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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

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Office of Proceedings
June 25, 2025
Part of
Public Record

Re: Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line R. Co., FD No. 36836

Dear Ms. Brown:

Enclosed for filing in the above-captioned docket is Norfolk Southern Corporation's and Norfolk Southern Railway Company's Reply to CSXT's Petition to Reject Norfolk Southern's Revised Application. It is being filed in both a Public Version and a Highly Confidential Version. If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7823 or by e-mail: wmullins@mullinslawgroup.net. If I am unavailable, you may contact Spencer Naake at (202) 663-7829 or by e-mail at snaake@mullinslawgroup.net.

Respectfully submitted,

/s/ William A. Mullins

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Norfolk Southern Railway Company

Enclosures

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
– ACQUISITION OF CONTROL –
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY’S REPLY TO CSX TRANSPORTATION, INC.’S PETITION TO REJECT
NORFOLK SOUTHERN’S REVISED APPLICATION**

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June 25, 2025

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Company**

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PUBLIC VERSION**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
– ACQUISITION OF CONTROL –
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY’S REPLY TO CSX TRANSPORTATION, INC.’S PETITION TO REJECT
NORFOLK SOUTHERN’S REVISED APPLICATION**

SUMMARY OF ARGUMENT

NS filed supplemental information as necessary and as requested by the Board to convert its application from a minor application to a significant application (the “Revised Application”). NS’s supplement contained all of the information requested by the Board in its March 14 Decision No. 2. The Revised Application confirmed that NPBL remains an independent, neutral railroad charging a cost-based switch rate with no discrimination among connecting railroads, customers, or types of commodities. The Revised Application confirmed that there is robust competition for the movement of intermodal containers between trucks, rail, East Coast Ports, and even between the terminals in the POV itself. In fact, the Revised Application establishes that CSXT is NPBL’s largest interchange partner and user. The Revised Application demonstrates that NPBL operates today, and will operate in the future, in a manner wholly consistent with NPBL’s 1897 governing agreement. In short, the Revised Application clearly demonstrates that the formal authorization for control of NPBL will change nothing and will not result in a substantial lessening of competition. The Revised Application should be accepted.

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As was expected, CSXT filed a petition (the “CSXT Petition”) asking the STB to reject the NS Revised Application. CSXT did not dispute that NS provided all of the specific information that the Board’s Decision No. 2 requested. CSXT did not provide one case citation or precedent supporting its contention that the Revised Application was somehow “deficient.” CSXT’s chief complaint is that NS did not present the type of information that CSXT wanted NS to provide (regardless of the fact that such information is not required by the regulations to be provided in the manner and format demanded by CSXT) and NS did not simply mimic what CSXT did in the Pan Am proceeding.¹ There is no support in the law or the facts for the notion that NS has to present its Revised Application in the manner called for by CSXT. The CSXT Petition amounts to nothing more than a series of misstatements, misdirection, and mistaken assumptions, aimed at preventing the Board from considering the merits of the control proceeding. The Revised Application was in full compliance with the regulations and should be accepted.

ARGUMENT

The pending control proceeding requires the STB to determine whether the control of NPBL by NS would likely result, in the future, 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. CSXT’s failed views and continued focus on past conduct from 2010 is misplaced. Simply put, NS seeks the Board’s authority, going forward, to control NPBL, and correct the administrative oversight from the 1980 applications.² With that approval, there will be no

¹ See CSX Corp. and CSX Trans., Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (Decision No. 3) (STB served May 26, 2021).

² City of Ozark v. Union Pac. R.R. Corp., 843 F.3d 1167, 1169 (8th Cir. 2016) (“The focus of the STB’s exclusive jurisdiction is interstate rail transportation, at present and in the future.”).

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changes in NPBL’s operations, marketing plans, organization charter, labor requirements, governance, or the cost-based approach to rate-setting. NS is not seeking to have NPBL be a consolidated subsidiary or alter-ego, but instead to continue to operate pursuant to its neutral, independent, and non-discriminating nature. NS has made these commitments and will abide by these commitments in the future. This is not, and NS is not seeking, a do-over of the 1980 application, the 1982 ICC decision, or even the 2022 STB decision that NS had not obtained consent for control over NPBL. NS is not looking for retroactive antitrust immunity.³

At this point in the proceeding, the Board is not deciding the merits of the application but is instead making a preliminary determination whether to accept, or to reject, the Revised Application pursuant to the Board’s regulations and directives. As discussed below, NS submitted all of the specific information required by the Board’s regulations, as adjusted by Decision No. 2. And CSXT has failed to show that NS has not complied with the regulations or the Board’s decision. Therefore, the Board should unequivocally accept the Revised Application.

³ CSXT makes several arguments that in the past NS “conspired” with NPBL to perform acts that allegedly were anticompetitive and harmful to CSXT. NS believes strongly that the facts show that those allegations are wrong, and the District Court likewise rejected CSXT’s arguments – including making a definitive statement that CSXT had failed to make any actionable claim from 2013 to 2018. CSXT’s mere repetition of its allegations will not make them true, regardless of how many times they are made, in how many different pleadings and before how many forums that they are made. The Revised Application is not about what has happened in the past. That was the subject of the District Court antitrust allegations. NS is not seeking any form of retroactive immunity, authorization, or control, nor does the Board generally grant such retroactive authority. Arkansas-Oklahoma Railroad Company – Acquisition and Operation Exemption – State of Oklahoma, FD 36323, slip op. at 3 (STB served Sept. 18, 2019) (“Although the Board on occasion has granted authority retroactively, it generally disfavors retroactive grants of authority”) (footnote omitted). See also, The Elk River R., Inc. – Merger Exemption – The Buffalo Creek R. Co., FD 36434, slip op. at 3 (STB served Nov. 6, 2020) (same). Consistent with that policy, NS is only looking for lawful control of NPBL going forward.

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I. THE BOARD REQUIRED NS TO SUPPLEMENT THE MATERIAL ALREADY ON THE RECORD SUFFICIENT TO MEET THE DIFFERENT INFORMATION REQUIREMENTS OF A SIGNIFICANT APPLICATION FROM THAT REQUIRED OF A MINOR APPLICATION, AND NS DID SO

The Original Application submitted on February 14, 2025, covered many, but not all, of the information requirements for a significant application.⁴ Decision No. 2 required NS to present the following data to “perfect” its Original Application, all of which was provided in the Revised Application.⁵

- An impact analysis and any supporting documents pursuant to 49 CFR 1180.7(a) and (c), including market shares, traffic flows, interchange data, use of other modes, and competition between other ports and terminals.
- A list of the top 10 NPBL customers for the past five years, including volumes moved by each customer (tons by two-digit Standard Transportation Commodity Code for non-containerized freight and containers otherwise).
- Information on the costs and operational efficiencies of the alternative approaches to moving containerized freight by rail in and out of the two major container terminals at the Port of Virginia (NIT and VIG). This information should include the use of on-dock, near dock, NPBL, and Commonwealth Railway, and include the costs and impacts of drayage, when required.

