

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

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

CSX TRANSPORTATION, INC.'S REPLY TO
NS'S PETITION FOR RECONSIDERATION OF
A PORTION OF DECISION NO. 3 AND
NS'S PETITION FOR STAY OF DECISION NO. 3

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1. Introduction

CSXT¹ hereby replies to NS’s Petition for Reconsideration of a Portion of Decision No. 3 (“Petition for Reconsideration”) and Petition for Stay of Decision No. 3 (“Petition for Stay”), filed on April 21, 2025 in this proceeding.²

Taken together, these pleadings ask the Board to allow NS to delay all discovery – even any discussion of the relevance of or burden of responding to discovery requests – for months. Cutting through the swirl of rhetoric and grievance in the petitions, NS’s basic argument is that it would be too burdensome to deal with CSXT’s discovery requests while NS searches for facts that might support its extraordinary request to control NPBL. But this is an imaginary burden of NS’s

¹ Unless otherwise defined, the acronyms and defined terms used herein are the same as those used in the Board’s Decision No. 2, served on March 14, 2025 in this proceeding, or in CSX Transportation Inc.’s Petition to Reject Northern Southern’s Minor Application, filed on February 27, 2025.

² NS’s Petition for Housekeeping Stay, also filed on April 21, 2025, was granted by the Board on April 24, 2025.

own making. In order to come into compliance with the law and address its decades-long unauthorized control of NPBL, NS could have simply divested control of NPBL. Instead, NS chose to ask the Board for fast-track authority to control NPBL, in a proceeding subject to tight statutory deadlines. NS appears to be using any litigation levers available, including meritless claims for reconsideration and stay, to restrain the creation of a record in this control proceeding on the adverse effects of NS's unlawful control of NPBL.

The primary thrust of CSXT's discovery – indeed, the exclusive focus of CSXT's First Set of Requests for Production of Documents to NS – is to make the record in the District Court litigation available to the Board in this proceeding. The District Court litigation consists of an antitrust case involving the same factual issues that the Board must consider in this control proceeding. Having told the Board that the District Court record is “ready for presentation” and “available to the parties and the Board” in this proceeding, NS now seems to be desperately seeking to hide that record from the Board. (*See* NS Reply 17, 35, Mar. 7, 2025.) NS points to some ill-defined burden in responding to these requests. In fact, there would be zero burden in agreeing to make that record available here, because NS can simply consent to do so under the District Court's protective order.

The material that NS produced in the District Court litigation is directly relevant to NS's and NPBL's anticompetitive conduct, which is at the heart of the public interest standard at issue in this control proceeding. But neither CSXT's undersigned counsel for the STB proceeding nor the Board, can access these materials in this STB control proceeding until NS consents to their disclosure or produces them separately.

NS's Petition for Reconsideration and Petition for Stay are without merit. As to the Petition for Reconsideration, the Board's statement in footnote no. 2 of Decision No. 3 (“Footnote No. 2”) that discovery could begin in this proceeding is

fully consistent with the statute, with the Board’s regulations, and with precedent. Moreover, the Board has broad discretion over the management of its docket, and the Board properly exercised that discretion here. As to NS’s request for a stay, NS has no plausible basis for claiming irreparable harm or for satisfying the other factors that must be shown for a stay to be imposed.

2. The Board should reject NS’s Petition for Reconsideration because NS has failed to show that the Board committed material error.

In its petition seeking reconsideration of the Board’s holding in Footnote No. 2, NS argues that the Board committed material error by permitting discovery because no proceeding has been initiated, and by adopting the *CP/KCS* precedent regarding discovery timing³ without providing NS an opportunity to address CSXT’s use of that case. (NS Pet. for Reconsideration 1-2, 6.)

The Board’s standard for granting a petition for reconsideration is clear: a party must present new evidence or substantially changed circumstances that would materially affect the case or demonstrate material error that would mandate a different result. (*Id.* at 6.) In a petition that alleges material error, “a party must do more than simply make a general allegation; it must substantiate its claim of material error.” *Canadian Nat’l. Ry. Co. & Grand Trunk Corp.—Control—Iowa N. Ry. Co.*, FD 36744, slip op. at 7 (STB served Mar. 29, 2024); *see also Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R. (CP/DM&E)*, FD 35081, slip op. at 4 (STB served May 7, 2009) (denying petition for reconsideration where the petitioner did not substantiate the claim of material error and the Board found none).

