board found that NJ TRANSIT did not need Board authorization to acquire certain assets of the Orange Industrial Track from NSR. For its purchase of the Orange Industrial Track, NSR retained the legal ability and the right to provide freight service

on the Orange Industrial Track and NJ TRANSIT agreed that it would not interfere, or in any way impair, NSR's ability to provide freight service on that line. *New Jersey Transit Corporation- Acquisition Exemption- Norfolk Southern Railway Company*, STB Docket No. FD 35638 at 3 (Decided March 26, 2013). Similarly, in this case, NSR retains the legal right to provide freight service on the Line and NJ TRANSIT will not interfere with NSR's ability to provide such service. In addition, like the Orange Branch acquisition, NJ TRANSIT is assuming control of dispatching for passenger and freight service over the Line. The Board should, therefore, find that NJ TRANSIT's acquisition of the Line is not the "acquisition of a railroad line under 49 U.S.C. § 10901(a)(4)." *Id.* at 5.

As stated above, NJ TRANSIT and NSR cannot purchase the Line until the Board issues its decision to dismiss the Notice of Exemption. Therefore, NJ TRANSIT respectfully requests that this Board expedite its issuance of a ruling on its Motion to Dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of June 2023, caused a copy of the foregoing Motion to Expedite of the New Jersey Transit Corporation to be served by first class mail upon the following parties of record to this proceeding:

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Vice President, Strategic Planning
650 W. Peachtree Street NW
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Dover and Delaware River Railroad, LLC
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Dated: June 21, 2023