A. An Impact Analysis And Any Supporting Documents Pursuant To 49 CFR 1180.7(a) And (c)

Information required by 49 CFR 1180.7(a) and (c) was provided in the Revised Application beginning on page 39 (NS-13, 44) and in the detailed analysis included in the Revised Verified Statement of Daniel L. Fapp (“Fapp Revised VS”) submitted in the Revised Application. This information is further detailed and discussed in his Verified Statement (“Fapp

⁴ The Original Application included information required by 49 CFR 1180.6(a).

⁵ Information required by 49 CFR 1180.6(b) was not required, and was not included, in the Original Application. Therefore, to the extent applicable to a significant, rather than a major, application, that information had to be included in the Revised Application, to the extent not waived by the Board. Information responsive to section 49 CFR 1180.6(b)(5) was provided on page 39 (NS-13, 44) of the Revised Application. The Board waived the obligation to respond to sections 49 CFR 1180.6(b)(3), (b)(7), and (b)(8).

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Reply VS”) attached hereto as Exhibit A. CSXT’s argument with respect to whether the information provided in the Revised Application is sufficient to warrant acceptance of the Revised Application is discussed below, but NS’s information is more than sufficient to establish a prima facie significant application that should be accepted.

B. The Board Sought Traffic Tapes and Customer Data, Both Of Which Were Provided.

The Board specifically sought the submission of two years of traffic tapes for NPBL and a list of the top 10 customers for the past five years, together with the volumes for each of those customers categorized by two-digit STCC.⁶ Each of those items were submitted, as directed, at the same time that the Revised Application was filed.

C. The Board Sought And Received Information On Rail And Drayage Access To NIT and VIG.

The Board provided that “Applicants should address and present information on the costs and operational efficiencies of the alternative approaches to moving containerized freight by rail in and out of the two major container terminals at the Port of Virginia (NIT and VIG). This information should include the use of on-dock, near dock, NPBL, and Commonwealth Railway, and include the costs and impacts of drayage, when required.”⁷ This information was provided in the Revised Application and the Fapp Revised VS, and is discussed in the Fapp Reply VS.

The Fapp Revised VS “focus[ed] specifically on the transportation costs of service and efficiencies for transporting intermodal container traffic moving to and from the Norfolk International Terminal (“NIT”) and the Virginia International Gateway Terminal (“VIG”)

⁶ 49 CFR 1180.4(c)(2)(v) provides that the Board may direct the applicant to submit additional information.

⁷ Decision No. 2, slip op. at 8.

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located in Hampton Roads, Virginia.”⁸ That verified statement included the total volume and shares of traffic moving via CSXT and NS through those two terminals.⁹ The impacts of using drayage (favored by CSXT) versus rail direct (favored by NS) can be ascertained through the data discussed in Fapp’s Revised VS. That verified statement addresses, among other things, the overall percentage of international containerized traffic moving to and from the Port of Virginia on lanes served both by NS and CSXT, and the “intense competition” for that traffic, as reflected by the relative NS and CSXT market share for that competitive traffic.¹⁰

Logistics and the cost of access to and from NIT and VIG are specifically addressed in the Fapp Revised VS. The discussion as to rail access to NIT begins at page 7 of the Fapp Revised VS, and that discussion includes details concerning the rail access for NS, NPBL, and CSXT via NPBL. The discussion as to truck access to NIT begins on page 15 of the Fapp Revised VS, both as to the movement of trucks inside and outside NIT gates for service to and from Pinner’s Point, a CSXT near-dock facility. The discussion as to rail access to VIG begins on page 25 of the Fapp Revised VS, with discussion of rail access (including that for the Commonwealth Railway) beginning on page 26.

In sum, the Significant Application fully complies with the obligations of the Applicants and there is no reason not to accept it as incomplete.

⁸ Fapp Revised VS at 1.

⁹ Fapp Revised VS, Table 1, at 3.

¹⁰ Fapp Revised VS at 5.

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II. CSXT’S ARGUMENTS AND ASSERTIONS SHOULD BE REJECTED**A. CSXT’s Assertion That NS Did Not Address Inclusion Is Patently Wrong And That Element Is Not Even Required In A Significant Transaction**

CSXT argues that NS failed to address the information requirement of 49 C.F.R. § 1180.6(a)(2)(vi), which requires a discussion of the public interest justifications in support of the application, including the effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory. NS did address the requirements of 49 C.F.R. § 1180.6(a)(2)(vi), and CSXT acknowledges this,¹¹ by quoting NS’s statement that “[T]here is no basis for including another railroad in the control approval because such approval will not adversely affect the ability of any other carrier to provide essential services.”¹² So CSXT proves itself wrong.

Even in major transactions, “The Board will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.”¹³ In the realm of consideration of a major transaction (which this is not), inclusion is

¹¹ CSXT Petition at 6.

¹² CSXT Petition at 6 (quoting NS Revised Application at 42). The regulation cites to 49 U.S.C. § 11324. Under that statute, inclusion is only an element that applies to approval of major transactions under 49 U.S.C. § 11324(c). In the past, when consolidations could result in other carriers going bankrupt or losing significant amounts of revenue, then inclusion was an important element. If the proposed transaction could potentially result in a railroad being unable to financially survive so as to continue to provide essential services to the public, the regulation required discussion of whether to “include” that railroad in the transaction. And as noted, the ICC and the Board have the ability to force inclusion in the context of a major transaction. Such is not the case in a significant transaction. Approval of this transaction does not jeopardize CSXT’s essential services. As such, NS was not required to include CSXT in its Revised Application. Union Pacific Corp. - Control & Merger - Southern Pacific Corp., FD 32760, 1 S.T.B. 233 *; 1996 STB LEXIS 220, **281 (STB served Aug. 12, 1996) (discussing the essential services doctrine).

¹³ 49 C.F.R. § 1180.1(j).

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a “matter of last resort”.¹⁴ The grant of the requested control in this proceeding will not endanger the provision of any essential services to any party, as explained throughout the Revised Application, and so the summation statement made in the Revised Application is appropriate.¹⁵ As the transaction will not create any concerns regarding the ability of any other railroad to continue to provide essential services to the public, NS was not required to address it other than it did (if that is even required) and NS certainly was not required to analyze CSXT “inclusion” in its analysis.

Further, the Board’s regulations do not require NS to engage in acts of futility,¹⁶ particularly when doing so will delay what the Board has said must be addressed promptly.¹⁷ The engagement of other railroads in the area (which means, of course, CSXT) regarding inclusion in this particular transaction is not required and would have been futile. This transaction does not propose the future restructuring (for example) of the rail structure in the

¹⁴ Major Rail Consolidation Procedures, EP No. 582 (Sub-No. 1), slip op. at 45 (STB served June 11, 2001).

