

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
June 2, 2025
Part of
Public Record

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

**F.D. 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'S COMBINED
MOTION TO HOLD IN ABEYANCE**

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**

June 2, 2025

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

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INTRODUCTION

John Adams once said “[f]acts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.”¹ Despite its flurry of filings and argument, CSXT Transportation (“CSXT”) cannot avoid the fundamental fact: CSXT has on-dock access to Norfolk International Terminal (“NIT”) via a switch rate with the Norfolk & Portsmouth Belt Line Railroad (“NPBL”). Any claim to the contrary is simply incorrect and dishonest. The fundamental issue is that CSXT simply does not like the rate. That rate is based entirely on the cost to operate NPBL – which is rooted in the NPBL’s founding charter. And rather than lower its rail rate to take less of a profit on its intermodal moves to/from the NIT, CSXT wants the government to force an even lower rate on NPBL. It is long past time for CSXT to stop peddling its fairy tale of half-truths and distortions

¹ *Adams’ Argument for the Defense: 3-4 December 1770*, National Archives, available at <https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016>.

of facts in order to deceive this Board and the public. The real boogey man in CSX's fairy tale is math.

More confounding is CSX's claim that NS unilaterally controls NPBL. That is simply not the case. As recently as April 2025, at the NPBL annual shareholder meeting, the CSX shareholder representative admitted the current President of NPBL is independent. By CSX's own definition, the NPBL's board of directors is not an entity that is unilaterally controlled by NS – which only has fifty percent of the NPBL board seats. The key point is that CSXT's current list of complaints has arisen under a NPBL board that is not controlled by any single party, despite NS's ability to do so as the majority owner. And one convenient fact that CSXT fails to mention is that the current board structure was created by an agreement between NS and CSXT. Apparently CSXT does not agree with its own commitments.

CSXT continues to cherry-pick quotes from rulings in its futile lawsuit, indicative of its attempts to mislead. Again, the inconvenient truth for CSXT is that it lost that litigation, in part, because it was focused on putting the biggest possible damages number on the board and did not establish that there was an actionable claim during the applicable statutory recovery period. Now, with the complaint at the STB, the cycle starts again: CSXT does not like reality and instead seeks remedies that are inconsistent with the facts and the law. CSXT has lost on every single claim and appeal, including at the U.S. Supreme Court. The recent actions filed at the STB and that are the subject of this filing are just another attempt by CSXT to use government coercion to force NPBL to adopt a lower switch rate specifically designed to favor CSXT and contrary to NPBL's founding documents. If CSXT wants to increase their market share at NIT, let them lower their own rate or take other marketplace actions. One thing they should not be

able to do is use government regulation to force artificial rates or artificial mandated operating rights.

Because NS has owned and controlled NPBL since 1982 and until 2018, without complaint by CSXT, neither CSXT, NPBL, nor NS knew that NS had unlawful control of NPBL. This changed in 2022. In its 2022 decision the STB directed NS to remedy that unlawful control upon completion of the various appeals filed by CSXT. Now, NS is trying to do what the Board told it to do. But CSXT is erecting one roadblock after another. CSXT has attacked NS's control application.² It has filed premature, burdensome, extensive, and non-relevant discovery in the Control Docket. And rather than litigating its claims and seeking remedies in the context of the Control Docket, CSXT has decided to file a string of separate and distinct STB actions seeking remedies that in large part can be sought in the Control Docket.³

CSXT has brought those actions during the exact timeframe that NS is preparing to supplement and complete its control application. In addition, CSXT is using these duplicative filings to separately serve NS with the same premature and burdensome discovery CSXT served in the Control Docket (which discovery is currently subject to a housekeeping stay issued by the Board). CSXT timed its discovery and filings in a manner that is intended to "flood the zone" and cause NS to respond at the same time as it is preparing its application as requested by the

² The application is to be filed in Norfolk S. Ry. Co. – Control Acquisition – Norfolk & Portsmouth Belt Line R. Co., FD 36836, referred to herein as the "Control Docket".