Additionally, “the error must be one that ‘would mandate a different result.’” *Canadian Nat’l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, FD 35087 (Sub-No. 8), slip op. at 5 (STB served Oct. 30, 2017) (quoting *Montezuma Grain Co.*

³ *See Canadian Pac. Ry. Ltd.—Control—Kansas City S. (CP/KCS)*, FD 36500, slip op. at 4 (STB served Aug. 2, 2021).

v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003)). “[N]o matter the claimed basis for reconsideration (new evidence, changed circumstances, or material error), the alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected in order for reconsideration to be granted.” *Brookfield Asset Mgmt., Inc. & DJP XX, LLC—Control Exemption—Genesee & Wyoming, Inc., et al.*, FD 36326, slip op. at 3 (STB served Feb. 7, 2020).

NS failed to meet the burden of establishing that reconsideration is warranted here. Therefore, the Board should reject the Petition for Reconsideration.

2.1 The Board has initiated a proceeding.

NS argues that discovery is not permitted because no proceeding has been initiated. (NS Pet. for Reconsideration 6.) That is clearly wrong. The Board has initiated a proceeding here.

First, on February 14, 2025, NS filed a Minor Application, seeking authority to control NPBL, along with a Motion for Protective Order to govern discovery and the development of a record in this proceeding. NS argued that “[i]ssuing a protective order at the outset of this proceeding, as the Board has routinely done in prior cases, will facilitate any necessary exchange or disclosure of information.” (NS Mot. for Protective Order 1.) On February 19, 2025, the Board granted the motion for protective order, which is now in effect for this proceeding.

Second, in response to NS’s application, CSXT argued that NS had failed to provide the Board with the materials necessary to adequately consider the competitive effects of its proposed transaction. CSXT sought to have the application rejected and the proceeding terminated. The Board did not grant CSXT’s request. Instead, on March 14, 2025, the Board stated that it would consider NS’s submission as a prefiling notification of a significant transaction and publish notice

of it in the Federal Register.⁴ Decision No. 2, slip op. at 7, 7 n.8. Indeed, the Board has already published two Federal Register notices regarding this proceeding. *See* 90 Fed. Reg. 12,440 (Mar. 17, 2025); 90 Fed. Reg. 16,056 (Apr. 16, 2025).

Third, the Board then ordered NS to submit a revised proposed procedural schedule and “to perfect their application for a significant transaction.” Decision No. 2, slip op. at 10. In accordance with Decision No. 2, NS then filed a Revised Motion for Procedural Schedule on March 21, 2025. NS indicated that it anticipates complying with the Board’s direction to “perfect the application . . . on or shortly before June 14, 2025.” (NS Revised Mot. for Proposed Procedural Schedule 3 n.7.)

Fourth, in Decision No. 3, the Board expressly acknowledged that it has initiated a proceeding. *See* Decision No. 3, slip op. at 2 n.2 (noting that the Board’s approach regarding discovery is appropriate here, “given the initiation of the proceeding and the treatment of Applicants’ February 14, 2025 submission as a pre-filing notification”). This makes good sense. If a proceeding has not been initiated, then how would the Board govern the submission of these and other pleadings?

But now it appears that NS is questioning whether to advance with the proposed transaction. In its Petition for Reconsideration, NS asserted that it is not bound to file a significant application in this proceeding and that it has other options. (NS Pet. for Reconsideration 8.) According to NS, such choices include proceeding with the proposed transaction, appealing the Board’s Decision No. 2 to

⁴ The Board has stated that “[t]he prefiling notification required by [its] regulations is intended to give the public sufficient advance notice of an imminent application so as to allow interested persons to begin, prior to the filing of the application, their in-depth analyses of the impact the proposed transaction is likely to have.” *CSX Corp. & CSX Transp., Inc.—Control & Operating Leases/Agreements—Conrail Inc. & Consolidated Rail Corp.*, FD 33388, slip op. at 3 (STB served May 2, 1997). The purpose of the prefiling notification—to allow interested parties to begin their analysis of the impacts of the transaction—further supports the Board’s determination that discovery is available now, after notice of the proposed transaction has been given and the proceeding has been initiated.

