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March 10, 2025

309329

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
March 10, 2025
Part of
Public Record

Re: **Docket No. FD 36836**
Norfolk Southern Corporation and Norfolk Southern
Railway Company – Acquisition of Control –
Norfolk and Portsmouth Belt Line Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Reply of Norfolk and Portsmouth Belt Line Railroad Company to CSX Transportation, Inc.'s Petition to Reject Norfolk Southern's Minor Application** (NPBL-1), dated March 10, 2025.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Norfolk and Portsmouth
Belt Line Railroad Company

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36836

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

**REPLY OF NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY
TO CSX TRANSPORTATION, INC.'S PETITION TO REJECT
NORFOLK SOUTHERN'S MINOR APPLICATION**

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**ATTORNEYS FOR
NORFOLK AND PORTSMOUTH BELT
LINE RAILROAD COMPANY**

Dated: March 10, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36836

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

**REPLY OF NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY
TO CSX TRANSPORTATION, INC.'S PETITION TO REJECT
NORFOLK SOUTHERN'S MINOR APPLICATION**

Norfolk and Portsmouth Belt Line Railroad Company ("NPBL") hereby replies to the Petition of CSX Transportation, Inc. ("CSXT") to reject the Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSR" and, collectively with NSC, "NS") Minor Application filed in this proceeding. NPBL takes no position on the merits of either CSXT's Petition or NS's Minor Application, other than to address here CSXT's mischaracterization of the proceeding – currently stayed – in Docket No. FD 36223, *Norfolk Southern Railway Company – Petition to Set Trackage Rights Compensation – Norfolk and Portsmouth Belt Line Railroad Company* ("NSR Compensation").

The *NSR Compensation* proceeding began in 2018, when NSR filed a petition (the "NSR Petition") for prescription of new compensation terms for NPBL's continued use of approximately 11 miles of longstanding trackage rights over NSR rail lines in Chesapeake and Norfolk, Virginia. NPBL filed several pleadings in response to the NSR Petition, including support for CSXT's request to intervene in the case. *NSR Compensation*, NPBL October 23, 2018 letter filing, at 1. CSXT was granted intervention based on the Board's explicit finding that CSXT's participation "will not unduly disrupt the schedule." *NSR Compensation*, March 29, 2019

Decision at 7. CSXT nevertheless then persuaded the Board to hold the proceeding in abeyance over NSR and NPBL objections. *NSR Compensation*, July 25, 2019 Decision (granting abeyance); *NSR Compensation*, December 19, 2019 Decision (denying NSR’s petition for reconsideration).

Now, more than five years later, CSXT claims that NPBL “manufactured” the *NSR Compensation* proceeding by orchestrating disagreement with NSR, and thereby, in CSXT’s words, perpetrating a “sham.” CSXT Petition at 23-24. CSXT’s mischaracterization is unfair, unwarranted and unsupported. Even a cursory review of NPBL’s filings in *NSR Compensation* reveals that NPBL has engaged in that proceeding in good faith and in defense of its standalone interests. NPBL vigorously opposed NSR’s proposed procedural schedule, and contested NSR’s proposed process (or lack of process) for determining the applicable valuation methodology that would govern the proceeding. *NSR Compensation*, NPBL October 3, 2018 Reply to NSR Petition at 4-6. NPBL moved to strike material in NSR’s Petition that NPBL believed was subject to attorney-client and other privileges. *NSR Compensation*, NPBL October 3, 2018 Motion to Strike; *see also NSR Compensation*, March 29, 2019 Decision at 8. NPBL also corrected NSR’s misidentification of the trackage rights as entirely overhead in nature. *NSR Compensation*, NPBL October 3, 2018 Reply at 2, n.2 and 7. And NPBL pointed out that, despite NPBL’s requests, NSR had provided no basis for the compensation it had sought from NPBL, which far exceeded recent STB determinations. *NSR Compensation*, NPBL October 3, 2018 Reply at 5, n.5.

These are hardly the actions of a “puppet” arguing with its “ventriloquist.” CSXT Petition at 23. Indeed, in arguing that the now-expired trackage rights terms must remain in place until the Board sets new ones, CSXT Petition at 19, n.14, CSXT is simply repeating an argument NPBL already made against NSR. *NSR Compensation*, NPBL October 3, 2018 Reply at 6-7 (Board should not grant retroactive effect to compensation determinations unless the parties

consent to retroactivity); *see also* *NSR Compensation*, NPBL September 3, 2019 Reply to NS Petition for Reconsideration, at 3-4. There simply is no basis to conclude or infer that the *NSR Compensation* proceeding is a sham.

NPBL does not mean by this limited response to indicate that it agrees with the balance of CSXT's Petition. Nor does this response convey NPBL's concurrence in the substance of the NS Minor Application, which was neither discussed with NPBL before filing or served on NPBL upon filing. NPBL takes no position on the merits of either pleading at this time. NPBL merely wants the record to be clear regarding its participation in and approach to the *NSR Compensation* proceeding.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

By: _____

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**ATTORNEYS FOR
NORFOLK AND PORTSMOUTH BELT
LINE RAILROAD COMPANY**

Dated: March 10, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2025, a copy of the foregoing **Reply of Norfolk and Portsmouth Belt Line Railroad Company to CSX Transportation Inc.'s Petition to Reject Norfolk Southern's Minor Application** (NPBL-1) was served by electronic or first-class mail, postage prepaid, upon:

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/s/ Thomas J. Litwiler

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