

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36836

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**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
– ACQUISITION OF CONTROL –
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

**NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
PETITION FOR HOUSEKEEPING STAY**

EXPEDITED HANDLING REQUESTED

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April 21, 2025

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EXPEDITED HANDLING REQUESTED

Pursuant to 49 C.F.R. 1117, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”) hereby petitions the Surface Transportation Board (“STB” or “Board”) for a housekeeping stay regarding the two pending Motions to Compel filed by CSX Transportation, Inc., one filed on April 9, 2025, designated as CSXT-6, and the second filed April 18, designated as CSXT-7. Specifically, NS asks the Board to toll the time period for NS’s response to CSXT-6 and CSXT-7 until after the Board considers and renders a decision on NS-9, NS’s Petition for Reconsideration of A Portion Of Decision No. 3 (“Petition for Reconsideration”) and/or the corresponding Petition for Stay, both filed on April 21, 2025. Given that the Board is unlikely to rule on either the Petition for Stay or the Petition for Reconsideration by the time NS is required to reply to the Motions to Compel, which is April 29

and May 8,¹ respectively, it is reasonable to toll the deadline for NS's reply to CSXT's two Motions to Compel.

ARGUMENT

The procedural history and the extent of CSXT's extensive, far reaching, and over-broad discovery has been set forth in both the Petition for Reconsideration and the Petition for Stay and will not be repeated here. As noted, NS's reply to the Motion to Compel is due April 29. If the Board could rule on the Petition for Stay on or before April 29, this request for a housekeeping stay would be moot. However, it is highly unlikely that the Board will be able to rule on the Petition for Stay, yet alone the Petition for Reconsideration, before NS is required to reply to the two Motions to Compel. As such, to avoid unnecessary litigation, expenditure of time and resources, and to ensure sufficient time for the Board to consider both the Petition for Stay and the Petition for Reconsideration, it is reasonable to issue a housekeeping stay of the April 29 deadline until such time as the Board can rule on the Petition for Stay and/or the Petition for Reconsideration.

A housekeeping stay is often put into place to permit the Board and parties additional time to address one issue that is intertwined with another, particularly when the second has an otherwise applicable procedural deadline or regulatory effective date that, if not paused, would either nullify or further complicate the scope of the Board's regulatory authority. See, e.g., Rail Switching Services, Inc. – Operation Exemption – Pemiscot County Port Authority, et al., FD 35685 (STB served November 13, 2012); SteelRiver Infrastructure Partners LP, et al. – Control

¹ CSXT has asked the Board to direct NS to respond to its second motion to compel, CSXT-7, by April 23, 2025. CSXT adds a sense of urgency to the matter by referring to the "statutorily imposed timeline," CSXT-7 at 5, et seq., even though CSXT is fully aware that the statutorily imposed timeline runs from the date of acceptance of the application, not from the date of submission of a pre-application notice of intent. 49 C.F.R. 1180.4(e)(2).

Exemption – Patriot Rail Corp., et al., FD 35622 (STB served May 25, 2012), slip op. at 3 (granting a housekeeping stay to provide time for the Board to rule on certain procedural items before other procedural deadlines are implicated); see also, Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc. – Intra-Corporate Family Transaction Exemption, FD 36199 (STB served June 29, 2018) (granting a stay of the effective date of a verified notice of exemption to permit the Board sufficient time to fully consider arguments presented).²

A housekeeping stay would not prejudice any party. There may be a short period of time between when the reply to the two Motions to Compel otherwise would be due and the time the Board rules on the Petition for Stay and/or the Petition for Reconsideration, but this allows for time for the Board to review what NS views as serious material error as set forth in its two petitions and with very little delay in the schedule. Should the Board determine to grant a stay on April 29 in order to provide time for it to rule upon the Petition for Reconsideration, that decision will render this housekeeping stay moot until such time as the Board rules on the Petition for Reconsideration. However, as CSXT's reply to the Petition for Stay is due April 28, the Board has only one day to consider and rule on the Petition for Stay before NS's response to the first CSXT Motion to Compel (CSXT-6) would be due. In that light, NS believes the Board should grant this housekeeping stay before April 29 in order to allow time for the Board to rule on both the stay petition and the reconsideration petition and eliminate the need for NS to file its reply to CSXT's Motion to Compel, CSXT-6, such reply due April 29. The housekeeping stay also would toll the need for NS to respond to CSXT's Motion to Compel, CSXT-7 during the

² An electronic review of the ICC's and Board's records indicates that the Chairman or the Board has issued a housekeeping stay over 50 times. In general, the basis for granting a housekeeping stay is to allow time for parties to fully reply to various motions and arguments and to allow time for the Board to consider such pleadings. Consistent with this longstanding precedent, the Chairman or the Board should do so here.

same period. If the Board eventually denies a stay and denies the reconsideration, which it should not, then the tolling of the time for an NS response to the two Motions to Compel can be lifted.

Granting the housekeeping stay with regard to the time for a response to the Motion to Compel harms nobody. It certainly is not prejudicial to CSXT as under the published procedural schedule, CSXT will, if reconsideration is denied, have over 90 days from today to complete its discovery and present its case. Not granting the housekeeping stay, on the other hand, leaves the parties researching and arguing before the Board not only the issue of timeliness, but further arguing all of the other applicable objections including, as to each, relevance, burden, and the like, which all would be moot if the Board grants the Petition for Stay and the Petition for Reconsideration. The extra burden on NS and the Board is not necessary until such time as the Board rules on the stay petition and the reconsideration petition. A grant of a housekeeping stay tolling the time period which NS has in order to respond to CSXT's Motions to Compel is advantageous to the Board, saving valuable Board review time, and results in no harm to CSXT.

CONCLUSION

The Board should grant a housekeeping stay of the time period for NS to respond to the CSXT Motions to Compel, CSXT-6 and CSXT-7, pending Board action on NS's Petition for Reconsideration of Decision No. 3.

Respectfully submitted,

/s/ William A. Mullins

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Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

April 21, 2025

CERTIFICATE OF SERVICE

I certify that, on April 21, 2025, in keeping with 49 CFR §1114.21(f), I have caused to be served a copy of the foregoing Petition for Housekeeping Stay upon each Party of Record in this Proceeding.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company