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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:

CSXT's June 3rd letter filed in reply to NS's letter of June 2 and requesting a housekeeping stay of NS's control proceeding¹ is not only a reply in violation of 49 C.F.R. 1104.13(b), but to continue what has become standard practice by CSXT – to say one thing but do another. While CSXT objects to NS's motions for abeyance and housekeeping, hypocritically, it requests the Board to promptly consider its untimely and duplicative requests for "affirmative relief." The Board should not grant CSXT's request for a housekeeping stay on the NS/NPBL control docket.

CSXT acknowledges that NS filed a control application that encompasses many of the same issues to be heard in what it calls "CSXT's affirmative cases." It does not deny that it was not until *after* NS filed a consolidated proceeding to address control of NPBL as directed by the Board that CSXT then, and only then created a firestorm by filing, *more than three months after NS filed its control application*, several distinct, and yet intertwined, actions, all aimed at

¹ CSXT's request for a housekeeping stay of the control proceeding is a request for affirmative relief that NS has right to reply to without violating §1104.13.

adjudicating pieces of the greater whole. None of CSXT's filings address the Board's clear directive "to address the unauthorized control issue immediately following resolution of the district court proceeding, including appeals." Norfolk S. Ry. Co. – Petition for Declaratory Order, FD 36522, slip op. at 17, note 25 (STB served June 17, 2025), which was directed at NS, not CSXT.² The only action that is remotely related to addressing NS's unauthorized control is the control proceeding itself. That proceeding should move forward, and therein CSXT can address its perceived harms. It is the control proceeding that is directly responsive to the Board's directions.

CSXT's desire to delay the control proceeding, while encouraging the Board to not delay its proceedings, should come as no surprise. This is right out of CSXT's playbook. Indeed, CSXT sought, and was granted an abeyance of the NS/NPBL trackage rights compensation proceeding (Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223) and when NS, again following the Board's directive, moved to remove that proceeding from abeyance given the resolution of the court cases, CSXT has sought to delay it yet again. But the trackage rights compensation, like the control case, goes directly to the heart of CSXT's allegations that NPBL's switching rate is somehow anticompetitive and should be resolved concurrent with the control proceeding. It should not be held in abeyance.

It is time for the Board to move forward in the trackage rights compensation case. It has been delayed and unresolved for 7 years now. Yet that rate is a key component of NPBL's switching rate. As Judge Davis said, "[a]ny future 'switch rate' that NPBL charges to CSX to access NIT will necessarily include the NSR-NPBL rate as a cost factor because NPBL will have to pay NSR that rate for each car moved to NIT. Thus, this 'expense' will essentially be transferred to NPBL's customers, as are NPBL's other operating costs."³ How ironic that "CSXT is entitled to relief and is entitled to prompt consideration of its claims," while at the same time CSXT urges the Board to delay the control proceeding and to further delay the consideration of claims that NS has sought to progress 7 years ago.

The Board should grant NS's housekeeping stay on the CSXT complaint proceeding and the CSXT terminal trackage rights proceeding. The Board should not grant CSXT's request for a housekeeping stay on the NS/NPBL control docket. CSXT has not met any of the required burdens to justify such relief, and imposition of a housekeeping stay would cause continued

² Indeed, had the Board meant by that directive to urge CSXT to progress with the wide-variety of actions that the CSXT affirmative cases now advocate, the only one that could not have progressed at that time would have been the CSXT complaint. That case largely seeks to relitigate the same case that CSXT chose to progress at the federal district court rather than at the STB. So rather than acting "promptly," CSXT has delayed action until it lost at the federal district courts, its first chosen forum.

³ CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679, 710, n. 19 (E.D. Va. Jan. 3, 2023).

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harm to NS, NPBL, and the shipping public, by leaving the core issue – whether to authorize NS to control NPBL – unresolved.

Respectfully submitted,

/s/ William A. Mullins

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