¹⁵ Even assuming that 49 C.F.R. § 1180.6(a)(2)(vi) was applicable to this transaction, which it is not, the argument in the CSXT Petition about exploring the effect of including CSXT in the proposed transaction assumes the predicate, rebutted throughout the Revised Application, that a grant of STB consent for NS to control NPBL would eliminate CSXT’s access to NIT and to customers located along the NPBL line, thus apparently affecting essential services, although CSXT would still have the ability to use NPBL for all other customers. The materials submitted in the Revised Application rebutting this assumed predicate therefore meet the requirements of the regulation to include the effect on CSXT’s essential services.

¹⁶ See, e.g., San Joaquin Valley R. Co. – Lease Amendment and Operation Exemption including Interchange Commitment – BNSF Ry. Co., FD 35772 (STB served May 28, 2015) (no reason to hold up on an exemption for failure to post copies of a notice where no affected employees would be able to see them).

¹⁷ The Board, in its June 17, 2022, decision in the NS Declaratory Judgment Proceeding clearly expressed concern with the time involved in resolving matters and as such instructed “the parties to take appropriate steps to address the unauthorized control issue *immediately* following resolution of the district court proceeding, including any appeals.” Norfolk S. Ry. Co. – Pet. For Declaratory Order, FD 36522, slip op. at 17, n.25 (STB served June 17, 2022).

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Northeast United States but instead simply addresses an issue that was overlooked in a transaction that took place over forty years ago. Indeed, the potential inclusion of CSXT, in the manner described by CSXT, would have been the very antithesis of the transaction pending before the Board (the grant of the Board’s consent for the control that resulted from the 1982 ICC decision).

B. Contrary to CSXT’s Assertions, NS Did Include An Impact Analysis As Required By The Regulations

On closer inspection, CSXT’s complaints are not that NS failed to address critical issues, but that NS did not address such issues in the manner that CSXT would have preferred.¹⁸ CSXT argues with “how” NS addressed 49 C.F.R. § 1180.7(a), requiring an impact and market analysis, as opposed to “whether” NS addressed that regulatory requirement.¹⁹ However, the Board has determined that such a requirement, particularly for significant transactions, provides applicants with a significant amount of flexibility on describing the impacts of the proposed transaction.

See CSX Corp. and CSX Trans., Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (Decision No. 3) (STB served May 26, 2021) (explaining that applicants in significant transactions have “the greatest leeway to develop the best evidence on impacts of each individual

¹⁸ See, e.g., Fapp Reply VS at 4 (addressing the complaint in the Verified Statement of Julie M. Carey, at 2, note 6, that Fapp reported traffic in absolute numbers rather than in percentage terms). Indeed, as is discussed by Mr. Fapp, it is the analysis presented by *CSXT’s experts* that are lacking in substance, as opposed to form. See, Fapp Reply VS at 4-5 (discussing the fact that Ms. Carey, among other things, attempts to compare drayage shipments between NIT and VIG, when the underlying transportation circumstances differ substantially).

¹⁹ CSXT makes essentially the same arguments at two different locations in its petition, first beginning on page 3 (Section 2.1, claiming that “The Revised Application is incomplete because NS failed to present an adequate impact analysis (49 C.F.R. §1180.7(a))”) and second beginning on page 11 (Section 2.6, claiming that “The Revised Application is incomplete because NS’s market analysis is deficient”). In each case, CSXT essentially argues that NS’s Revised Application failed to provide the Board with an analysis on how the requested authority – the right for NS to control NPBL in the future – would affect markets and competition.

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transaction” and further that applicants should be “free to choose the type(s) and format” of that evidence). In fact, this principle is expressly spelled out in the Board’s regulations.²⁰ Far from imposing specific data requirements, the Board’s regulations provide “a general guideline,” which “may (but need not)” include certain supporting data, and expressly provide that parties are “free to choose the type(s) and format” of the supporting data submitted.²¹ CSXT ignores all of these words and would pigeon-hole NS to presenting only the data that CSXT wanted and in their format. Here, NS’s prior filed Minor Application and the Revised Application provide sufficient supporting data, including market shares, traffic flows, interchange data, use of other modes, and competition between other ports and terminals. Similarly, CSXT points to the need of the application to examine the “effect of the proposed transaction” pursuant to 49 C.F.R. § 1180.6(a)(2). The Revised Application addressed all of this in depth.

If the true impact of the proposed transaction (the granting of the consent for NS to control NPBL in the future) is that there will be no change, then that is exactly what NS should say, and that is exactly what it has said. If there is a competitive market today for movement of intermodal containers to and from NIT (to pick one of the narrower of relevant markets), then there will be a competitive market tomorrow. And there is a competitive market today. As Mr. Fapp explains in his Reply VS, evidence was submitted that CSXT’s share of that market was above [[]] for the years prior to 2023. He correctly observes that the fact that a share of the market is [[]] does not result in a conclusion that there is no effective competition, and in doing so he points to a situation where trucks had only a 12 percent share of the market yet

²⁰ 49 C.F.R. § 1180.7(c).

²¹ Id.

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presented a very strong competitive threat to the rail market for the movement of coke from a facility.²²

NS backed up that conclusion through extensive discussions beginning on page 28 of the Revised Application, as supported by the Fapp Reply Verified Statement attached hereto. NS will not repeat that discussion here, but it included the information spelled out in 49 C.F.R. § 1180.7(a). The Minor Application and the Revised Application clearly (1) discussed the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers²³ (as further discussed above and in n.12, *supra*); (2) discussed an impact analysis that included underlying data, a study of the implications of those data, and a description of the resulting likely effects of the proposed transaction on the transportation alternatives that would be available to the shipping public; (3) applied that data and discussed its application to 49 U.S.C. § 11324(d); and (4) discussed what NS believes are the relevant markets and issues and the validity of its analysis, including, where applicable, city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that could be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered). All of the above have been presented and included in the various filings submitted to the Board. CSXT may not like how or what NS presented, but the Board’s regulations provide NS with the “greatest leeway” to determine the type and manner of

²² Fapp Reply V.S. at 3.

²³ See 49 C.F.R. 1180.7(a).

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supporting data it presents to the Board. Accordingly, it is clear that the NS has complied with section 1180.7(a) and (c).

Interestingly, some of the material submitted by CSXT in its argument to dismiss the Revised Application as having a “deficient” impact analysis actually end up supporting NS’s impact analysis. Ms. Carey argues that NS has failed to “demonstrate the feasibility of short-haul truck moves in combination with rail at the economic scale today or with the expanded NIT capacity tomorrow.”²⁴ In his Reply VS, Mr. Fapp not only identifies the evidence he already has placed in the record that demonstrates exactly that point but also shows how the material that Ms. Carey submits effectively supports his conclusions and contradicts her own points.²⁵

Indeed, some analysis that CSXT faults NS for not providing in the way and manner CSXT thinks NS should have provided is simply not available. Mr. Fapp explains that Ms. Carey complains that NS did not compare NPBL’s switch rate to confidential negotiated switch rates that may be available at other locations.²⁶ Confidential negotiated switch rates are not publicly available, so the failure to include those rates in its competitive analysis is not a cause to dismiss the application as “deficient.”

