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Transportation Solutions for the 21st Century

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: STB Docket No. NOR 42183, *CSX Transportation, Inc. v. Norfolk Southern Corporation and Norfolk Southern Railway Company*

STB Docket No. FD 36859, *CSX Transportation, Inc. – Terminal Trackage Rights – Norfolk Southern Railway Company and Norfolk & Portsmouth Belt Line Railroad Company*

Dear Ms. Brown:

On May 30, 2025, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”) filed separate motions for a thirty-day extension of time, until July 9, 2025, in each of the above-referenced proceedings. The extension requests applied to a substantial number of procedural deadlines for the filing of a number of recent pleadings, discovery, and actions brought by CSX Transportation (“CSXT”).

CSXT today responded to the NS thirty-day request with a proposal to grant NS a 10-day extension of time, which would require NS to respond to: (1) a complaint, (2) a terminal trackage rights application, (3) a motion to a petition to dismiss or to continue to hold in abeyance, and (4) over 200 onerous demands for the production of documents filed in two different proceedings all within four days after filing its application. For the reasons set forth in its petition for housekeeping and its motion for abeyance, both filed concurrently with this letter in the two above dockets, NS rejects CSXT’s offer for a 10-day extension.

NS believes both of these proceedings should be held in abeyance, or even dismissed on the Board’s own motion, until such time as the control proceeding in FD has been resolved. The requests for the thirty-day extensions of time were necessary to comply with the Board’s

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regulation at 49 C.F.R. §1104.7(b). If NS's request for abeyance is granted, then the motions for an extension of time will be moot.

Furthermore, CSXT's over-the-top rhetoric has become an amusing sideshow. CSXT is the victim? It is no victim. Don't take NS's word for it. Here is what the U.S. District Court for the Eastern District of Virginia said:

[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.

CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679, 712-713 (E.D. Va. Jan. 3, 2023). CSXT has lost nothing due to NS's control of NPBL. CSXT has suffered no damages.

The truth of the matter is that NS has not exercised its almost 44 years of majority control of NPBL to act in an anticompetitive manner. It has used its control to adopt an NPBL board of directors, with CSXT's consent, which provides for three members from NS, two from CSXT, and an independent director. It has used its control of NPBL to ensure that NPBL continues to act in a neutral fashion and in full compliance with NPBL's 1897 Operating Agreement and consistent with Virginia state corporate law regarding minority shareholder rights. As NS will fully demonstrate, STB recognition and approval of NS's control, control that all parties thought until recently that NS had, will not 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.

For the reasons noted in the motion for abeyance, the petition for housekeeping stay, and this letter, the Board should not adopt CSXT's suggestion that NS only be given a 10 day extension of time to respond to the numerous and voluminous pleadings and discovery that CSXT has filed. Instead, at a minimum, the Board should hold the two above noted proceedings in abeyance pending resolution of CSXT's claims in the control proceeding; thereby making NS's requests for 30-day extensions of time moot.

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Respectfully submitted,

/s/ William A. Mullins

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