

CSXT-18

309962

ENTERED
Office of Chief Counsel
August 15, 2025
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

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

CSX TRANSPORTATION, INC.'S
MOTION TO MODIFY THE PROCEDURAL SCHEDULE

EXPEDITED HANDLING REQUESTED

John P. Patelli
Steven C. Armbrust
Jason M. Marques
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Peter W. Denton
Anthony J. LaRocca
Molly Bruder Fox
Linda Stein
Sally Mordi
Steptoe LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for CSX Transportation, Inc.

Dated: August 15, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

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

CSX TRANSPORTATION, INC.'S
MOTION TO MODIFY THE PROCEDURAL SCHEDULE

CSX Transportation, Inc. (“CSXT”) respectfully requests that the Surface Transportation Board (“STB” or “Board”) modify the procedural schedule in this matter pursuant to 49 C.F.R. § 1104.7(b). In light of outstanding discovery from Norfolk Southern Corporation and Norfolk Southern Railway Company’s (collectively, “NS”) and a pending discovery motion before the Board, CSXT seeks a limited extension of the August 27, 2025 deadline to submit comments in opposition to NS’s control application in this proceeding to Monday, September 8, 2025.

The requested 12-day extension would align the comment deadline with the deadline for responsive applications. CSXT would not oppose similar limited extensions to later deadlines in the proceeding, although none may be necessary given that the deadline for responses to comments and responsive applications is already aligned at October 27, 2025.

As explained below, good cause exists for granting this necessary extension. CSXT is filing this motion today, because 49 C.F.R. § 1104.7(b) requires CSXT to file a request for extension “not less than 10 days before the due date.” CSXT is

hopeful that the outstanding discovery issues will be resolved in sufficient time to submit comments by the new September 8, 2025 deadline. But if the Board grants this motion, CSXT reserves the right to request a further extension within 10 days of the new deadline for comments, or by August 29, 2025, if the relevant discovery issues are not resolved by that date.

BACKGROUND

As the Board is aware, over the last four decades, NS has improperly controlled Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) without the required Board authorization, allowing NS to transform NPBL from a neutral switching railroad into a tool wielded by NS to engage in anticompetitive conduct. Extensive background on the relevant facts underlying this dispute can be found in prior briefing and is not repeated here.

In this control proceeding, the Board entered a procedural schedule on July 10, 2025 that laid out the following submission deadlines: notice of intent to participate by June 23, 2025, descriptions of anticipated responsive applications by August 12, 2025, and comments in opposition to the application by August 27, 2025. CSXT has met the first two deadlines.

Despite CSXT’s best efforts, at every turn throughout this proceeding, NS has dragged its feet to prevent CSXT from accessing information and materials relevant to this proceeding. For example, even after acknowledging that the documents and information that NS produced or disclosed in the district court antitrust lawsuit against NS and NPBL¹ were relevant and representing to the Board in its minor application that the district court record would be “ready for presentation” and is “available to the parties and the Board” in this proceeding, NS dithered, raising

¹ *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530-MSD (E.D. Va. Oct. 4, 2018).

pretextual objections to obstruct CSXT's access and forcing CSXT to file a motion to compel to access the materials. That motion was granted by the Board on July 25, 2025.

Now, there are two outstanding discovery matters that are unlikely to resolve before the August 27, 2025 deadline to submit comments, thereby preventing CSXT from fully presenting its evidence on that date: (1) the production of certain discovery from NS, and (2) CSXT's Motion to Compel the Appearance and Testimony of Cannon Moss.

(1) Discovery from NS: CSXT has diligently pursued discovery from NS for over five months, but less than two weeks before CSXT's submission deadline, NS has told CSX that it has not yet completed its production. CSXT first sought discovery in March 2025, serving two sets of requests for production on NS regarding materials from the district court proceeding and documents and communications between NS and NPBL. CSXT followed up in June with a third set of requests for production and a set of interrogatories regarding agreements and communications with other carriers and operational decisions. Finally, a fourth set of requests for production limited to materials implicated in the above-described motion to compel followed in July. NS has been producing documents on a rolling basis, making its fourth production consisting of over 600 documents after 5:00 pm yesterday, August 14, 2025. In response to CSXT's inquiries, NS informed CSXT this morning that it has not completed its productions and "expects to have subsequent rolling productions." (Ex. 1.)