Finally, some of the CSXT complaints as to the impact analysis are simply wrong. Ms. Carey’s statements can be read in a manner that implies NPBL did not transport *any* traffic for CSXT under the 2010 uniform, cost-based rate, but as Mr. Fapp points out, this is blatantly false. CSXT is NPBL’s largest interchange customer and user. Indeed, over the 10-year period from 2013 through 2022, NPBL interchanged on average [[]] percent of its railcars with CSXT.

²⁴ Carey VS at 3.

²⁵ Fapp Reply V.S. at 5.

²⁶ Fapp Reply VS at 6.

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Simply stated, well over [[]] of the traffic that moves on the NPBL is received or delivered to the CSXT.”²⁷

In any event, NS submitted a great deal of additional information about operations and costs applicable to the NPBL regardless of whether NS or another entity controls NPBL,²⁸ including information that CSXT claims is nowhere to be found.²⁹ NS’s Revised Application included the required analysis, especially in light of the regulation’s directive to afford NS the “greatest leeway” in determining the type and format of its supporting data. There is therefore no basis to reject the application.

C. CSXT Asserts That NS Failed To Include A Marketing Plan, Failing To Recognize That NS Will Not Be Integrating NPBL Into Its Marketing And Operations In A Consolidated Manner.

CSXT argues that NS failed to include a marketing plan, and that this is a fatal flaw requiring the Board to reject the Revised Application as incomplete. That analysis fails to

²⁷ Id. at 8.

²⁸ See, e.g., Revised Application at 30-31 (concerning rail transit time for CSXT service to NIT, locomotive consist and configuration for the same, operations over moveable bridges and the priority of marine vessel traffic over freight rail traffic, costs), and at 32-33 (concerning the effect of the proposed transaction on truck options, which would not be affected regardless of the ownership of NPBL). Mr. Fapp’s Revised Verified Statement addresses traffic moving to and from various POV terminals via various domestic lanes. Fapp Revised VS at 5. That VS discusses the competition between POV terminals and other ports along the east coast of the United States, including NS’s and CSXT’s focus on specific routes for intermodal service, as well as the financial investment on each party’s system associated with that focus. Id. at 5-7. Fapp discusses specifics as to the relevant facilities, operations, costs and the like. These are but some of the many discussions throughout the Revised Application that address issues raised, and some not raised, by CSXT’s enunciated concerns. If CSXT believes that specific information detailing the distribution of truck traffic between certain lanes and east coast United States ports is relevant, CSXT is free to attempt to develop and present that to the Board; however, the fact that NS did not address this point in the manner CSXT wants it addressed is not grounds to reject the Revised Application.

²⁹ See, e.g., Fapp Reply VS at 6-7 (discussing criticisms that were levied by Ms. Carey about the failure of Mr. Fapp to disclose the basis for assumptions used for using 2.5 containers per rail car as an average).

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comprehend the transaction being proposed, and the role of the marketing plan in the Board's analysis of whether to approve that proposed transaction. Finally, it fails to acknowledge what NS did submit along these lines.

Section 1180.7 states that the impact analysis "should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal)." ³⁰ Here, there will be no "consolidated marketing plan." NPBL will continue with its own marketing plan – with CSXT at the table. The "existing and potential competitive alternatives" were fully set out in the Minor Application and the Revised Application, discussed above, and will not be repeated here.

CSXT's complaint with regard to the lack of a detailed marketing plan is obviously based upon the inaccurate assumption that NS is seeking Board approval to integrate NPBL into the NS fold as an alter-ego and fully-integrated subsidiary for operational, marketing, ratemaking and other purposes. ³¹ NS is not requesting the Board to grant NS authority to merge or otherwise consolidate with NPBL in a manner that would do away with the non-discriminatory, independent nature of NPBL's Board of Directors, its operating personnel, or its marketing personnel. The "control" NS seeks is simply to continue to own the majority of NPBL's stock ownership. But that does not mean that if control authorization were granted by the Board, NS would integrate NPBL into its marketing efforts any more than it does today, and with full recognition that CSXT, one of NS's primary competitors, would be at the NPBL board room table listening in as marketing efforts were progressed.

³⁰ 49 C.F.R. § 1180.7(a).

³¹ CSXT asks a series of questions that demonstrate this lack of understanding. CSXT Petition at 7-8.

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NS is committed to not changing how NPBL operates or markets today – elements that CSXT has never complained about. The only complaint by CSXT is that it does not like NPBL’s switching rate for intermodal traffic, but that rate is fully consistent with the principles set forth in the 1897 governing agreement, an agreement that predated NS’s acquisition of a majority of NPBL’s stock by 85 years. NS is committed to continuing to abide by those principles for future rate-setting. NPBL will continue to market, set rates, and operate in the same manner directed by the 1897 governing agreement.

D. CSXT Argues That NS Has Not Defined A “Relevant Market” Competition Analysis – But It Is Wrong.

CSXT states that the applicable regulations require NS to “identify and address relevant markets and issues,” and to “demonstrate both the relevance of the markets and issues analyzed and the validity of their methodology” as part of its marketing analysis.³² CSXT, in the several documents it has filed in this and in the CSXT Related Proceedings, has repeatedly narrowed the relevant market to as small of a market as possible – direct rail access by CSXT to NIT.³³ It is this market that CSXT seems fixated on to the exclusion of truck and drayage access to the same, rail, truck, drayage or barge³⁴ access to other terminals at the Port of Virginia and to rail, truck, drayage or barge access to any port along the eastern United States.

³² CSXT Petition at 8, citing 49 C.F.R. § 1180.7(a).

³³ Let us face it, NIT has direct rail service today by two railroads – NS and NPBL. This will not change with control approval. The issue is not NS’s control. The issue is that CSXT just does not like the rate that NPBL charges to switch traffic to CSXT.

³⁴ Often overlooked is the fact that the Port of Virginia is also served via barge and the Richmond Marine Terminal which provides a separate inland terminal connection for import and export traffic with CSXT direct access, and NS access via local switch.

https://www.portofvirginia.com/wp-content/uploads/2025/04/POV_2025-RMT.pdf.

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On its face, CSXT's arguments that NS has failed to provide information on relevant markets and issues related to those markets is facetious. NS has done precisely the opposite. NS has listed all of the different competitive options and their characteristics and costs, not only from NIT but from other East Coast Ports.³⁵ CSXT complains that NS has failed to land on one definition of "relevant market" and stick with it. But the regulations do not require such a narrow construct. Instead, NS has provided information on all of the potential relevant markets. Just because CSXT would like to artificially narrow the relevant market to only NIT does not mean that NS's Revised Application is "deficient" so as to be rejected. CSXT can make whatever arguments it wants to make on "relevant" market, but it does not get to pick and choose how NS presents its market information.