an appellate court, restructuring the proposed transaction, taking undefined “corporate actions” to avoid control issues, or filing an individual petition for exemption (NS does not specify what statutory requirement the exemption would cover). (*Id.*)

Even if NS had the discretion to take different action in the future, that would not negate the existence of a proceeding that is pending *now*. But NS also misstates its discretion in this proceeding.⁵ The Board ordered NS to perfect its application for a significant transaction, and to submit the difference between the filing fee for a minor transaction and the fee for a significant transaction, between April 14 and June 14, 2025. Decision No. 2, slip op. at 10. Given the unique history of this particular control proceeding, these were not mere suggestions. Moreover, NS indicated that it would comply with this order in its Revised Motion for Proposed Procedural Schedule, further confirming that this proceeding has been initiated.

⁵ Indeed, through its continued attempts to characterize this matter as a run-of-the-mill control proceeding, NS ignores the incontestable fact that it is now, and has been for years, unlawfully controlling NPBL without the Board’s authorization, and remains under express order of the Board to address this issue. That fact alone nullifies NS’s numerous protestations regarding whether a proceeding has been initiated. NS appears to believe that it can ignore altogether the legal requirement that Board authorization is required *before* control can be asserted and the Board’s rules that provide a clear path for parties seeking control authorization to avoid violating the law, namely the divestiture of the controlling interest into a voting trust. *See, e.g., Major Rail Consolidation Procedures*, EP 582 (Sub-No. 1), slip op. at 28 (STB served June 11, 2001) (“The Board, like the ICC before it, has permitted the use of voting trusts during the pendency of control applications, so long as the trust would not result in unlawful control.”); *Reliance Group Holdings, Inc.—Petition for Declaratory Order*, 366 I.C.C. 446, 453 (1982) (“We have recognized the independent voting trust, when properly used, to be an appropriate mechanism for acquiring control of publicly held regulated carriers while at the same time avoiding violation of section 11343.”). NS fails to explain why it should be permitted to continue in violation of the law while it considers various supposed alternatives.

2.2 The Board's holding in Footnote No. 2 is consistent with the Board's discovery rules.

Given that a proceeding has been initiated, the Board's holding in Footnote No. 2 is consistent with its rules on discovery. As CSXT explained in its Response to NS's Revised Motion for Proposed Procedural Schedule, filed on March 28, 2025, the Board's discovery rules clearly provide that, as long as a proceeding is in place, discovery may be conducted. Under 49 C.F.R. § 1114.21(a)(1), "[p]arties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding." The rules further state that "[a]ll discovery procedures may be used by parties without filing a petition and obtaining prior Board approval." *Id.* at § 1114.21(b).

2.3 The Board's practice in prior proceedings is not inconsistent with the approach the Board has taken here.

NS incorrectly asserts that Footnote No. 2 is contrary to the Board's precedent in prior control proceedings, including *CP/DM&E*, where the Board affirmatively stated that discovery may begin. *See CP/DM&E*, FD 35081, slip op. at 10 (STB served Dec. 27, 2007). But the Board need not affirmatively state that discovery may begin in every proceeding, and the Board has not even used such affirmative language in every control proceeding. NS fails to mention that, in the most recent significant control proceeding reviewed by the Board—*CSX Corp. & CSX Transp., Inc.—Control & Merger—Pan Am Systems, Inc. (CSX/Pan Am)*, Docket No. FD 36472—the Board never affirmatively stated that discovery could begin. And yet, the parties engaged in discovery. In fact, in each of *CSX/Pan Am* and *CP/KCS*, the parties engaged in discovery before the Board issued its decision accepting the application for consideration.⁶

⁶ NS acknowledges that CSXT engaged in discovery prior to acceptance of its application in *CSX/Pan Am*. (NS Pet. for Reconsideration 10 n.18.) Whether CSXT agreed to do so is entirely irrelevant to the question of whether discovery is available prior to acceptance of an application.