(2) Motion to Compel Cannon Moss: Because NPBL categorically refused CSXT's extensive efforts to take the deposition of Cannon Moss, President and General Manager of NPBL, CSXT filed a motion to compel on July 31, 2025, to which NPBL replied on August 5, 2025. This motion is currently pending before the Board.

Before seeking relief from the Board, CSXT first tried repeatedly to schedule Mr. Moss's deposition throughout the month of July: On July 2, 2025, counsel for CSXT emailed NPBL about scheduling the deposition of Mr. Moss at the end of July should the Board accept NS's revised application. After ignoring four emails from CSXT on this topic that were sent on July 2nd, July 10th, July 16th, and July 21st, counsel for NPBL finally responded on July 22nd asserting that NPBL did not see a need or justification for CSXT to depose Mr. Moss. (CSXT's Mot. to Compel the Appearance and Testimony of Cannon Moss 2, July 31, 2025.) Nonetheless, NPBL suggested that they might produce him for a deposition if CSXT were to serve a notice of deposition with an explanation of the cause or reason for the deposition. (*Id.*) CSXT served that notice on July 24, 2025, and on July 29, 2025, NPBL again refused to produce Mr. Moss for the deposition. (*Id.* at 3.)

Mr. Moss is the President and General Manager of NPBL—the subject of NS's application for “Acquisition of Control of Norfolk & Portsmouth Belt Line Railroad Company.” Mr. Moss's deposition testimony is important for CSXT's comments submission because Mr. Moss has knowledge regarding CSXT's Rate and Service Proposal and Governance Proposal from 2024, both of which are central to this proceeding. Moreover, NPBL has already produced numerous communications sent or received by Mr. Moss subsequent to his 2020 deposition in the federal district court litigation. These include Mr. Moss's external communications with the Virginia Port Authority and Virginia International Terminals regarding Norfolk International Terminals' operations and NPBL's interoperability with the Port of Virginia. They also include Mr. Moss's external communications with CSXT employees regarding trackage rights negotiations, as well as information about the NPBL Board of Directors. CSXT should be able to question Cannon Moss about these and other documents and topics that are clearly relevant to the disputes in this proceeding.

As of yesterday, August 14, 2025, counsel for CSXT and NPBL have opened discussions regarding consensual resolution of this issue and CSXT is hopeful that the issue can be resolved without further Board intervention. However, even if the issue is resolved, it is unclear whether the deposition of Mr. Moss could be scheduled with sufficient time for CSXT to use the testimony in connection with the comments that it currently must file on August 27, 2025.

LEGAL STANDARD

49 C.F.R. § 1104.7(b) provides for extensions of time in matters before the Board. In relevant part, the regulation states that “[a]ny time period . . . may be extended by the Board in its discretion, upon request and for good cause.” In past cases, the Board has found good cause for extending procedural schedules in a wide variety of situations. *E.g.*, *N. Am. Freight Car Ass’n v. BNSF Ry. Co.*, NOR 42137, slip op. at 1 (STB served June 26, 2013) (extending discovery period where “timely completion . . . has been unavoidably delayed” due to counsel health issues and technical issues with document production); *Capitol Materials, Inc.—Petition for Dec. Order—Certain Rates and Practices of Norfolk S. Ry. Co.*, NOR 42068, slip op. at 6 (STB served Apr. 19, 2002) (granting an extension of the procedural schedule to allow sufficient time to comply with a new protective order); *SCIO Pottery Co. v. Consol. Rail Corp.*, NOR 40330, 1990 WL 287229, at *1 n.1 (ICC Jan. 18, 1990) (finding “a sufficient basis” for extending discovery based on movant’s assertion “that it needs additional time to complete desired discovery”).

Relevant here, the Board has previously recognized that deficiencies in the production of discovery materials is good cause for extension. *E.g.*, *E.I. Dupont De Nemours & Co.*, NOR 42125, slip op at 2 (STB served Sept. 11, 2012) (granting an extension of procedural schedule due to the non-moving party’s delayed production of documents and the complexity of the case). In addition to granting extensions for

the collection of discovery, the Board has also recognized that parties require time to develop the evidence from discovery for inclusion in submissions. *Rio Grande Indus., Inc., et al.—Purchase & Related Trackage Rts.—Soo Line R.R. Co. Line Between Kansas City, Mo. & Chicago, Il. (Rio Grande Indus., Inc.)*, FD 31505, 1989 WL 247000, at *1 (ICC Dec. 14, 1989) (granting extension to “deadline for parties to submit evidence in opposition to the application . . . due to the time required in the discovery process to develop evidence in support of or opposition to the application”); *Ariz. Elec. Power Coop., Inc.*, NOR 42113, slip op. at 1 (STB served Jan. 8, 2010) (granting a third motion to extend where contract production was delayed and an expert had to be replaced, which “delayed finalizing the evidence”).