³ As discussed below, CSXT seeks to recover damages for the same alleged antitrust violations that CSXT sought to recover in its federal district court case and which claims were denied. CSXT should not be able to recover damages for the same alleged actions, regardless of whether those claims are progressed in the Control Docket or through a complaint proceeding that would essentially relitigate the same issues that it lost on in another forum. Indeed, as in the antitrust claim, CSXT's damages claim are outside of the statutory time period provided for in ICCTA for the recovery of damages. 49 U.S.C. § 11705(c).

Board. CSXT has done this intentionally and in a harassing and manipulative manner.⁴ And CSXT intentionally filed these actions on the Friday before Memorial Day as a means to short circuit NS's time to respond.⁵ Because the relief that CSXT could legitimately seek in the complaint and in the terminal trackage rights proceeding may be sought as potential conditions to in the Control Docket, and because there is no utility and efficiency in processing concurrent cases that involve the same issues and facts, the Board should hold all deadlines, including discovery deadlines, in the complaint and terminal trackage rights proceedings in abeyance until such time as the control application has been decided.⁶

EXPEDITED HANDLING REQUESTED

Because the deadlines associated with responding to the complaint and terminal trackage rights application fall on June 9, right before NS's application is required to be filed,⁷ NS

⁴ It was precisely because of the concerns about over burdening and harassing a potential applicant between the time of the notice of filing an application and the filing of the application that the Board, in its Major Merger Rules, specifically prevented pre-mature discovery and only required the production of the 100% traffic tapes before the application was filed. Major Rail Consolidation Procedures, EP No. 582 (Sub-No. 1), slip op. at 53 (STB served June 11, 2001) (permitting access to the traffic tapes but not broad general pre-application discovery in order to protect prospective applicants during preparation of their application). CSXT completely ignores this directive by the Board and treats it with disdain.

⁵ When NS filed its Minor Application in the control docket, it unintentionally filed on the Friday before President's Day. CSXT complained about that action. CSXT-1, pg. 3, n. 3. Having not realized that it had done so until this was pointed out by CSXT, in a telephone conversation with CSX's counsel, this counsel explained that this was not done intentionally and apologized for inadvertently doing so. Here, CSXT clearly knew what it was doing and did exactly what it criticized NS for unintentionally doing.

⁶ For the same reasons set forth herein justifying an abeyance, the Board, rather than holding those proceedings in abeyance, could also dismiss those proceedings as untimely and unnecessary at this stage of the process. See Grafton And Upton Railroad Company – Petition For Declaratory Order, FD 36696 (STB served Nov. 15, 2023) (Board noting that it can hold a case in abeyance or dismiss it pending resolution of related case).

⁷ As noted in its petition for reconsideration and housekeeping stay, both filed in the Control Docket, at that time, it was not clear whether NS would move forward with the filing of an

requests expedited handling of this abeyance petition.⁸ While the Board deliberates, NS also has concurrently filed a housekeeping stay regarding further action in the two proceedings until the Board has had the time to make a determinations on the request for abeyance, as well as on the pending motions for reconsideration and petition to stay filed in the Control Docket. NS also filed on May 30, and consistent with 49 C.F.R. § 1104.7(b), two separate requests for an additional thirty days to respond to all deadlines filed in the complaint and terminal trackage rights proceedings. If the housekeeping stay and this abeyance request are granted, the request for an additional thirty days will be moot.