As CSXT explained in its Response to NS's Revised Motion for Proposed Procedural Schedule, NS's position that parties must hold off on discovery until some arbitrary "start date" is flatly inconsistent with prior STB cases. *See, e.g., Navajo Transitional Energy Co., LLC v. BNSF Ry. Co.*, NOR 42179, slip op. at 4 (STB served Aug. 7, 2023) ("[T]he Board's regulations do not prevent parties from starting discovery before a procedural schedule is issued."); *Norfolk S. Ry. Co.—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Ry. Co., Inc.*, FD 35873, slip op. at 8 (STB served May 15, 2015) (noting that "[t]he Board's regulations clearly provide for discovery," and that a commenter "could have served the parties in this matter with discovery requests at any time under the Board's regulations"); *Riverview Trenton R.R. Co. Acquisition & Operation Exemption—Crown Enterprises, Inc.*, FD 33980, slip op. at 11 n.17 (STB served Feb. 15, 2002) (noting that a party "required no authority from [the Board] to undertake discovery if it wished to do so").

NS's assertion that these are "non-relevant cases" is incorrect. (*See* NS Pet. for Reconsideration 15.) In each of these cases, the Board cites its general discovery rules. The Board's general discovery rules apply here. Contrary to NS's implications, there are no special discovery rules for control proceedings. Thus, the Board's interpretation of its general discovery rules in prior proceedings is clearly relevant here.⁷

⁷ NS also cites *Paducah & Louisville Ry., Inc.—Control Exemption—Paducah & Illinois R.R. Co.*, FD 33362 (STB served July 9, 1999), where the Board decided not to institute a show-cause proceeding. That case is easily distinguished from the present proceeding since, as the Board has acknowledged, a proceeding has been initiated here.

2.4 The Board has broad discretion to manage and control its own dockets and proceedings.

It is well settled that “administrative agencies have broad discretion to manage and control their dockets and proceedings.” *James Riffin—Acquisition & Operation Exemption—in York Cnty., PA*, FD 36548, slip op. at 11 (STB served Mar. 28, 2023) (citing *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 636 (D.C. Cir. 1984) (“There is a ‘general principle that [i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business when in a given case the ends of justice require it.”)); see also *Limiting Extensions of Trail Use Negotiating Periods*, EP 749 (Sub-No. 1), slip op. at 8 (STB served Dec. 4, 2019) (“It has been long recognized that agencies have broad discretion to manage and control their own dockets and proceedings.”).

The Board has the discretion to manage and control the discovery process in this proceeding. The Board was well within its authority to determine that discovery is open. The exercise of this discretion does not constitute material error. See *Norfolk S. Ry. Co.—Petition for Exemption—in Baltimore City & Baltimore Cnty., MD*, AB 290 (Sub-No. 311X), slip op. at 10 (STB served Jan. 27, 2012) (“It is within the Board’s discretion to determine how much weight to accord to evidence submitted by parties; the exercise of this discretion does not constitute material error.”).

2.5 NS was not prejudiced by the Board’s holding in Footnote No. 2.

NS also complains that it was prejudiced by the Board’s holding in Footnote No. 2 because it did not have an opportunity to comment on CSXT’s views on discovery timing. (See NS Pet. for Reconsideration at 1-2.) This assertion is also based on a false premise.

First, NS mischaracterized CSXT's March 28, 2025 filing as a "petition for initiation of discovery." (*Id.* at 4.) CSXT's filing directly responded to NS's Revised Motion for Procedural Schedule, which included NS's proposal for discovery to begin 30 days after the revised application was filed and for discovery to close 135 days after the revised application was filed. (See NS Revised Motion for Procedural Schedule 3.) CSXT had a right to reply to NS's Revised Motion for Procedural Schedule. There was no requirement that CSXT wait to reply to NS's motion until the Board had published a proposed procedural schedule in the Federal Register.

Second, before the Board made its holding, NS could have responded substantively to CSXT's March 28, 2025 comments regarding discovery timing in the April 1, 2025 letter that NS filed with the Board. Instead, NS stated therein that it would "await publication of its proposed revised procedural schedule in the *Federal Register*" and that it was "hopeful that it will have an opportunity to comment" on proposed modifications or requests that were filed in response to the *Federal Register* notice. (NS Letter, Apr. 1, 2025.) And now, NS (like all interested parties) **does have** the opportunity to submit comments on the proposed procedural schedule that was issued by the Board in Decision No. 3. See Decision No. 3, slip op. at 3 ("The Board invites all interested persons to submit written comments on the proposed procedural schedule."). Indeed, NS has three more days – until April 28 – to do so. Instead, NS decided to file these specious petitions. NS cannot now complain that it was "deprived" of fundamental due process.