But even if the relevant market is, as argued by CSXT, as narrow as the movement of intermodal traffic through NIT, NS submitted extensive evidence on traffic within that market through the Fappy Reply Verified Statement. Mr. Fapp compared intermodal movements through NIT by both CSXT and NS through NIT for a recent seven (7) year period and included information for the same seven (7) year period by competitive lane.³⁶

NS has made a complete case with regard to the relevant market (or markets) and the impact, or lack of impact, of the Board granting its authority for proposed application. The application is not deficient because NS has delineated an inclusive market that recognized all the relevant competitive elements and provided a competitive analysis for all of these markets. CSXT states that "[i]t's not up to the Board to determine what the relevant markets are in a

³⁵ CSXT Petition at 8.

³⁶ See Fapp Reply VS, attached hereto, at 2.

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control proceeding,”³⁷ but that is not true. In fact, it is precisely for the Board, after receiving input and argument from parties to the proceeding to determine the proper market for evaluation.³⁸ NS has presented its views to the Board. If CSXT chooses to argue that the only relevant market for evaluation is that defined as only rail, only to a single terminal, and only intermodal, and only at NIT, then it is free to do so, just as NS is free to provide information should the Board (correctly) decide that the relevant market must be more inclusive to capture the competitive elements at play with respect to the subject intermodal traffic.

Certainly, addressing competition in a more extensive manner to reflect each competitive force affecting the subject traffic is not a reason for dismissing the Revised Application as “deficient.” Given that the Board will decide as to the relevant market and competition within that market, it is only wise for an applicant in a control proceeding to provide the Board with all information relevant to the Board’s determination of what is and is not the applicable market.

E. CSXT Argues That The Application Is Deficient By Failing To Identify Stations That Would Experience A “2-to-1” Reduction In Competitive Access, Even Though NS Said There Would Be None.

NS provided sufficient competitive analysis in its Minor Application and its Revised Application to support its determination that there would be no 2-to-1 points created as a result of the proposed transaction. NIT has been served for over 100 years by NPBL and NS (and its predecessors). NS’s acquisition of the majority of NPBL shares, and its control of three NPBL Board of Director seats (seats that CSXT actually supported in creating), has not, and will not,

³⁷ CSXT Petition at 10.

³⁸ See, e.g., Bessemer and Lake Erie R. Co. – Acquisition and Operation – Certain Rail Lines of CSX Transp., Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, N.Y., FD 36347 (Decision No. 7), slip op. at 13 (STB served February 25, 2021) (Then-Board Member Fuchs, dissenting) (taking issue with an earlier Board decision in the proceeding as ignoring certain important facts in determining the relevant market).

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result in NPBL being merged into the NS system. In fact, it has not resulted in NS controlling the board at all, as CSXT controls 2 and the sixth is +The transactions will not result in any changes to NPBL's marketing plan, its operations, its labor personnel, the Board make-up, the 1897 governing agreement, or the rate-setting methodology.

CSXT falsely claims that "NS argues that the elimination of CSXT as the only competition to NS for on-dock rail at NIT through NS's control of CSXT's access to NIT will have no adverse effect."³⁹ But NS did not make that argument, and the underlying assumption – that NS control over NPBL has and will eliminate CSXT's competitive access to NIT – is soundly refuted by evidence in the record.⁴⁰ It is not true that the grant of the requested control authorization will result in the elimination of CSXT as the only competition to NS for on-dock rail at NIT. CSXT will have the same access that it has today. And competition, even if one views the relevant market as being only NIT, will continue to be robust. CSXT forgets that both CSXT and NS are competing against trucks, who hold the majority market share of traffic to/from NIT. NS control of NPBL will not eliminate that competitive option; yet alone CSXT's ability to continue to use NPBL. If CSXT believes otherwise, it is free to argue that in its comments, but CSXT's incorrect characterization is not a reason to ignore the competitive analysis that NS submitted or to reject the Revised Application.

³⁹ Petition at 10. CSXT's reasoning is perplexing as no party is talking about eliminating CSXT's ability and opportunity to compete at NIT. CSXT can and does compete at NIT today and that will not change in the future. CSXT wants direct rail access. But it already has that access. If NPBL's switch rate in combination with CSXT's division requirement makes an "all rail" CSXT/NPBL move not competitive to NS's "all rail move," CSXT can lower its own division to make its "all rail" rate more competitive. CSXT will not do so because drayage at NIT, and CSXT's focus on VIG, provides CSXT with all of the access it needs to compete at the POV, while maintaining CSXT's desired profit margins.

⁴⁰ See, e.g., Fapp Reply VS at 2 (discussing how he analyzed, and put into the record, "the low cost of drayage to and from the NIT and its impact on rail use in the market").

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As it stands, there will be no change to CSXT access to NIT via the NPBL switch as a result of Board approval of this proposed transaction. Further, notwithstanding the claims of CSXT,⁴¹ CSXT has rail access to NIT via the NPBL switch today, in addition to the service it has to NIT via drayage and the access to VIG, and should the authority requested be granted, CSXT will continue to have that rail access to NIT via the NPBL switch in the future.

III. NS HAS DEMONSTRATED THAT PUBLIC BENEFITS ARISING FROM THE PROPOSED TRANSACTION WOULD OUTWEIGH ANY LIKELY POTENTIAL ANTICOMPETITIVE HARMS.

NS's future authorized control of NPBL will not result in any anticompetitive effects, as is demonstrated in the Revised Application. This is so whether the focus is on the original ICC approval back in 1982⁴² or the going-forward approval sought in this proceeding. But the question for the Board is whether NS's future control of NPBL passes muster under the statute. The evidence submitted in this proceeding demonstrates that there is a strong, highly competitive environment not only at NIT, but also at the Port of Virginia and the East Coast of the United

⁴¹ CSXT's expert begins with the assumption that "NSR control of NPBL eliminates an independent rail routing to the POV NIT facility and shippers that utilize that facility." Verified Statement of Nathan Miller, at CSXT-10-23. This reasoning is perplexing. Is he saying that NPBL is an "independent rail routing today" that will be eliminated by the future authorization of NS control? Or is he saying that NPBL has not been an "independent" rail routing since 1982, a position that CSXT has never advocated? Or is he saying the establishment of the 2010 uniform cost-based rate (which is consistent with the principles of the pre-1982 NPBL governing agreement) is what eliminated NPBL's independence? None of this is well articulated by CSXT. The simple truth is that future NS control of NPBL will not eliminate an "independent" rail routing. NS control will change nothing in how NPBL has operated for 43 years now or how it has been governed since adopting of the 1897 Operating Agreement.

⁴² As NS has consistently stated, this is not about "approving" or "authorizing" NS's 1982 control of NPBL. NS is not seeking retroactive authority, but only control authority for the future. CSXT's attempts to selectively relitigate the past are not consistent with Board precedent or the transaction that NS has asked the Board to approve.

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States for import and export intermodal rail transportation.⁴³ The authorization sought by NS will not change that because the authorization will not affect the adherence to the underlying principles that governed NPBL before the 1982 transaction, governed NPBL's adoption of the 2010 switch rate, and will govern any future switch rate of NPBL.

