

SERVICE DATE – APRIL 24, 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

Decided: April 24, 2025

On February 14, 2025, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, Applicants) filed a submission, styled as an application for a “minor” transaction, seeking Board authority under 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 to control Norfolk & Portsmouth Belt Line Railroad Company (NPBL). By decision served March 14, 2025, and published in the Federal Register on March 17, 2025 (90 FR 12440), the Board found that the proposed transaction should be classified as a “significant” transaction. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 7-8 (STB served Mar. 14, 2025). Accordingly, the Board determined that it could not treat Applicants’ submission as an application at that time and considered Applicants’ February 14, 2025 submission as a prefiling notification for a significant transaction. Id. at 1. The Board stated that Applicants may perfect their application by supplementing their February 14, 2025 submission. Id. at 7-8. The Board also required that Applicants file with the Board, by March 21, 2025, a revised proposed procedural schedule reflecting the Board’s determination that the proposed transaction is a significant transaction. Id. at 8-9.

On March 21, 2025, Applicants filed a revised proposed procedural schedule. As part of that schedule, Applicants proposed that discovery would begin on the date the Board publishes notice of its acceptance of the application in the Federal Register. (Applicants Revised Mot. 3, Mar. 21, 2025.) On March 28, 2025, CSX Transportation, Inc. (CSXT), filed a response to Applicants’ revised motion for a proposed procedural schedule, and on April 1, 2025, Applicants filed a letter in response to CSXT’s filing.

By decision served April 11, 2025, and published in the Federal Register on April 16, 2025 (90 FR 16056), the Board published notice of the revised proposed procedural schedule and invited public comment. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 3), FD 36836, slip op. at 8-9 (STB served Mar. 14, 2025). The Board noted in that decision that it “has permitted discovery after the initiation of a proceeding under 49 U.S.C. § 11323 but before the filing of an application” and found that it would be appropriate in this case for discovery to begin before the filing of the application. Id. at 2 n.2 (citing Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 4 (STB served Aug. 2, 2021); 49 C.F.R. § 1114.21(a)).

On April 9, 2025, CSXT filed a motion to compel, seeking a Board order compelling Applicants to produce documents and information that they produced or disclosed in a related district court lawsuit. On April 18, 2025, CSXT filed a second motion to compel, related to documents and information requested in a second set of discovery requests CSXT served on Applicants. Applicants' replies to CSXT's first and second motions to compel are due on April 29, 2025, and May 8, 2025, respectively.

On April 21, 2025, Applicants filed a petition seeking reconsideration of the Board's holding in Decision No. 3 regarding the start of discovery. That same day, Applicants also filed a petition to stay the holding in footnote 2 of Decision No. 3 pertaining to the start of discovery and a petition for housekeeping stay. In its petition for housekeeping stay, Applicants ask the Board to toll the deadlines for their replies to the two motions to compel until the Board rules on Applicants' petition for reconsideration and petition for stay. (Applicants Mot. for Housekeeping Stay 1.) According to Applicants, a housekeeping stay would "avoid unnecessary litigation [and] expenditure of time and resources." (Id. at 2.) Applicants further state that a housekeeping stay would not prejudice any party. (Id. at 3.)

Because the outcome of the petition to stay and the petition for reconsideration relate to the timing of discovery, a housekeeping stay tolling the deadlines for Applicants' replies to the two pending motions to compel is appropriate here. However, in order to facilitate the expeditious resolution of the petition for reconsideration, the reply deadline for that motion will be moved from May 12, 2025, to May 5, 2025.

It is ordered:

1. Applicants' petition for housekeeping stay is granted.
2. The deadlines for Applicants' replies to the two pending motions to compel are postponed pending further order of the Board.
3. Replies to Applicants' petition for reconsideration are due May 5, 2025.
4. This decision is effective on the date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.