In contrast, the Board has declined to find good cause in cases where the moving party has made no effort to justify its request for modification. *E.g.*, *CSX Transp., Inc.—Abandonment Exemption—in Clark, Floyd, Lawrence, Orange & Washington Cntys., Ind.*, AB 55 (Sub-No. 775X), slip op. at 1 (STB served Feb. 6, 2018) (noting that the movant made “no attempt to explain why it [was] unable to comply with the regulations in the extended time it ha[d] already been given”).

ARGUMENT

Under the existing procedural schedule, the deadline for comment submissions is set for August 27, 2025. In light of outstanding discovery from NS and pending discovery motions before the Board, CSXT is unlikely to have all of the discovery it needs to provide comments by the current deadline, much less time to finalize its comments based on that discovery. Accordingly, CSXT now moves for a limited 12-day extension of the comment submission deadline in order to receive and incorporate the relevant discovery. NS is not prejudiced by the requested modification. Good cause accordingly exists to modify the procedural schedule, and the Board should exercise its discretion to grant CSXT’s motion.

1. The remaining discovery is not complete today and is unlikely to be completed in the time provided by the current procedural schedule.

As explained above, discovery is not complete today and may not be completed before the August 27 comment submission deadline. Although CSXT has diligently sought relevant discovery from the related parties for months, and has previously moved the Board for relief where appropriate, the timing of the remaining discovery matters are ultimately dependent on other parties. NS has failed to complete its production in response to CSXT's discovery requests, and CSXT is reliant on NS to certify its completion. NS has not indicated that this delay is caused by anything that CSXT could influence, such as meeting and conferring over the scope of requests.

Furthermore, NPBL has refused to produce Mr. Moss for deposition, despite the demonstrated relevance of his knowledge and experience. CSXT timely moved to compel after attempts to negotiate with NPBL failed, but that motion is still pending, and even if granted now or otherwise resolved consensually by the parties, the deposition would take time to schedule and complete.

CSXT is entitled to full discovery before submitting comments, and anything less is prejudicial to its opposition. But even if NS completes discovery and NPBL produces Mr. Moss for deposition shortly before August 27, 2025, CSXT is also entitled to a sufficient period in which "to develop evidence in . . . opposition to the application." *Rio Grande Indus., Inc.*, FD 31505, 1989 WL 247000, at *1.

2. CSXT is seeking the minimum extension of time needed to complete discovery and prepare comments for submission.

CSXT understands that the Board, NS and NPBL all have an interest in not dragging out this proceeding unnecessarily. Therefore, CSXT's request for an extension is narrow and focused on discovery that is necessary to its opposition to

NS's application, and it is brought in good faith to prepare comments in opposition to NS's claims.

First, it is not clear what documents or how many documents NS still plans to produce. Second, Mr. Moss's deposition testimony will shed light on NPBL's communications with the Virginia Port Authority and Virginia International Terminals regarding Norfolk International Terminals' operations and NPBL's interoperability with the Port of Virginia, trackage rights negotiations with CSXT, communications with the NPBL Board of Directors, and information about CSXT's Rate and Service Proposal and Governance Proposal from 2024, all of which are relevant to this proceeding. Far from being a prolonged "fishing expedition," or a scam to delay proceedings, CSXT's pursuit of discovery is necessary to address NS's control application, and CSXT must be given an opportunity to pursue that discovery.

3. NS is not prejudiced by an extension of the procedural schedule.

Lastly, NS is not prejudiced by a limited extension of the procedural schedule. The extension sought is short, and NS's interests in the control proceeding are not affected. While this motion is limited to the August 27 deadline for "comments, protests, requests for conditions, and any other evidence and argument in opposition to the application," CSXT would not oppose similar limited extensions to later deadlines in the procedural schedule. There is ample room to accommodate all such deadlines in advance of the final statutory deadline for closing the record on January 6, 2026. But further extensions may be unnecessary, given that this request would align the deadline for comments and responsive applications at September 8, 2025, and that the deadline for responses to comments and responsive applications is already aligned at October 27, 2025.