Nevertheless, NS has demonstrated that, by granting its approval for the NS continuation of control of NPBL, the Board will enable the continuation of public benefits going forward. Ensuring that NPBL continues to adhere to the uniform and cost-based principles of the 1897 governing agreement in adopting future switch rates will certainly provide a significant public benefit. Further, as discussed in the Revised Application, NS's position as a majority stockholder of NPBL provided NPBL with greater access to capital markets, lower operating costs, and efficiencies,⁴⁴ each of which would continue a public benefit upon approval of this application (and would cease to exist if this application were not approved).⁴⁵

This public transportation benefit is important in meeting significant transportation needs. Indeed, although one would not know this from CSXT's arguments, there are customers at the Port of Virginia that rely on domestic rail services provided by NPBL to provide connections to

⁴³ Of course, NPBL serves customers other than NIT, and those customers originate and terminate for the domestic market traffic other than intermodal containers. The continuation of uniform, cost-based switching services provided by NPBL further ensure that these customers are not harmed. NS has presented evidence that if NPBL were to adopt a discriminatory rate just for CSXT intermodal traffic, that, consistent with the NPBL's 1897 governing agreement, would require NPBL to raise its rate to these other NPBL customers. This may benefit CSXT but it is certainly not in the public interest.

⁴⁴ Although these benefits derive from being affiliated with NS, none of these benefits require NPBL's full integration with NS via integrated marketing and operating plans.

⁴⁵ CSX Corp. – Control – Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al., FD 28905 (Sub-No. 27), slip op. at 3 (STB served July 15, 1997) (quoting an ICC decision, served December 1995, in the same underlying docket and noting that efficiency gains experienced by the carrier can be expected to be passed on to the general public in presence of competition).

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NS and CSXT routes. Adherence to the uniform, cost-based switch that has been a historic hallmark of the NPBL services is important to these customers. CSXT's proposal and arguments would harm these customers.

CONCLUSION

NS submitted a Revised Application upgrading its filing from a minor application to a significant application, as directed by the Board. This revised submission included all the information requested in the Board's March 14 decision. The application reaffirmed that NPBL is a neutral, cost-based operator with no bias toward any railroad, customer, or commodity type. It also highlighted the competitive nature of intermodal transport and confirmed that CSXT is NPBL's largest customer. It also reconfirmed that NS's future control of NPBL will not result in the substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Despite this, CSXT filed a petition to reject the Revised Application, arguing it was deficient—not because it lacked required information, but because it did not provide certain data in a certain form and did not mimic CSXT's approach in a previous, factually distinct case. CSXT provided no legal precedent to support its claims. CSXT's petition is based on misstatements and flawed assumptions. The Board's precedent and regulations provide that NS is to be provided “the greatest leeway to develop the best evidence on impacts” for its specific application and further that applicants should be “free to choose the type(s) and format” of that evidence.” NS did precisely that. NS's Minor Application and the Revised Application included market shares, traffic flows, interchange data, use of other modes, and competition between other ports and terminals and much, much more. CSXT ignores this and would require NS and the Board to review only the data and the format that CSXT mandates. This approach should be

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rejected. The Revised Application follows the Board's regulations and its decisions and should be accepted.

Respectfully submitted,

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June 25, 2025

Attorneys for Norfolk Southern Corporation and
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CERTIFICATE OF SERVICE

I certify that, on June 25, 2025, in keeping with 49 CFR §1114.21(f), I have caused to be served a copy of the foregoing Reply to CSXT's Petition to Reject Norfolk Southern's Revised Application 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

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
– ACQUISITION OF CONTROL –
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY’S REPLY TO CSX TRANSPORTATION, INC.’S PETITION TO REJECT
NORFOLK SOUTHERN’S REVISED APPLICATION**

EXHIBIT A

REPLY VERIFIED STATEMENT OF DANIEL FAPP

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36836

)
)
) **Norfolk Southern Corporation**
) **Norfolk Southern Railway Company**
) **– Acquisition of Control –**
) **Norfolk & Portsmouth Belt Line**
) **Railroad Company**
)
)

Reply Verified Statement

of

Daniel L. Fapp
Senior Vice President

L. E. Peabody & Associates, Inc.
ECONOMIC CONSULTANTS

On Behalf Of

Norfolk Southern Railway Company

Date: June 25, 2025

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I. INTRODUCTION

My name is Daniel L. Fapp, and I am a consultant and Senior Vice President of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. I am the same Daniel L. Fapp that submitted an Opening Verified Statement in Surface Transportation Board (“STB” or “Board”) Docket No. FD 36836, *Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line R. Co.* on February 14, 2025 (“Opening VS”) and a Supplemental Verified Statement on June 13, 2025 (“Supplemental VS”) included in Norfolk Southern Corporation and Norfolk Southern Railway Company¹ (collectively “NS”) Supplement and Perfection of Application (“Supplemental Application”). A copy of my credentials was included as Exhibit No. 1 to my Opening VS.

I was requested by Counsel for NS to respond to CSX Transportation, Inc.’s (“CSXT”) Petition to Reject Norfolk Southern’s Revised Application (“CSXT Petition”) filed June 20, 2025 in the instant proceeding, including responding to the Verified Statement of Dr. Nathan Miller (“Miller VS”) and the Verified Statement of Ms. Julie M. Carey (“Carey VS”) included with the CSXT Petition.

The results of my review are summarized in the remainder of this Reply Verified Statement (“Reply VS”) under the following topical headings:

- II. Traffic Movements Through Norfolk International Terminal
- III. Port of Virginia
- IV. NPBL Rate and Variable Cost Analyses.

¹ Norfolk Southern Railway Company is a wholly owned subsidiary of Norfolk Southern Corporation, a non-carrier holding company.

II. TRAFFIC MOVEMENTS THROUGH NORFOLK INTERNATIONAL TERMINAL

CSXT makes several claims about information provided by NS in its Supplemental Application as it pertains to the market for intermodal traffic originating and terminating at Norfolk International Terminal (“NIT”), including an alleged lack of information about the market for intermodal traffic. Those claims are unfounded.

First, CSXT claims that NS “virtually ignores NIT” and fails to address whether the movement of intermodal traffic through NIT is a relevant market, instead diverting attention to and focusing on intermodal traffic moving through the two (2) Port of Virginia (“POV”) intermodal terminals.² This allegation is false. Exhibit__DLF-7 to my Supplemental VS compares the intermodal traffic originated and terminated at NIT by both CSXT and NS for the seven (7) year period 2017 through 2023. Moreover, Exhibit__DLF-5 to my Supplemental VS shows the intermodal container volumes transported by CSXT and NS in traffic lanes with and without intramodal competition that originate and terminate at the NIT for the same seven (7) year time period. Exhibit__DLF-5 is further supported by my workpapers which show the intermodal lanes served by CSXT and NS from the NIT and the geographic areas where the two (2) railroads compete for intermodal traffic to/from this terminal.³ Although NS believes the relevant market is not simply NIT, even if it was, as argued by CSXT, NS certainly submitted a significant amount of analysis precisely discussing NIT.