NS further claims that other parties have been prejudiced by the Board's holding in Footnote No. 2. NS proffers the alarmist and unsupported assertion that "[f]ailing to reconsider footnote No. 2 will have a lasting and artificially dampening impact on any future transactions that would be under the Board's jurisdiction, contrary to the Board's statutory directives, including but not limited to 49 U.S.C. 10101(2)." (NS Pet. for Reconsideration 5-6.) It is well known to all STB

practitioners that a party seeking control authority from the Board may be subject to discovery. It is also well known that a party that submits a minor application in a control proceeding may face a Board decision finding that the proposed transaction is significant. This proceeding is the third time the Board has made such a determination. Discovery was available in each of those proceedings. There is no reason to think that the Board's holding in Footnote No. 2 could have an "artificially dampening impact" on future transactions.

3. The Board should reject NS's Petition for Stay of Decision No. 3 because NS has failed to meet the criteria for a stay.

In its Petition for Stay, NS requests that the Board stay the effectiveness of its holding in Footnote No. 2, pending Board action on the Petition for Reconsideration. (NS Pet. for Stay 1.) The Board should reject NS's request. There is no need to stay the portion of Decision No. 3 holding that discovery is now open in this proceeding. As explained below, NS has failed to meet the criteria for a stay.

In deciding a request for stay, the Board considers: (1) whether the party seeking a stay is likely to prevail on the merits; (2) whether the party seeking a stay will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. *Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada R.R., LLC, & Florida, Gulf & Atlantic R.R., LLC*, FD 36566, slip op. at 8 (STB served Apr. 7, 2022). The party seeking a stay "carries the burden of persuasion on all of the elements required for such extraordinary relief." *Canadian Nat'l. Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, FD 35087, slip op. at 4 (STB served Jan. 16, 2009).

The threshold consideration in deciding whether a stay is appropriate is whether the moving party will be irreparably harmed without it. *Macquarie Infrastructure Partners V GP*, FD 36566, slip op. at 8. The party seeking a stay

must show that the injury claimed is “imminent, ‘certain and great.’” *Id.* If a petitioner does not demonstrate that irreparable harm will occur if a stay is not granted, the petition for a stay will be denied and the Board does not need to address the remaining stay criteria. *Montana Rail Link, Inc.—Discontinuance of Service Exemption—in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis & Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, & Sanders Cntys., Mont.; Bonner & Kootenai Cntys., Idaho; & Spokane Cnty., Wash.*, AB 575 (Sub-No. 2X), slip op. at 3 (STB served Apr. 6, 2023); *see also In re Platinum Partners Value Arbitrage Fund L.P.*, No. 18CV5176 (DLC), 2018 WL 3207119, at *6 (S.D.N.Y. June 29, 2018) (“A requirement to produce documents, at least absent a claim of privilege or sensitivity, is not generally the type of injury that is irreparable.”).

3.1 NS has not demonstrated that it will suffer irreparable harm in the absence of a stay.

NS has not shown that it will suffer harm that is “imminent, certain and great” if the Board’s determination that discovery is open in this proceeding remains in place while the Board considers NS’s Petition for Reconsideration. It is patently absurd for NS to claim that complying with discovery “would not only create a substantial burden on NS, but possibly would impact its service, which would have the spillover effect of harming the shipping public it serves.” (NS Pet. for Stay 15.) NS does not provide any evidence or explanation to justify its outrageous claim. NS also fails to explain why it can manage its discovery obligations in the other litigation matters that NS is surely involved in at any given time, yet cannot do so here. This entirely unsupported assertion merely underscores the hollow nature of NS’s stay request.

NS complains about having to address pleadings and discovery requests in this proceeding while also supplementing its application. (*See id.* at 4.) But any

applicant in a control proceeding must handle competing workstreams while complying with its obligations in the proceeding. Additionally, NS fails to mention that it is facing motions to compel only because it has refused to engage in *any* discovery – in defiance of the Board’s holding in Footnote No. 2. NS has refused to honor its representations to the Board that the record developed in the District Court would be “ready for presentation” and is “available to the parties and the Board” in this proceeding, and it has refused to comply with valid discovery requests. (*See* CSXT Letter, Mar. 20, 2025; CSXT Mot. to Compel, Apr. 9, 2025; CSXT Second Mot. to Compel, Apr. 18, 2025.)