Furthermore, because CSXT only seeks an extension for discovery to which it is already owed, NS risks no additional expenditure of resources beyond what it is already obligated to conduct, or any delay in obtaining its own discovery. And CSXT will comply with its existing discovery obligations under the current procedural schedule with respect to producing materials to NS. There is no justification for short-cutting discovery in this matter, particularly where the delay has been caused, in part, by NS's own actions. Despite CSXT requesting discovery in a timely manner—dating back to March 2025—NS has repeatedly dragged its feet and created obstacles for CSXT to obtaining relevant discovery. NS should not now benefit from its reticence.

4. Conclusion

CSXT accordingly requests that the Board modify the procedural schedule to include a limited 12-day extension for comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, from August 27, 2025 to September 8, 2025.

Because the current procedural schedule calls for any stakeholder comments to be filed by August 27, 2025, just 12 days from the date this Motion is filed, CSXT is asking for expedited consideration of this Motion. Specifically, CSXT requests that the Board direct any parties to respond to this Motion no later than August 19, 2025 and that the Board rule on this Motion no later than August 22, 2025. CSXT believes that expeditious relief is appropriate given the brief period before comments are due and the limited relief sought herein.

Dated: August 15, 2025

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton

Anthony J. LaRocca

Molly Bruder Fox

Linda Stein

Sally Mordi

Steptoe LLP

1330 Connecticut Ave., NW

Washington, DC 20036

(202) 429-3000

Attorneys for CSX Transportation, Inc

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

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

CSX TRANSPORTATION, INC.'S
MOTION TO MODIFY THE PROCEDURAL SCHEDULE

Exhibit 1

August 15, 2025 Email Thread – NS Productions

From: Spencer Naake <snaake@mullinslawgroup.net>
Sent: Friday, August 15, 2025 11:13 AM
To: Stein, Linda; William Mullins; Rose-Michele Nardi; John Edwards
Cc: Denton, Peter; Mordi, Sally; Fox, Molly Bruder; Goldschmidt, Lauren; Snyder, Elizabeth
Subject: [EXTERNAL] Re: FD 36836 - NS's Second Production of Documents and Responses and Objections to CSXT's Third Requests for Production

Linda,

NS's fourth production focused on documents related to the custodian Michael McClellan in response to RFP 20 and RFP 96. It is our good-faith belief that we have produced the requested documents consistent with your and Bill's ongoing discussions; however, should any additional documents be discovered as we continue to progress in discovery, we will promptly produce them. As to your other question, this was not NS's final production. We continue to review relevant documents and expect to have subsequent rolling productions.

Regards,

Spencer



Spencer Naake
Associate

2001 L Street NW, Suite 720
Washington, DC 20036

202-663-7829 Direct
202-441-1739 Cell
snaake@mullinslawgroup.net
mullinslawgroup.net

The above message may be privileged, confidential and protected from disclosure by attorney/client work product or other privileges. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.

From: Stein, Linda <LStein@steptoe.com>
Sent: Thursday, August 14, 2025 3:18 PM
To: Spencer Naake <snaake@mullinslawgroup.net>; William Mullins <wmullins@mullinslawgroup.net>; Rose-Michele Nardi <rnardi@mullinslawgroup.net>; John Edwards <jedwards@mullinslawgroup.net>
Cc: Denton, Peter <pdenton@steptoe.com>; Mordi, Sally <smordi@steptoe.com>; Fox, Molly Bruder <mbfox@steptoe.com>; Goldschmidt, Lauren <lgoldschmidt@steptoe.com>; Snyder, Elizabeth <esnyder@steptoe.com>
Subject: FW: FD 36836 - NS's Second Production of Documents and Responses and Objections to CSXT's Third Requests for Production

NS Counsel:

I received an out of office reply when I sent the below email to Bill Mullins a few minutes ago. Can one of you please respond today to my highlighted question below– has NS now completed its document production in this proceeding?