Second, Dr. Miller states that for shippers using NIT, the NPBL-CSXT routing does not currently provide an economic alternative to a single-line NS routing because NS’s control of the NPBL eliminates a so-called ‘independent’ rail routing to NIT.⁴ Dr. Miller disregards my analysis

² See, CSXT Petition at 9.

³ See, Supplemental VS workpaper “Exhibit__DLF-5.xlsx,” tabs “Originating Comp,” “Originating No Comp,” “Terminating Comp” and “Terminating No Comp.”

⁴ See, Miller VS at 1-2.

demonstrating the cost-effectiveness of drayage to and from the NIT and its impact on rail use in the market. My Supplemental VS demonstrated that CSXT's drayage costs is substantially lower than an all rail NPBL-CSXT movement resulting in CSXT increasing its market share from NIT over time.⁵

Third, Dr. Miller also disregards the fact that although NS may have the majority ownership of NPBL, NS has not used that ownership to change the "independent" nature of NPBL. NPBL still charges a uniform cost-based tariff rate based upon its organizational charter. This is the same approach NPBL has been guided by both before and after NS majority ownership. NS ownership did not change the rate making process or the neutrality of NPBL's operations. Given NPBL's cost-based approach, NPBL, for all intents and purposes, remains an "independent" railroad operating in the same manner as it has since 1897. If CSXT cannot compete using NPBL's rate, that is the result of either CSXT's division requirements being too high or a function of the marketplace, not NS using market power to take away the independent nature of the NPBL.

Fourth, Dr. Miller and Ms. Carey state that absent effective rail-on-rail competition at NIT, NS has {{[REDACTED]}} percent market share of direct rail service at NIT and {{[REDACTED]}} percent market share when considering dray movements.⁶ They claim therefore the share of traffic served by CSXT at NIT is "{{[REDACTED]}}" and imply that dray movements do not provide effective competition.⁷ There are several issues with Dr. Miller and Ms. Carey's allegations. To begin with, they focus on a single year (2023) while ignoring other years in which CSXT had shipped substantially more intermodal traffic through NIT. While CSXT volumes dipped in 2023 as compared to prior years, CSXT's market share was above {{[REDACTED]}} percent of NIT intermodal traffic in the years prior to

⁵ See, Supplemental VS at 25.

⁶ See, Miller VS at 5, Carey VS at 1-2.

⁷ *Id.*

2023.⁸ In addition, the STB previously determined that even “{{[REDACTED]}}” modal shares can indicate the presence of effective modal competition in a market. In its decision in STB Docket No. 42022, *FMC Wyoming Corp. and FMC Corp. v Union P. R. Co.*, served May 12, 2000 (“*FMC May 2000 Decision*”) the STB determined that a {{[REDACTED]}} percentage (12 percent) of shipments by truck indicated the railroad faced effective competition.⁹

Fifth, Ms. Carey states that the NS application does not empirically show that its control of the NPBL had no effect on otherwise prevailing dynamics for movements to NIT, and such a showing “would begin with preliminary screens to ascertain if sufficiently high shares and concentration exists to raise concern of competitive impact” on NIT shipments.¹⁰ She then states that NS’s alleged high market share at NIT in 2023 shows that NS’s Supplemental Application must present a “competition (*sic*) analysis.”¹¹ Ms. Carey fails to take into consideration the extensive data presented in my Exhibit__DLF-4, which shows CSXT’s share of NIT traffic increased from less than {{[REDACTED]}} percent of the NIT market share in 2008 to over {{[REDACTED]}} percent in 2021.¹² In simple terms, CSXT went from shipping virtually no containers through NIT in 2008 to having over one-sixth of the market in 2021. This clearly indicates that CSXT is not foreclosed from the NIT intermodal market. To the extent CSXT believes it could move more containers by rail if NPBL would lower its rate, which may or may not be the case, that is not a factor caused by NS’s control of NPBL.

⁸ See, Supplemental VS Exhibit_DLF-7.

⁹ See, *FMC May 2000 Decision* at 16 (“We conclude that the potential for conversion to motor carriage is sufficient to discipline UP’s rail rates. * * * [W]e are persuaded that the continued threat of a potential conversion to truck provides an effective constraint on UP’s rail rates.”).

¹⁰ See, Carey VS at 1.

¹¹ See, Carey VS at 2.

¹² CSXT transported {{[REDACTED]}} out of {{[REDACTED]}} NIT containers in 2008 and {{[REDACTED]}} containers out of {{[REDACTED]}} containers in 2021.

III. PORT OF VIRGINIA

Ms. Carey makes several statements regarding shipments from the various intermodal terminals at the Port of Virginia (“POV”) in an apparent effort to claim that NS did not analyze the intermodal market from the perspective of the entire port area.

First, Ms. Carey claims that I did not calculate market shares for CSXT and NS on competitive and non-competitive lanes for traffic originating at all POV terminals and that I did not discuss these findings.¹³ Ms. Carey is incorrect. Market share can be shown either based on volumes or as percentages. Exhibit__DLF-5 to my Supplemental VS shows NS and CSXT’s market share in terms of volumes for each railroad from each terminal within the POV.¹⁴ As to her claim that I did not discuss these findings, Exhibit__DLF-5 and my supporting workpapers speak for themselves and clearly show NS and CSXT’s share of traffic on lanes moving to and from the POV.

Second, Ms. Carey claims that CSXT’s alleged “paltry” volume of dray movements from POV terminals make up only {{[REDACTED]}} percent of total container movements through POV and that this shows drayage services is not an effective economic competitor to NPBL’s all rail movements.¹⁵ There are two (2) issues with Ms. Carey’s claim. Ms. Cary focuses on 2023, a year in which CSXT dray movements from the NIT (the only terminal CSXT drays containers in its normal course of business) was low and does not recognize that two years prior in 2021 CSXT’s dray percentage was nearly {{[REDACTED]}} the 2023 amount. In addition, Ms. Carey made an apples-to-oranges comparison by including shipments from Virginia International Gateway (“VIG”) in her calculation. As I explained in my Supplemental VS, CSXT does not dray containers from VIG

¹³ See, Carey VS at 2, fn 6.

¹⁴ If she desired to show the market share in percentage terms, Ms. Cary could have easily done so using the data in either my Exhibit__DLF-5 or from my supporting workpapers.

¹⁵ See, Carey VS at 3.

to its Pinner's Point intermodal facility. It relies entirely on access via a switching railroad, whose switching rate is actually comparable to NPBL's.

Third, Ms. Carey states that NS failed to demonstrate the feasibility of short-haul truck movements at POV for current or future volumes.¹⁶ She then includes a hypothetical example in which she asserts that it would not be possible to dray 1,204 containers per day through the NIT.¹⁷ Ms. Carey's example shows dray is possible and also highlights the efficiency of drayage operations at NIT. My Supplemental VS Exhibit__DLF-9 contains the weekly and annual volumes of containers that moved by truck through NIT and shows that NIT has the capacity to move volumes higher than suggested by Ms. Carey. Exhibit__DLF-9 also shows that the NIT handled 706,160, 770,278 and 601,528 containers by truck in 2021, 2022 and 2023, respectively. These annual volumes equate to 1,934, 2,110 and 1,648 containers per day, respectively, or considerably above the 1,204 containers per day indicated by Ms. Carey.¹⁸ Moreover, Exhibit__DLF-9 demonstrates that during its July 17, 2022 peak, NIT handled 18,448 containers in a week or 2,635 containers per day. Such a demonstration contradicts Ms. Carey's expectations and shows the feasibility of the dray alternative at NIT.

