

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 30, 2025
Part of
Public Record

**NOR DOCKET NO. 42183
CSX TRANSPORTATION, INC. v. NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY**

**NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
MOTION FOR EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

EXPEDITED HANDLING REQUESTED

**Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208**

**William A. Mullins
Rose-Michele Nardi
John V. Edwards
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7823**

May 30, 2025

**Attorneys for Norfolk Southern
Corporation and Norfolk Southern Railway
Company**

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On May 20, 2025, CSX Transportation, Inc. (“CSXT”) filed a complaint in the above-referenced proceeding (the “CSXT Complaint Proceeding”). Under the applicable regulations, an answer to CSXT’s complaint 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. 1111.5(c). Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR” and, collectively with NSC, “NS”), pursuant to 49 C.F.R. 1104.7(b),¹ hereby ask the Surface Transportation Board (“STB” or “Board”) to grant a thirty day extension of time, until July 9, 2025, for NS to file any and responsive pleadings in this docket. Absent this extension, NS’s answer to the complaint and other responsive pleadings, such as a cross-complaint, a motion to make the complaint more definite, the response to CSXT’s First Set of Discovery, and a motion to dismiss which may accompany the answer (49 C.F.R. 1116) would all be due June 9, 2025.

¹ 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).

Accordingly, NS requests that the timing for the filing of all of these actions should, like an extension of time to answer the complaint, be similarly extended for thirty days.²

This motion applies only to the complaint filed by CSXT on May 20, 2025 in the above-captioned proceeding. The complaint 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 Docket³ 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 complaint and corresponding discovery, they filed a terminal trackage rights application and corresponding discovery wherein CSXT seeks terminal trackage rights over NS and NPBL in the Port of Virginia.⁴ This is the same 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

² NS anticipates soon filing a motion to hold this complaint and the terminal trackage rights application in abeyance and a housekeeping stay requesting a stay of all of the pending deadlines in this complaint and the terminal trackage rights application 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 to answer the complaint and to extend the other deadlines in order to strictly comply with 49 C.F.R. 1104.7(b).

³ Norfolk S. Ry. Co. – Control Acquisition – Norfolk & Portsmouth Belt Line R. Co., FD 26826.

⁴ CSX Trans. Inc. – Terminal Trackage Rights – Norfolk S. Ry. Co. and Norfolk & Portsmouth Belt Line R. Co., FD 36859.

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,⁵ 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 and terminal trackage rights application proceedings. 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.⁶

In an attempt to bring order to CSXT's generated chaos, NS is requesting an additional thirty days to answer the complaint, reply to the discovery, and to extend the other deadlines related to his complaint proceeding. Generally, requests for extensions of time are permitted when good cause exists and the granting of the extension will not prejudice any party.⁷ As described above, good cause exists to permit the requested extension of time in this proceeding,

⁵ Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223.

⁶ 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).

⁷ CSX Transportation, Inc. – Abandonment Exemption – in Pinellas County, FLA., AB 55 (794X), STB served January 27, 2020).

given the confluence of several deadlines in a variety of related proceedings, and the burden 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 the CSXT Terminal Trackage Rights proceeding.⁸

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.⁹ 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, and right before the June 14 deadline. This was all done in a deliberate attempt to "flood the zone"

⁸ 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).

⁹ 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).

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 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.¹⁰

Respectfully submitted,

/s/ William A. Mullins

Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208

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Rose-Michele Nardi
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MULLINS LAW GROUP PLLC
2001 L St., N.W.
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Washington, D.C. 20036
Tel.: (202) 663-7823

Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

May 30, 2025

¹⁰ As noted, NS believes it is more appropriate to hold the complaint and terminal trackage rights proceedings 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 to the Complaint 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