In fact, NS has stood on its objections and refused to produce a single document relating to its unlawful manipulation of NPBL, to the control authority it seeks from the Board, to the impact of its requested control authority on shippers and public facilities in Virginia, and to the factual assertions it has already made in submissions in this proceeding. (CSXT Second Mot. to Compel 2.) NS’s obstructionist conduct is unacceptable, and the Board should not reward it with the granting of a stay.

Furthermore, there is absolutely no burden associated with responding to CSXT’s first Motion to Compel Production of Documents by NS and by NPBL, which seeks documents and information that was produced or disclosed in the District Court litigation. The materials are pre-packaged and no time, effort, or expense in the form of additional searches or review by NS is needed. NS can simply consent under the District Court protective order to disclosure of the District Court record. As CSXT stated in its first Motion to Compel, “[c]onsenting to disclosure of the district court record would have been the most efficient and least burdensome course of action because the parties already exchanged the requested information during the District Court Proceeding. . . . Upon receipt of written consent from NS and NPBL, CSXT’s counsel for the STB proceeding could have accessed the

responsive material immediately without further assistance from NS or NPBL.”
(CSXT Mot. to Compel 8.)

Any burden associated with responding to CSXT’s Second Motion to Compel Production of Documents by NS is reasonable, and in any event, will not rise to the level of irreparable harm. The Second Motion primarily asks that NS update the information that CSXT requested (and largely received) in the District Court litigation to cover subsequent years. CSXT has not insisted here on the immediate production of the requested documents. Rather, CSXT’s requests have been reasonable. CSXT is willing to meet and confer with NS on any particular concern regarding the scope of specific requests, but NS has refused to engage.

Since NS has not demonstrated that irreparable harm will occur if a stay is not granted, the Petition for Stay should be denied, and the Board need not address the remaining stay criteria. Nevertheless, CSXT explains below that NS has failed to meet the remaining stay criteria.

3.2 NS has not demonstrated that there is a strong likelihood that it will prevail on the merits.

NS is not likely to prevail on the merits. As discussed in detail above, a proceeding has clearly been initiated. Therefore, the Board’s holding in Footnote No. 2 is consistent with the Board’s rules on discovery, and it is not inconsistent with the approach the Board has taken in prior proceedings. Additionally, the Board has broad discretion to manage its own dockets and proceedings and thus had the authority to determine that discovery is open in this proceeding now. Moreover, NS was not prejudiced by the Board’s holding in Footnote No. 2.

3.3 NS has not demonstrated that other interested parties will not be substantially harmed by a stay.

CSXT is clearly an interested party in this proceeding, and it would be substantially harmed by the issuance of a stay. Additionally, any other party to this proceeding that might wish to pursue discovery could be substantially harmed. NS’s

unlawful and inappropriate control of NPBL is a matter of great public interest. Other stakeholders have already expressed their concern to the Board and still more may do so.

As discussed above, NS has refused to engage in *any* discovery, in defiance of the Board's holding in Footnote No. 2. It appears that NS is attempting to exploit the statutory deadlines faced by the Board in control proceedings to improperly compress the time period available to take discovery. The temporal limits on discovery proposed by NS would inappropriately constrain the development of a full record in this proceeding with tight statutory deadlines. Additionally, NS seems to be trying to impede discovery and limit the time for discovery by refusing to respond to valid discovery requests and instead forcing CSXT to seek relief at the Board. Given the tight statutory deadlines and NS's obstructionist conduct, CSXT and other interested parties will be substantially harmed if the Board issues a stay, further delaying discovery in this proceeding.

3.4 NS has not demonstrated that the public interest supports granting the stay.

NS has not shown that a stay would be in the public interest. Rather, it would be in the public interest to not unnecessarily delay discovery any further in this proceeding. Additionally, it would be in the public interest for the Board to protect the integrity of its processes, including its rules on discovery. NS's obstructionist conduct should not be tolerated by the Board.

4. Conclusion

For the reasons set forth above, CSXT respectfully requests that the Board deny the Petition for Reconsideration and the Petition for Stay.

Respectfully submitted,

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Dated: April 25, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Reply to NS's Petition For Reconsideration of a Portion of Decision No. 3 and NS's Petition For Stay of Decision No. 3 in Finance Docket No. 36836 to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

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April 25, 2025