IV. NPBL RATE AND VARIABLE COST ANALYSES

I included in my Opening VS a comparison of switching rates charged by other switching railroads at East Coast and Gulf Coast ports on a per container and on a per container-mile basis to that charged by NPBL.¹⁹ I also included a calculation in my Opening VS of NPBL's estimated variable costs of service per railcar. Ms. Carey claims that these analyses were insufficient, failed to compare NPBL's switch rates to other short line switch rates and developed inaccurate rate

¹⁶ See, Carey VS at 3.

¹⁷ See, Carey VS at 3, fn 17.

¹⁸ Based on average daily values over a three (3) year period.

¹⁹ See, Opening VS at 5-7 and Exhibit__DLF-3.

comparisons and variable cost estimates.

First, Ms. Carey claimed that I did not compare NPBL's switch rates to other short line switch rates, in large part because I did not include confidential negotiated rates in my sample.²⁰ Ms. Carey does not recognize that commercially negotiated switch rates are generally included in confidential agreements, which are not publicly available. I clearly noted this fact in my Supplemental VS when I did not include CSXT's negotiated switch rate with the Commonwealth Railroad in my analysis of rail switch rates from VIG.²¹ In simple terms, Ms. Carey's claim is that I did not include information in my analysis to which I did not have access.²² Absent the availability of confidential information, my rate comparison based on publicly available tariff rates is the best comparison available and clearly shows the market for port switch operations.

Second, Ms. Carey states that my rate comparison was based on an average of 2.5 containers per railcar and that there is no support for using this average number of containers.²³ Ms. Carey is wrong. The switching carrier rate comparison included in Exhibit __DLF-3 of my Opening VS shows that I developed the rate comparison assuming 2.0, 2.5 and 3.0 containers per railcar. In developing Table 2 of my Opening VS, I used the rates based on 2.5 containers per railcar for that particular table because it is the midpoint value of my analysis. In addition, the use of 2.5 containers per railcar is consistent with the average {{[REDACTED]}} containers per railcar NS utilizes on shipments to and from the VIG as shown in my Supplemental VS workpapers.²⁴ Finally, it is common for railroads to use a value of 2.5 containers per railcar when evaluating international

²⁰ See, Carey VS at 3-4 (noting that "NS never looked at whether negotiated switch rates at other facilities were also lower than tariff rates").

²¹ See, Supplemental VS at 28.

²² Ms. Carey also states that I also disregarded commercial agreements for rail lift charges. See, Carey VS at page 3, note 20. Ms. Carey fails to recognize that port lift charges are set by tariff in virtually all cases.

²³ See, Carey VS at 4, fn 25.

²⁴ See, Supplemental VS workpaper "04.25 CWRV NS INTERMODAL TRACKAGE RIGHTS.xlsx," tab "NS INVOICE - New Format" which shows in April 2025 NS moved {{[REDACTED]}} intermodal railcars and {{[REDACTED]}} containers for an average of {{[REDACTED]}} containers per railcar.

intermodal movements. This is because the size of the well on most intermodal railcars range from 40 to 53 feet and can accommodate both 20- and 40-foot international containers.²⁵ Railroads and ports attempt to maximize the number of containers on a railcar, and it is standard practice to place two (2) 20-foot containers and one (1) 40-foot container on a railcar. In some cases, carrying three (3) containers is not possible and the railcars will carry two (2) containers. The use of 2.5 containers per railcar reflects the fact that railroads attempt to maximize their productivity by placing more than two (2) containers on a railcar.

Third, Ms. Carey's comparison of the NS contracted switch rate of {{[REDACTED]}} per container for movements to VIG to the NPBL rate of \$105 per container for movements to NIT is incorrect.²⁶ As indicated above, my Supplemental VS workpapers show that NS carried on average {{[REDACTED]}} containers per railcar to and from VIG. If Ms. Carey wished to compare the confidential contract rate on the movement from VIG to the tariff rate for movements to NIT, the proper comparison would be to divide the NPBL tariff rate of \$210 per railcar by the {{[REDACTED]}} containers actually realized by NS resulting in a rate of {{[REDACTED]}} per container.

Fourth, Ms. Carey states I did not develop a NPBL specific variable cost analysis.²⁷ Ms. Carey is incorrect. As Ms. Carey acknowledges, I relied upon NPBL's actual operating costs as reported in its Annual Financial Reports to develop my estimates of NPBL's variable costs.²⁸ Based on STB precedent, I could have relied upon the STB's Eastern Region URCS to calculate the NPBL's variable costs.²⁹ However, NPBL specific costs that I calculated are a better determination of NPBL's variable costs than relying upon the STB's URCS Eastern Region

²⁵ See, <https://www.up.com/customers/track-record/tr121421-what-is-a-well-car-rail-car.htm>, and <https://www.bnsf.com/about-bnsf/virtual-train-tour/flatbed.html>

²⁶ See, Carey VS at 4, fn 22.

²⁷ See, Carey VS at 4, fn 24.

²⁸ *Id.*

²⁹ See, *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads*, Ex Parte No. 589 (STB served March 28, 2003).

variable costs. Ms. Carey states that she raised this concern in response to the original application, filed back in February of 2025. My response to her then was the same as it is today. In addition, Ms. Carey herself did not develop an estimate of the NPBL's variable costs.

Fifth, Ms. Carey states that NS failed to identify a single comparison railroad to NPBL that is jointly or independently owned, charges high tariff rates and fails to move traffic volumes for one railroad in which it interchanges.³⁰ NS was not required to identify such a railroad because the railroad described by Ms. Carey would not be comparable to NPBL. Ms. Carey implies that NPBL does not transport any traffic for CSXT under the tariff rate applicable to all NPBL traffic. As my Supplemental VS stated, however, over the 10-year period 2013 through 2022, NPBL interchanged on average {{[REDACTED]}} percent of its railcars with CSXT.³¹ Simply stated, CSXT is NPBL's largest railroad customer. Well over half of the traffic that moves on the NPBL is received or delivered to the CSXT.

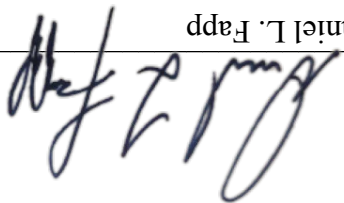
* * *

³⁰ See, Carey VS at page 4.

³¹ See, Supplemental VS at 11.

VERIFICATION

I, Daniel L. Fapp, verify under penalty of perjury that I have read this Supplemental Verified Statement on behalf of the Norfolk Southern Railway Company, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Daniel L. Fapp

Executed on June 25, 2025