

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

AND¹

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
PETITION FOR HOUSEKEEPING STAY**

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**

¹ The dockets are not consolidated but involve the same request for relief. Identical copies of this filing are being filed in both dockets.

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Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR” and, collectively with NSC, “NS”) hereby request the Surface Transportation Board (“STB” or “Board”) to issue a temporary housekeeping stay in the above-captioned proceedings (the “Complaint and Terminal Trackage Rights Proceedings”) until such time as the STB has had an opportunity to consider and decide a separate request, filed today, to place the Complaint And Terminal Trackage Rights Proceedings in abeyance (the “Abeyance Motion”). The Board is unlikely to be able to rule on the Abeyance Motion before NS is required to comply with numerous procedural deadlines and, as set forth in the Abeyance Motion, good cause exists for issuance of a housekeeping stay of numerous procedural deadlines. Such a stay will not

materially harm any party and will facilitate the Board's orderly processing of the numerous related proceedings.²

ARGUMENT

Since 1897, the Norfolk and Portsmouth Belt Line Railroad ("NPBL") has operated safely and efficiently to serve the Port of Virginia on behalf of NS and CSX Transportation, Inc. ("CSXT"). For the past 44 years, NS has had a majority ownership of the shares of the NPBL. This NS ownership was never opposed by CSXT. In fact, CSXT had never asserted that NS lacked authorized control of NPBL, never asserted that NPBL and NS were somehow colluding, never sought to change the underlying agreements that governed operation of NPBL, never requested that NS or NPBL give CSXT terminal trackage rights to serve the Norfolk Intermodal Terminal ("NIT") directly and never complained about the subsidy that the Port of Virginia ("POV") gives CSXT to dray containers to/from CSXT's Portsmouth Yard. And when NPBL adopted a uniform switching rate in 2010, in accordance with the 1897 operating agreement and based upon NPBL's costs, CSXT still took no legal action. Why would it? CSXT's market share of NIT container traffic was continuing to grow.

But in 2018, CSXT, frustrated that its growing container traffic was not enough, decided to have the government do for it, what CSXT had failed to do. Unlike NS, CSXT never invested in the infrastructure to serve the NIT so that it could have direct on-dock service. Rather, CSXT wants to have the government intervene to force NS and NPBL to lower the switching rate NPBL charges, in direct violation of the 1897 Operating Agreement, and/or to give CSXT access

² On May 30, 2025 and in the Complaint and Terminal Trackage Rights Proceedings, NS filed for a 30-day extension of time to respond to the various filing deadlines. This was done to comply with 49 C.F.R. § 1104.7(b). Those extension requests might become moot if the Board grants this housekeeping stay and/or the Abeyance Motion.

to NS's and NPBL's infrastructure via terminal trackage rights and at a government mandated rates. And thus began CSXT's campaign of aggressive litigation to force a lower switching rate and force NS and NPBL to give CSXT on-dock direct NIT access. Throughout this campaign, CSXT has pursued spurious claims of breach of contract, breach of fiduciary duties, and prohibited collusion in violation of antitrust laws. And for each spurious claim, CSXT has lost, including its latest grasp by appealing to the U.S. Supreme Court.

Undeterred in its meritless campaign in the courts, CSXT now seeks to resurrect these discredited theories by coming before the Board. It is clear that CSXT intends to use Board proceedings to achieve the same results that it could not achieve in the courts – a lower switching rate or to obtain government mandated direct on-dock access. In its effort to re-litigate its failed court case, CSXT has filed a myriad of actions to delay, obfuscate, obstruct, and burden NS, NPBL, and the Board.