To be clear with respect to this abeyance request, NS asks the Board to:

- (1) hold in abeyance any further proceedings in NOR Docket No. 42183, CSX Trans., Inc. v. Norfolk S. Corp. and Norfolk S. Ry. Co. (the “Complaint Proceeding”), including the significant amount of discovery already propounded in that proceeding (discovery that is largely duplicative of discovery already subject to a housekeeping stay in the Control Docket); and
- (2) hold in abeyance any further proceedings in F.D. No. 36859, CSX Trans., Inc. – Terminal Trackage Rights – Norfolk S. Ry. Co. and Norfolk & Portsmouth Belt Line R. Co. (the “Terminal Trackage Rights Proceeding” and, together with the Complaint Proceeding and the potential future revocation or unlawful abandonment proceedings that CSXT threatens to file, the “Ancillary Proceedings”), including the significant amount of discovery already propounded in that proceeding (discovery that is duplicative of discovery propounded in the Complaint Proceeding and, largely duplicative of discovery already subject to a housekeeping stay in the Control Docket⁹); and
- (3) clarify that the decision regarding the requested abeyances will apply equally to any further actions by CSXT that logically and factually are related to the Control Docket and Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk &

application on or before June 14. There were potential other avenues available to both NS and CSX that would have alleviated the need for the filing of the application. While those avenues remain possibilities, NS has determined that it will move forward with the application.

⁸ Tongue River Railroad Company, Inc. – Rail Construction And Operation – In Custer, Powder River And Rosebud Counties, Mont., FD 30186 (STB served Dec. 3, 2015) (Board suspended upcoming deadlines and expedited the deadline for replying to an abeyance request).

⁹ Discovery has been served on NPBL as well.

Portsmouth Belt Line R. Co., FD 36223, the “Trackage Rights Compensation Proceeding,” including the threatened Ancillary Proceedings yet-to-be filed.

For all of these reasons, the Board should expeditiously grant the NS request to hold the Ancillary Proceedings in abeyance and issue a housekeeping stay until such time the Board can rule upon this Petition.

ARGUMENT

In recent weeks, CSXT has taken several actions, and set the stage for several more, all of which relate to the issues that will be addressed in the Control Docket. The new CSXT complaint and terminal trackage rights application involve the same parties, events, arguments, and issues that will be presented in the Control Docket. But rather than resolve those issues in one docket, CSXT wants the Board to undertake multiple (and potentially conflicting) proceedings all involving the same arguments. Indeed, the combined result of CSXT’s actions is to have a very real and material adverse effect on the Board and its processes and on NS efforts to do just what the Board has directed NS to do—file a control application to resolve NS’s long standing (but inadvertently unauthorized) control of NPBL. The STB must issue a decision putting a pause—an abeyance—on all of the chaos and attempts by CSXT to draw the Board’s attention away from the core issue: whether authorizing NS’s 42 year control of NPBL will, going forward, result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

A. Until Recently, There Was No Major Controversy.

The historic and more recent events of these proceedings are well known to the Board and will not be repeated here at length. Suffice it to say that this case has its genesis in the 1980

proceeding where NSC,¹⁰ a noncarrier holding company, filed for ICC approval to control, through stock ownership, Norfolk and Western Railway Company (“N&W”) (and its subsidiary companies) and Southern Railway Company (“SRC”) (and its consolidated system companies).¹¹ That proceeding had an ancillary effect—giving effective stock control of NPBL to NS, with CSXT retaining a minority position in that railroad. CSXT directly participated in the proceeding, but did not raise any objection either to the underlying proceeding or the ancillary effect as to NPBL. For decades, NS, CSXT, the Board and others all believed, and affirmatively acted on the belief, that the NS control of NPBL had been authorized by the 1982 ICC decision and without complaint.

Indeed, both NS and CSXT fully understood NS’s control and acted in concert with the understanding and belief that the 1982 ICC decision had granted NS control over NPBL. For example, on March 1, 1989, N&W, SRC, and CSXT entered into the Supplemental Agreement whereby CSXT would be permitted the right to appoint two representatives to the NPBL Board of Directors, and that N&W and SRC collectively would be permitted to appoint three representatives to the NPBL Board of Directors. There would be a sixth Director, consisting of the President of the NPBL. This Supplemental Agreement reflected the control that all parties thought had been granted by the ICC in 1982.

