

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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May 30, 2025
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Public Record

**FINANCE DOCKET NO. 36859
CSX TRANSPORTATION, INC. – TERMINAL TRACKAGE RIGHTS –NORFOLK
SOUTHERN RAILWAY COMPANY AND NORFOLK & PORTSMOUTH BELT LINE
RAILROAD COMPANY**

**NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
MOTION FOR EXTENSION OF TIME TO RESPOND REGARDING
CSXT TERMINAL TRACKAGE RIGHTS APPLICATION**

EXPEDITED HANDLING REQUESTED

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May 30, 2025

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On May 20, 2025, CSX Transportation, Inc. (“CSXT”) filed an application (the “Application”) for terminal trackage rights over Norfolk Southern Railway Company (“NSR”) and the Norfolk & Portsmouth Belt Line Company (“NPBL”) in the above-referenced proceeding (the “CSXT Terminal Trackage Rights Proceeding”). In that application, CSXT proposes to have the proceeding advance pursuant to the modified procedures set forth in 49 C.F.R. Part 1112.¹ Further, CSXT proposes to have the proceeding governed by a procedural schedule that is set forth in the Application.²

Under the applicable regulations, a response to these two requests for affirmative relief must be filed within 20 days after the service of the complaint “or within such additional time as the Board may provide.” 49 C.F.R. 1104.13(a). NSR and Norfolk Southern Corporation

¹ Application at 28.

² Id. at 28-29.

(“NSC” and, collectively with NSR, “NS”), pursuant to 49 C.F.R. 1104.7(b),³ hereby asks the Surface Transportation Board (“STB” or “Board”) to grant a thirty day extension of time, until July 9, 2025, for NS to file any responsive pleadings in this docket that would otherwise be due on June 9, 2025 pursuant to the Board’s regulations.⁴

This motion applies only to the Application filed by CSXT on May 20, 2025 in the above-captioned proceeding. The Application and its associated timeframes all arise out of the same facts and allegations that are now the subject of several actions. These actions are all related. Absent this extension and/or absent a grant of the housekeeping stay or abeyance petition that NS will soon file, NS will be required to file numerous pleadings, motions, and discovery requests in an extremely tight time frame and at approximately the same time. This is the same time period that NS has been requested by the Board in its March 14, 2025 decision in the NS Control Docket⁵ to file additional data and information. NS is working on the Board’s request and intends to file it on or before June 14, 2025 as requested.

At the same time CSXT filed this Application and corresponding discovery, they filed a complaint and corresponding discovery wherein CSXT seeks to remedy what it alleges are damages that it incurred due to NS’s unlawful control of NPBL and seeks to force NS to divest or otherwise alleviate NS’s control of NPBL.⁶ The relief sought in this Application is the same

³ Pursuant to the Board’s regulations, a request for extension of time must be filed not less than 10 days before the due date for the applicable action. 49 C.F.R. 1104.7(b).

⁴ NS anticipates soon filing a motion to hold this proceeding in abeyance and a corresponding housekeeping stay requesting a stay of all of the pending deadlines in this proceeding until such time as the Board can rule on the abeyance request. If the housekeeping stay and/or the abeyance request are granted, this pleading will become moot. However, NS is filing this request to extend the time in order to strictly comply with 49 C.F.R. 1104.7(b).

⁵ Norfolk S. Ry. Co. – Control Acquisition – Norfolk & Portsmouth Belt Line R. Co., FD 26826 (“NS Control Docket”).

⁶ CSX Trans. Inc. v. Norfolk S. Corp. and Norfolk S. Ry. Co., NOR 36859.

relief that CSXT has separately claimed it will also request in a responsive application that it intends to file in the NS Control Docket. The deadlines to respond to the initial terminal trackage rights request and the corresponding discovery all fall at the same time as the deadlines for responding to the complaint and to file the requested data in the NS Control Docket.