Thank you, Linda
Linda S. Stein
Partner
Practice Group Leader, Transportation

Step toe

Step toe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036
[+1 202 429 8185](tel:+12024298185) direct | [+1 202 415 7263](tel:+12024157263) mobile | LStein@step toe.com | www.step toe.com | [Step toe Bio](#)

From: Stein, Linda <LStein@step toe.com>
Sent: Thursday, August 14, 2025 6:03 PM
To: William Mullins <wmullins@mullinslawgroup.net>; Denton, Peter <pdenton@step toe.com>; Snyder, Elizabeth <esnyder@step toe.com>
Cc: Fox, Molly Bruder <mbfox@step toe.com>; Goldschmidt, Lauren <lgoldschmidt@step toe.com>
Subject: RE: FD 36836 - NS's Second Production of Documents and Responses and Objections to CSXT's Third Requests for Production

Bill:

We received NS's most recent production in the past hour. Per my email from last Friday, August 8, can you please let us know today whether NS has now completed its document production in this proceeding. I do not believe the cover letter with today's NS production answers this question.

Thank you, Linda
Linda S. Stein
Partner
Practice Group Leader, Transportation

Step toe

Step toe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036
[+1 202 429 8185](tel:+12024298185) direct | [+1 202 415 7263](tel:+12024157263) mobile | LStein@step toe.com | www.step toe.com | [Step toe Bio](#)

From: William Mullins <wmullins@mullinslawgroup.net>
Sent: Saturday, August 9, 2025 9:25 AM
To: Stein, Linda <LStein@step toe.com>; Denton, Peter <pdenton@step toe.com>; Snyder, Elizabeth <esnyder@step toe.com>
Cc: Fox, Molly Bruder <mbfox@step toe.com>; Goldschmidt, Lauren <lgoldschmidt@step toe.com>
Subject: [EXTERNAL] Re: FD 36836 - NS's Second Production of Documents and Responses and Objections to CSXT's Third Requests for Production

I can confirm that you will receive a large production on or before August 14. This will include the McClellan documents and other responsive documents.

I will need to get back with you on RFP 54.

I will get the answer and information requested for the data fields.



William Mullins

Managing Partner

2001 L Street NW, Suite 720

Washington, DC 20036

202-663-7823 Direct

703-862-0696 Cell

wmullins@mullinslawgroup.net

mullinslawgroup.net

The above message may be privileged, confidential and protected from disclosure by attorney/client work product or other privileges. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.

From: Stein, Linda <LStein@step toe.com>

Sent: Friday, August 8, 2025 8:18 PM

To: William Mullins <wmullins@mullinslawgroup.net>; Denton, Peter <pdenton@step toe.com>; Snyder, Elizabeth <esnyder@step toe.com>

Cc: Fox, Molly Bruder <mbfox@step toe.com>; Goldschmidt, Lauren <lgoldschmidt@step toe.com>

Subject: RE: FD 36836 - NS's Second Production of Documents and Responses and Objections to CSXT's Third Requests for Production

Bill:

Thank you for your email. Please let us know by close of business on August 14 whether NS has completed its document production in this proceeding, including the production of the documents identified in your August 5 email below. With the August 27 comments deadline fast approaching, it is important that we receive the complete NS document production as soon as possible.

Also, we have a few outstanding data questions. With respect to RFP 54, on June 23rd, CSXT responded to NS's questions about certain data fields identified in RFP 54 including "total freight costs." In that correspondence, CSXT also asked whether for requests bb and cc, PC Miller accurately reports route distance for each NS move. We have not received a response from NS and NS has not produced the "total freight costs" data field. Please let us know whether (1) your client intends to produce "total freight costs" in response to RFP 54; and (2) PC Miller accurately reports route distance for each NS move.

Finally, our experts are not able to confirm volumes reported by Mr. Fapp in his report from the produced NPBL data. Consequently, we request that NS provide the raw data that calculates the numbers in the file "FD36836_HC_2020_2025_IndustryVolume.xlsx" cited in Mr. Fapp's report.

Thanks, Linda

Linda S. Stein

Partner

Practice Group Leader, Transportation

Step toe

Step toe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Motion to Modify the Procedural Schedule in Finance Docket No. 36836 to be served electronically or by first class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, Applicants' representative, William Mullins, and all parties of record in this proceeding.

/s/ Jensen Matsuda
Jensen Matsuda
Attorney for CSX Transportation, Inc.
August 15, 2025