The latest CSXT actions are, to put it mildly, numerous and overbearing. First, CSXT announced its intention to oppose, at every turn, NS's application for Board approval to control NPBL,³ which would correct a 44-year old oversight and permit NS to obtain the control approval that both NS and CST believed NS had obtained decades ago. Second, CSXT filed a separate complaint, based on the same facts that are at issue in the Control Docket. Third, CSXT served NS and NPBL with numerous and onerous discovery requests related to the complaint, which are largely duplicative of the numerous and onerous discovery it already filed in the Control Docket and which are a blatant attempt to undermine the housekeeping stay already in effect in that proceeding. Fourth, CSXT filed a separate application for terminal trackage rights

³ 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”.

over NSR and NPBL, which included a motion for the terminal trackage rights proceeding to be progressed under the Board's modified procedure rules and a motion for the imposition of a procedural schedule in that proceeding. Fifth, CSXT served discovery on NS in the terminal trackage rights proceeding (which is also largely duplicative of the onerous discovery it filed in both the complaint proceeding and the Control Docket, again attempting to undermine the current housekeeping stay imposed in the Control Docket). Sixth, CSXT filed motions for protective orders to govern those two proceedings. And seventh, CSXT filed a motion to dismiss or to hold in abeyance an associated trackage rights compensation proceeding (Finance Docket No. 36223). And still CSXT has threatened to file more.⁴

Given the timing, it is clear that CSXT has taken these actions to ensure that responses, answers, and discovery responses in several different actions all land on the same day, but also to land during the exact timeframe that NS is preparing to supplement and complete its control application, pursuant to the Board's March 14, 2025 Decision. Due to CSXT's actions, the following is a list of the items that are due from NS on June 9, 2025:

- NS answer to the CSXT Complaint;
- NS response to CSXT's first set of 103 requests for requests for the production of documents in the CSXT Complaint Proceeding;
- NS response to the affirmative request that the Board treat the CSXT Application for Terminal Trackage Rights using the Board's modified procedures;

⁴ CSXT intends to file for the revocation of a notice of exemption in Docket AB 290 (Sub-No. 299X) and AB 1024X and a complaint alleging that NS has unlawfully abandoned a diamond and a connecting track that accessed a discontinued line but were superfluous when the discontinuance was granted and could be redeployed elsewhere on the NS system.

- NS response to the procedural schedule that CSXT proposed for the CSXT Application for Terminal Trackage Rights;
- NS response to the CSXT’s first set of 103 requests for requests for the production of documents in the terminal trackage request; and
- NS’s response to the CSXT motion to dismiss or to continue to hold in abeyance the NS/NPBL trackage rights compensation proceeding in FD 36223.

The STB has also ordered NS to provide certain data required to supplement its previously filed control application. This additional data is due on or before June 14, 2025. NS is in the midst of preparing for that date, but CSXT’s actions recent actions ensure that the preparation of that application is burdened by several other crushing regulatory obligations – responses to complaints, applications, and expedited discovery.

Also pending before the Board and associated with the other actions referenced herein, are two motions in FD 36223, the NPBL trackage rights compensation for the movement of NPBL trains over NS track in the Port of Virginia. That proceeding was initiated on September 13, 2018, but was put in abeyance, *at CSXT’s request*, by an STB decision served on July 25, 2019.⁵ Now, six years later, the conditions for lifting the abeyance requested by CSXT being satisfied, NS filed a “Motion to End Abeyance Period” filed on April 30, 2025, to lift the abeyance. CSXT did not respond to that NS motion directly. Instead, on May 20, 2025, CSXT chose to file its own request for affirmative action, entitled “Motion to Dismiss or to Continue to

⁵ Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223 (STB served July 25, 2019), reconsideration denied, FD 36223 (STB served December 19, 2019).

Hold in Abeyance”.⁶ Because CSXT filed that motion at the same time that CSXT filed its complaint and application for terminal trackage rights, responses to that CSXT motion also are due on June 9, 2025, conveniently the same day that a response to other CSXT actions are required, and conveniently the same day that CSXT demands a response to the discovery that CSXT has propounded.

In this Petition, NS requests that the Board toll the time period for NS’s response to all of the deadlines associated with the Complaint and Terminal Trackage Rights Proceedings. The CSXT activities over the past week has deliberately resulted in a significant confluence of deadlines. It is reasonable to toll (via this housekeeping stay) all of the associated deadlines given that the Board is unlikely to rule on the Abeyance Motion before NS is required to respond to the various actions already pending in those proceedings (such actions set forth in more detail below). It is further reasonable to toll all of the associated deadlines to provide NS reasonable time to complete the Board’s data supplementation request in the Control Docket. In addition, tolling is reasonable for the Board to avoid unnecessary litigation, expenditure of time and resources, and to adopt an orderly process for the Board to consider the various claims, seriatim on a reasonable time frame. Indeed, all of these claims arise out of the same fact pattern, can be raised in the context of the complaint proceeding, and could become moot depending upon the outcome of that proceeding.