In a third related proceeding, on May 20, 2025, CSXT also filed a motion to dismiss or to continue to hold in abeyance the NS/NPBL Trackage Rights Compensation Proceeding,⁷ a proceeding that has been pending for years that seeks to directly address one of the core enunciated concerns by CSXT with regard to access at the Port of Virginia – the costs that NPBL incurs to provide the switching services that it provides to CSXT. The deadline to respond to that motion is also at the same time that NS is required by regulation to respond to the numerous filings and discovery propounded in the complaint proceeding and this Application. CSXT has also threatened to file a petition to revoke a discontinuance of operational service exemption, involving trackage located at the Port of Virginia and originally filed by NS and NPBL that would also require responses at the same time several other responses would be due.⁸

In an attempt to bring order to CSXT's generated chaos, NS is requesting an additional thirty days to answer the Application, reply to the discovery, and to extend the other deadlines related to this proceeding. Generally, requests for extensions of time are permitted when good cause exists and the granting of the extension will not prejudice any party.⁹ As described above,

⁷ Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223.

⁸ See, CSXT Complaint, at page 3-4, note 1 (stated that “Additionally, CSXT intends to file in Docket AB 290 (Sub-No. 299X) and AB 1024X a petition to reject the joint Notice of Exemption filed in those proceedings, or revoke the exemptions”) (referring to the Joint Notice of Exemptions granted by a decision granted in those proceedings served on May 15, 2008).

⁹ CSX Transportation, Inc. – Abandonment Exemption – in Pinellas County, FLA., AB 55 (794X), STB served January 27, 2020).

good cause exists to permit the requested extension of time in this proceeding, given the confluence of several deadlines in a variety of related proceedings, and the burden on NS and the Board to address each in a manner that is appropriate. The existence of the June 14, 2025 deadline for the filing of the NS significant application should take priority over the subsequently filed actions by CSXT, none of which will be prejudiced by the grant of the request for extension or by holding them in abeyance until the NS Control Docket has been resolved.

Further, the conditions underlying this request were not previously known to NS. As such, NS could not have adjusted its activities in the NS Control Docket or the NS/NPBL Trackage Rights Compensation Proceeding to accommodate the significant impact of the CSXT filings in the CSXT Complaint proceeding or in this proceeding.¹⁰

Granting an extension will not prejudice any party. With regard to the numerous pleadings and discovery requests submitted by CSXT, described above, the Board should take note that CSXT had complete control over the timing of each of these, as well as full knowledge as to the timing of the response and procedural deadlines.¹¹ If CSXT had filed the pleadings and requests before the Board's March 14 decision or after the control proceeding was completed, that would have been fair and would not have prejudiced NS or the Board. In either of those events, perhaps CSXT would not have opposed a requested extension of time in the spirit of fair and reasonable adjudication of issues before the Board. 49 U.S.C. 10101(15) and 10101(2). But, instead, CSXT intentionally chose to file all of the related proceedings, at the same time,

¹⁰ See, Union P. Corp. et al. – Control and Merger – Southern P. Rail Corp., et al. [Oversight], FD 32760 (Sub-No. 21), Decision No. 6, slip op. at 2 (STB served July 25, 1997) (denying an extension request on the basis that the parties requesting the extension had been on notice for a period of time as to the timetable for filings).

¹¹ See, Salt Lake City Corp. – Adverse Abandonment – In Salt Lake City, UT, AB-33 (Sub-No. 183), slip op. at 2, note 5 (STB served January 11, 2002).

and right before the June 14, 2025 deadline. This was all done in a deliberate attempt to “flood the zone” so as to prevent, delay, or frustrate NS’s attempt to comply with the Board’s March 14 order in the NS Control Docket. This is bad faith and deliberately planned. Such actions by CSXT should not be rewarded.

In any event, an extension should not prejudice CSXT because the cause of action that is the subject of the CSXT complaint and this Application are events that allegedly have already occurred and indeed arise from the inadvertent omission of an explicit request by NS to seek Interstate Commerce Commission consent to control NPBL so many decades ago. A delay of thirty days will not change any of those events and will not change the Board’s ability to review the same.¹²

Respectfully submitted,

/s/ William A. Mullins

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May 30, 2025

¹² As noted, NS believes it is more appropriate to hold the complaint and this proceeding in abeyance until the NS Control Docket is resolved and will be requesting the Board to do so, which, if granted, will make this request moot. This thirty day extension was filed to ensure strict compliance with 49 C.F.R. §1104.7(b).

CERTIFICATE OF SERVICE

I certify that, on May 30, 2025, in keeping with 49 CFR §1114.21(f), I have caused to be served a copy of the foregoing Motion for Extension of Time to Respond Regarding the CSXT Terminal Trackage Rights Application 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