

SERVICE DATE – JUNE 16, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36836

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

Decision No. 6

Decided: June 16, 2025

On February 14, 2025, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, Applicants) filed a submission, styled as an application for a “minor” transaction, seeking Board authority under 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 to control Norfolk & Portsmouth Belt Line Railroad Company (NPBL). By decision served March 14, 2025, and published in the Federal Register on March 17, 2025 (90 FR 12440), the Board found that the proposed transaction should be classified as a “significant” transaction under 49 C.F.R. § 1180.2, considered Applicants’ February 14, 2025 submission as a prefiling notification for a significant transaction, and permitted Applicants to perfect their application by supplementing their submission by June 14, 2025. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 1, 7-8 (STB served Mar. 14, 2025). The Board also required that Applicants file with the Board, by March 21, 2025, a revised proposed procedural schedule reflecting the Board’s determination that the proposed transaction is a significant transaction. Id. at 8-9.

On March 21, 2025, Applicants filed a revised proposed procedural schedule. CSX Transportation, Inc. (CSXT), filed a response on March 28, 2025, proposing, among other things, that the Board set a deadline for “comments addressing the sufficiency” of Applicants’ revised application, to be due 15 days after Applicants submit their supplement. (CSXT Response 3, Mar. 28, 2025.) CSXT argues that Applicants’ prior filings included “false assertions” and “inadequate economic analysis,” and there is a “strong likelihood” that the revised application will be “similarly flawed.” (Id.) On April 1, 2025, Applicants filed a letter, indicating that they would comment on CSXT’s March 28, 2025 response after the Board published notice of the revised proposed procedural schedule in the Federal Register. (Applicants Letter 2, Apr. 1, 2025.)

By decision served April 11, 2025, and published in the Federal Register on April 16, 2025 (90 FR 16056), the Board published notice of the revised proposed procedural schedule and invited public comment. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 3), FD 36836, slip op. at 8-9 (STB served Mar. 14, 2025).

Applicants filed comments on April 28, 2025. As relevant here, Applicants oppose CSXT's request for the Board to set a deadline for comments on the sufficiency of the revised application. (Applicants Comments 4, Apr. 28, 2025.) According to Applicants, the types of comments described by CSXT should be filed later in the proceeding. (*Id.* at 8.) Further, Applicants argue that permitting any comments to be filed just 15 days after Applicants file their supplement would deprive them of the opportunity to review and respond to the comments. (*Id.*) Lastly, Applicants argue that the governing statute does not provide for the submission of any type of comments before the Board accepts or rejects an application, *see* 49 U.S.C. § 11325(a), and CSXT has provided no precedent supporting the inclusion of such a deadline. (Applicants Comments 4, Apr. 28, 2025.)

On June 13, 2025, Applicants submitted their "Supplement and Perfection of Application." Under 49 U.S.C. § 11325(a) and 49 C.F.R. § 1180.4(c)(7)(i), the Board must accept a complete merger or control application, no later than 30 days after the application is filed, by publishing notice of the application in the Federal Register. An application is complete when it "contains all information for all applicant carriers required by these procedures, except as modified by advance waiver." 49 C.F.R. § 1180.4(c)(7); *see also* 49 C.F.R. § 1180.6-.8. If the Board determines that an application is incomplete, the Board must reject it by the end of the 30-day period. 49 U.S.C. § 11325(a); 49 C.F.R. § 1180.4(c)(7)(ii).

The Board often receives comments from interested parties after a merger or control application is filed but before notice of the application is published in the Federal Register. These comments are often filed shortly before the deadline for the Board to accept or reject an application, and at times, have been filed after the deadline for the Board to transmit its decision to the Federal Register for timely publication. *See, e.g., Canadian Nat'l Ry.—Control—Iowa N. Ry.*, FD 36744, slip op. at 3 (STB served Mar. 29, 2024); *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 et al., slip op. at 1-3 (STB served July 21, 2008). Given the short statutory deadline in § 11325(a) for the Board's decision, setting a deadline for interested parties to provide any comments on the completeness of the revised application, and for Applicants' to respond to those comments, would help to ensure that the Board has time in this case to consider those comments and responses before it is required to transmit its decision accepting or rejecting the application to the Federal Register for publication.¹ Accordingly, any comments regarding whether the application (as supplemented) should be accepted will be due by June 20, 2025. Any such comments must be limited to the completeness of the application, as described in 49 C.F.R. § 1180.4(c)(7)—i.e., whether the application "contains all information for all applicant carriers required by these procedures, except as modified by advance waiver." Applicants will be permitted to reply to any such comments by June 25, 2025.²

¹ Although 49 U.S.C. § 11325(a) does not expressly provide for a comment period, the Board is not prohibited from including one in the procedural schedule. *See* 49 U.S.C. § 1321(b)(3).

² The remainder of the arguments in CSXT's March 28, 2025 response to Applicants' revised proposed procedural schedule will be addressed in a subsequent decision.

It is ordered:

1. Comments limited to the completeness of the application may be filed by June 20, 2025.
2. Applicants' reply to any such comments is due by June 25, 2025.
3. This decision is effective on the date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.