¹⁰ At the time of the filing of the notice of intent for the 1980 control transaction, Norfolk Southern Corporation was known as NWS Enterprise (“NWS”); by the time the application was approved, NWS had changed its name to Norfolk Southern Corporation.

¹¹ NWS Enterprises, Inc. – Control – Norfolk and Western Railway Company and Southern Railway Company, FD 29430 (Sub-No. 1) (filed December 4, 1980) (“1980 Application”)

This decades-long era of cooperation came to an end when, on September 13, 2018, NSR filed a petition to set trackage rights compensation with the Board in FD 36223.¹² In its petition, NSR was upfront with the Board, noting that NS owned a majority share of NPBL. On October 3, 2018, CSXT filed a motion for leave to intervene. A day later, CSXT initiated antitrust litigation against NS in which CSXT claimed that NPBL remained an independent entity from NS.¹³ It was in connection with this federal court litigation that NS (not CSXT) raised the issue of NS's acquisition of Board authority to control NPBL through the 1982 control transaction. NS believed that it had obtained that authority, and NS raised it as a potential defense against CSXT's antitrust claims. The court referred the issue to the Board.¹⁴ In a decision served on June 17, 2022, the Board determined that neither the ICC nor the STB had granted that explicit authority for NS's control of NPBL.

In that decision, the Board directed NS to remedy the lack of control authority upon the resolution of CSXT antitrust litigation. Activity remained on hold at the Board, to CSXT's benefit, as the federal courts then picked back up the CSXT litigation claims. After a briefing and argument before the federal court, the court decided on summary judgment that CSXT was not entitled to damages. It dismissed the CSXT antitrust action. With the appeals being

¹² The trackage rights agreement that governed NPBL's rights to operate over NS's tracks had not been updated for decades. NPBL and NS agreed to various amendments to modernize the agreement but could not agree on the compensation rate NPBL would pay NS. NS, rather than exercising its control to force a rate upon NPBL that would have an impact on NPBL's switching rate (paid by both NS and CSXT) submitted the dispute to the Board. In doing so, NS was fully aware that CSXT could participate and have a say into what that rate would be. This is not a "sham" or a "fraud."

¹³ CSXT has taken two wholly inconsistent points of view. On the one hand, NPBL and NS are two independent parties conspiring together in violation of the antitrust laws, which was the basis of the antitrust claim, but somehow NS has used its control of NPBL to act in an anticompetitive manner. Both cannot be true.

¹⁴ CSX Transp., Inc. v. Norfolk S. Ry. Co., Civ. No. 2:18cv530 (E.D. Va. May 18, 2021).

completed, NS has done what the Board directed it to do by filing the control application. The Board should now move forward with the control proceeding while holding all other CSXT initiated proceedings in abeyance.

B. Since May 20, 2025, CSXT Has Significantly Increased Its Delay And Obstruction Activities Creating Substantial Burdens On NS And The Board's Processes

Following the filing of NS's minor control application, CSXT once again sought a delay and to create additional burdens to resolving NS's unintentional control of NPBL. It sought to have the minor application dismissed, or at a minimum, asked the Board to impose heightened regulatory requirements by converting it to significant and adding additional time. It succeeded. But that was not enough, CSXT has taken new actions to get the Board to do what the court refused to do, and more, but this time CSXT is hoping for a different result. And CSXT has not been subtle in its attempt to manipulate Board procedures to overwhelm NS and the Board with multiple filing deadlines all due at the same time.

CSXT has filed a complaint with the Board, a complaint with facts and arguments mirroring the facts and arguments that CSXT has already argued (and lost) before the U.S. District Court for the Eastern District of Virginia¹⁵ and that CSXT has already raised in the Control Docket. But not only has CSXT filed a complaint, to which NS is procedurally required to respond, CSXT also has already propounded discovery in that proceeding seeking potentially more than 100,000 pages or documents. That discovery is not only largely duplicative of discovery already served in the Control Docket (and subject to a housekeeping stay in that docket), but it is strategically timed to require a response right before the Control Docket significant application is due.