As explained in the previously granted request for the housekeeping stay in the NS Control Docket, such a stay often serves to permit the Board and parties additional time to

⁶ It is not clear why CSXT chose to file its own motion, rather than respond to the pending NS motion, but one reason may be so that it could procedurally have the last word on the subject. NS intends to respond to the CSXT motion, and no doubt CSXT will reply to that, all adding to the burden that the CSXT “flood the zone” tactics are imposing on not only NS but on the Board’s limited resources.

address one issue or more issues that are intertwined with another, particularly when the second has an otherwise applicable procedural deadline or regulatory effective date that, if not paused, would either nullify or further complicate the scope of the Board’s regulatory authority. See, e.g., Rail Switching Services, Inc. – Operation Exemption – Pemiscot County Port Authority, et al., FD 35685 (STB served November 13, 2012) (imposing a housekeeping stay “to provide the agency sufficient time to fully consider the arguments presented”); SteelRiver Infrastructure Partners LP, et al. – Control Exemption – Patriot Rail Corp., et al., FD 35622 (STB served May 25, 2012), slip op. at 3 (granting a housekeeping stay to provide time for the Board to rule on certain procedural items before other procedural deadlines are implicated); see also, Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc. – Intra-Corporate Family Transaction Exemption, FD 36199 (STB served June 29, 2018) (granting a stay of the effective date of a verified notice of exemption to permit the Board sufficient time to fully consider arguments presented).⁷ In this case, a housekeeping stay is appropriate because CSXT will, no doubt, wish to respond to the requests for abeyances, thus putting any decision by the Board well beyond the time for NS’s obligations to respond to massive amounts of discovery, in multiple dockets, as well as NS’s obligations to submit several pleadings, all of which may be rendered unnecessary should the requested relief be granted.

A housekeeping stay would not prejudice any party. The issues to be determined under the Complaint and Terminal Trackage Rights Proceedings have either already been litigated or

⁷ In general, the basis for granting a housekeeping stay is to allow time for parties to fully reply to various motions and arguments and to allow time for the Board to consider such pleadings. Consistent with this longstanding precedent, the Chairman or the Board should do so here.

will be litigated in the Control Docket or, to the extent any issues remain unresolved upon completion of the Control Docket, can be addressed at that time.⁸

Not granting the housekeeping stay, on the other hand, imposes an unreasonable burden on NS and the Board. As explained above, CSXT has timed each of the pleadings perfectly to result in several procedural due dates to land precisely on June 9, 2025, the Monday before the NS/NPBL control application is due. Further, CSXT has propounded identical discovery in multiple dockets, and that discovery is already the subject of a housekeeping stay put in effect by the Board. The actions of CSXT are not only a direct affront to that housekeeping stay but also layer on and compound the burden that led to the issuance of the housekeeping stay issued in the Control Docket. If not stayed, the Board too will be burdened with having to respond to and decide numerous cases and issues related to the same fact pattern that the Board is considering in the Control Docket. This will put an enormous strain on the Board's orderly processing of its dockets.

CONCLUSION

For all the reasons set forth above, the Board should expeditiously issue a housekeeping stay regarding further action in the Complaint and Terminal Trackage Rights Proceedings until the Board has the opportunity to make determinations on the requests for abeyance in those proceedings, as well as on the pending motions for reconsideration and petition to stay filed in the Control Docket.

⁸ Any ultimate holdings or findings in the Complaint and Terminal Trackage Rights Proceedings will be forward-looking and will not change what has already occurred in the past. Accordingly, there will be no harm to CSXT to delay those proceedings until the Control Docket has been completed.

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 Petition for Housekeeping Stay 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