¹⁵ CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679 (E.D. Va. Jan. 3, 2023) (“Summ. J. Op.”)

Simultaneously with the filing of its complaint on May 20, 2025, CSXT filed an application seeking terminal trackage rights over NS and NPBL, relief that CSXT has separately claimed it will also request in a responsive application in the Control Docket. CSXT has also propounded over a hundred discovery requests in that docket, discovery largely identical to the discovery served in the Complaint Proceeding and largely duplicative of discovery now subject to a housekeeping stay in the Control Docket. All of this discovery has to be dealt with separately due to the fact that it is served in different Board dockets, further adding to the overall burden on NS precisely the week before the application is due in the Control Docket.

In addition, on May 20, 2025, CSXT filed yet another pleading, a motion to dismiss or the continue to hold in abeyance the Trackage Rights Compensation Proceeding, a proceeding that has been pending for years, which seeks to directly address one of the core enunciated concerns by CSXT in the Control Docket—the costs that NPBL incurs to provide the switching services that it provides to CSXT. Accordingly, NS now must not only respond to that motion, but also to CSXT’s complaint, CSXT’s demands for extensive discovery, and CSXT’s terminal trackage rights application. The Board already has an orderly and established process to adjudicate CSXT’s claims—the Control Docket. The Board should not allow CSXT to abuse the Board’s statutes and procedures to undertake numerous different and concurrent proceedings and cause significantly more delay and burden on NS and the Board when all of these proceedings arise from the same facts and issues that will be addressed in the Control Docket.

But even this is not enough. CSXT is also threatening to file a petition to the Board asking the Board to revoke an NS and an NPBL discontinuance of service operation exemption

that went into effect with CSXT's knowledge and without CSXT opposition.¹⁶ That service operation exemption has existed for 15 years.¹⁷ This request for relief, too, arises out of the issues CSXT claims to be central to the Control Docket and the Trackage Rights Compensation Proceeding. CSXT's stated intention to progress these additional filings will further result in unnecessary duplication of the issues to be resolved in the Control Docket, resulting in inefficiencies, confusion, and a waste of both NS's and the Board's resources. Similarly, CSXT also threatens another complaint alleging that NS's removal of a diamond and a connecting track that were connected to and part of what was then a discontinued line constitutes an unlawful abandonment (which it does not).

Permitting all the numerous CSXT actions and threatened actions to proceed will materially adversely affect the ability of NS and the Board to proceed in an orderly and efficient manner with the Control Docket and the NS/NPBL Trackage Rights Compensation Proceeding – which are the key proceedings underlying all of the other proceedings. Indeed, resolving these two proceedings will resolve most, if not all, of the issues raised in the various CSXT dockets or threatened dockets. It is time for CSXT's delay tactics to end. The Board should hold the complaint and terminal trackage rights proceedings in abeyance so that it can move forward with the essential issue—should NS's 42 year old control of NPBL be officially authorized and approved.

¹⁶ “CSXT intends to file a separate request that the STB revoke the exemptions that allowed NSR to discontinue its service obligations, and that allowed NPBL to discontinue its trackage rights, over this line of railroad.” CSXT Complaint, page 3, FN 8.

¹⁷ CSXT permitted the exemption to take effect without any CSXT opposition. Note that CSXT does not claim ignorance of the impact the discontinuance would have had over CSXT access at the Port of Virginia, but, now, in a post-hoc rationalization, claims that it did not realize NS's and NPBL's anticompetitive motives.

C. Permitting These Overlapping Actions To Proceed Threatens The Efficiency And Effectiveness Of The Board's Processes, Raises Concerns of Conflicting Results, Inconsistent Evidentiary Records, and Regulatory and Appellate Outcomes.

“The Board has broad discretion whether to hold a proceeding in abeyance, and its decision ‘to do so in any particular situation is highly dependent on the facts and circumstances of the case.’”¹⁸ “In deciding whether to hold a docket in abeyance, the Board considers whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party.”¹⁹ Permitting all of the overlapping CSXT actions to proceed at the same time threatens the efficiency, the effectiveness, and, more importantly, the integrity, of the administrative process governing the Control Docket, which seeks to resolve an issue that has been pending since 2022. Allowing all of what CSXT has filed to proceed concurrently with the Control Docket will also overwhelm the Board’s resources and processing of other cases. Granting the abeyance allows the Board to proceed in an orderly fashion. Indeed, depending upon how the Control Docket and the Trackage Rights Compensation Proceeding are resolved, all of these other proceedings may become moot. If they are not moot, then they can move forward following conclusion of the Control Docket and Trackage Rights Compensation Proceeding. As such, holding them in abeyance at this time is not fundamentally unfair to any party. In fact,

¹⁸ Petition of the National Railroad Passenger Corporation for Relief Pursuant to 49 U.S.C. § 24905, FD 36048, slip op. at 3 (STB served October 3, 2016) (citing E.I. DuPont de Nemours & Co. v. Norfolk S. Ry., NOR 42125 et al., slip op. at 4 (STB served Nov. 29, 2012)) (holding the proceeding in abeyance pending resolution of a lawsuit in federal district court, recognizing that actions in the district court litigation could obviate the need to progress the Board action, and that “[i]f that were to happen, the Board and party resources required to litigate this proceeding would be wasted”).

¹⁹ Ballard Terminal R. Co., L.L.C. – Petition for Declaratory Order, FD 36261, slip op. at 4 (STB served June 27, 2019).

holding them in abeyance could, and likely will, save all parties, especially the Board, significant costs, time, and expense that each will incur if the cases are not held in abeyance.

The Control Docket will address the substance of the issues underlying all of the parallel proceedings CSXT seeks to begin, even as the federal district court has already determined that NS and NPBL have no liability for alleged antitrust violations that CSXT now seeks to relitigate in the numerous proceedings it has filed. Indeed, in connection with CSXT's 2019 request to hold the NS/NPBL Trackage Rights Compensation Proceeding in abeyance, the Board explicitly considered whether abeyance would promote efficiency in determining whether the proceeding should be placed on hold.²⁰ The Board held that proceeding in abeyance because other ongoing proceedings, including the court case, could have an impact on that proceeding. The same rationale applies here. Different overlapping actions involving the same fundamental issues but proceeding along different procedural schedules promotes inefficiency and lack of clarity. In addition, overlapping actions raise the concerns of inconsistent evidentiary records, inconsistent timelines for the development and introduction of the same evidence, and the potential for inconsistent results. These are exacerbated by the fact that any final action of the Board is subject to review by the federal courts, and potentially by different federal courts. These considerations go beyond concern for efficiency and threaten the integrity of the Board's processes. Holding them in abeyance while the Board decides the Control Docket and the Trackage Rights Compensation Proceeding will avoid these adverse consequences.

²⁰ Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223, slip op. at 4 (STB served December 19, 2019) (denying reconsideration of a decision to place the NS/NPBL Trackage Rights Compensation Proceeding in abeyance) (quoting N. Am. Freight Car Ass'n v. Union Pac. R.R., NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017)).

As noted, holding these proceedings in abeyance will not result in any entity being materially harmed.²¹ “The Board considers the fairness to both parties in determining whether to place [proceedings] in abeyance.”²² Holding these proceedings in abeyance would not be “fundamentally unfair to any party.” CSXT has already had the opportunity to adjudicate the issue of damages for past alleged antitrust concerns, and it had that opportunity to do so in its chosen forum. CSXT’s claims were found wanting and were soundly rejected.²³ The Board should now move forward with the Trackage Right Compensation Proceeding and the Control Docket. Any finding and holdings in those cases are forward looking and will not change what has already occurred in the past.²⁴ As such, there is no harm in moving forward and holding the other cases in abeyance. The Board has routinely held matters in abeyance where issues, parties, or fact patterns overlap.²⁵ It should do so here.

²¹ Amtrak FD 36048, at 4.

²² E.I. DuPont de Nemours & Co. v. Norfolk S. Ry., NOR 42125 et al., slip op. at 5 (STB served Nov. 29, 2012).

²³ CSXT is fond of quoting the court’s opinion that, in ruling upon the summary judgement motion, CSXT had presented (but not established) sufficient antitrust claims to allow the case to move forward. But CSXT conveniently ignores the most important part of that finding where the court noted: “[E]ven when CSX’s evidence is viewed in the light most favorable to CSX, the evidence is insufficient for a reasonable juror to conclude that the entirety of CSX’s lost customer contracts, or a majority of its lost contracts, or a notable minority percentage of its lost contracts, or even a non-speculative de minimis percentage of its lost contracts, is predicated on actionable overt acts occurring after 2012.” Summ. J. Op. at *712-713

²⁴ Furthermore, because any approval of NS’s control of NPBL is not retroactive, the STB’s approval cannot insulate NS and NPBL from application of the antitrust laws for conduct that occurred prior to the STB’s approval. The STB’s role is to determine whether NS’s future authorized control will result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. It is not the role of the STB to adjudicate allegations of violations of the antitrust laws that have occurred in the past. That is a role for the courts or DOJ.

²⁵ See, e.g., CF Industries, Inc. v. Indiana & Ohio Ry. et al. – Petition for Declaratory Order, FD 35517, American Chemistry Council, et al. v. Alabama Gulf Coast Ry. and RailAmerica, Inc., NOR 42129 (STB served January 24, 2013) (holding one STB action in abeyance until parties

D. Because The Board Is Unlikely To Decide On This Motion To Hold In Abeyance, NS Has Also Requested A Housekeeping Stay

The recent CSXT filings result in a significant confluence of deadlines. It is unlikely that the Board will be able to decide on this motion to hold all of the various related CSXT proceedings in abeyance before NS would have to comply with those deadlines, especially given the time that would normally be given to CSXT to respond to this pleading and CSXT's intentional filing before Memorial Day. Therefore, NS today is separately seeking a housekeeping stay on all associated procedural matters until the Board has had an opportunity to render a decision on the matters otherwise set forth in this pleading.

CONCLUSION

For all the reasons set forth above, the Board should expeditiously serve a decision to hold the two captioned proceedings in abeyance. The Board should clarify that the decision regarding the requested abeyances that are rendered will apply equally to any further actions by CSXT, such as the threatened CSXT revocation and unlawful abandonment proceedings, and further discovery submitted in any of the Complaint Proceeding, the Terminal Trackage Rights Proceedings, or other associated proceedings yet-to-be filed.

had the opportunity to fully engage in a second STB action). See also, Arizona Public Service Company & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, NOR 42091 (STB served, January 13, 2005) (the Board held the proceeding in abeyance at the request of the petitioner as the reasonableness of the same rates were pending judicial review with regard to STB determinations in a separate STB docket); Ballard Terminal Railroad Company, L.L.C. – Petition for Declaratory Order, FD 36261 (June 27, 2019) (the Board held the proceeding in abeyance while a state contract matter, involving substantially the same issue and fact pattern as that presented to the Board for review, was litigated in state court); and Atlas Land and Building Corp. and Atlas Materials Recycling Corp. – Petition For Declaratory Order – Industry Spur Track in Pittsburgh, PA, FD 36380 (STB served August 17, 2020) (holding the proceeding in abeyance as the easement track for sale before the Board was also subject to a state property rights dispute between the same parties).

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

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

Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

June 2, 2025

CERTIFICATE OF SERVICE

I certify that, on June 2, 2025, in keeping with 49 CFR §1114.21(f), I have caused to be served a copy of the foregoing Motion to Hold in Abeyance upon each Party of Record in these proceedings.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company