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August 15, 2025

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VIA E-FILINGChief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001ENTERED
Office of Chief Counsel
August 15, 2025
Part of
Public RecordRe: FD 36836, Norfolk S. Corp. & Norfolk S. Ry. Co. – Acquisition of
Control – Norfolk & Portsmouth Belt Line Rr. Co.

Dear Chief of Case Administration:

Norfolk Southern Corporation and Norfolk Southern Railway Company (“NS”) provides this brief letter in response to the August 15, 2025 motion filed by CSX Transportation, Inc. (“CSXT”), designated CSXT-18, asking the Surface Transportation Board (“Board”) to modify the procedural schedule to grant it extra time in which to file its comments (“Procedural Schedule Motion”). In that Procedural Schedule Motion, CSXT, however, continues to present a skewed representation of certain facts.

NS seeks to clarify certain representations for the record, focusing primarily on material facts omitted by CSXT in its pleading. NS then turns to the fact that CSXT foretells the fact that it will be returning to the Board to request further extensions of time, despite the fact that it is CSXT that has failed to produce a single document to NS in response to NS’s requests to CSXT for discovery. NS then turns to the fact that CSXT is seeking exactly the same relief that CSXT sought, and the STB rejected, with regard to aligning comments in opposition to the NS application with responsive applications. These considerations aside, NS will not object to the extension that CSXT specifically requests in its Procedural Schedule Motion (an alignment of the due dates for comments and responsive applications) but reserves the right to request an extension should CSXT continue to obfuscate and fail to produce discovery as it is required.

DISCUSSION**A. CSXT’s Procedural Schedule Motion Omits Several Material Facts**

Normally, a recitation of the history of a proceeding is not needed, but in this case, an understanding of that history puts the CSXT Procedural Schedule Motion into proper context. And once again, CSXT omits facts material to its motion. For example, CSXT alleges that NS

Chief of Case Administration

August 15, 2025

Page 2 of 4

“acknowledg[ed] that the documents and information that NS produced or disclosed in the district court antitrust lawsuit against NS and NPLB were relevant” in this proceeding, page 2, even though NS did no such thing¹ and despite the fact that the parties fought precisely that issue out before the Board.

Of more concern, though, is its mischaracterization – through omission – of the procedural schedule and the discovery process. Just reading the CSXT pleading without experiencing this proceeding is telling:

- “CSXT has diligently pursued discovery from NS for over five months....” CSXT-18 at 3.
- “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.” Id.
- “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.” Id.
- “Finally, a fourth set of requests for production ... followed in July. Id.

Reading this without the clarifications added by NS presents a tale that is not quite accurate.

For example, CSXT omits the fact that in March, NS proposed a procedural schedule that specifically provided that discovery should not even begin until after the Applicants’ application had been reviewed by the Board and accepted for processing. CSXT responded to that proposed procedural schedule on March 28, 2025 (CSXT-5). On April 9, 2025, and April 18, 2025, CSXT filed motions to compel. On April 24, 2025, the Board issued a housekeeping stay tolling NS’s response to the two motions to compel. That housekeeping stay was not lifted until June 13, 2025. Decision No. 5. The fact that the STB would permit CSXT’s propounding *any* discovery was in question before June 13, 2025, is a material fact that CSXT omits in its presentation to the ALJ and the Board. But that is not all.

The June 13, 2025, Board decision merely resolved the question of when discovery would be permitted to begin. That decision specifically reserved on whether to grant the two CSXT motions to compel. That issue was not decided until the Board served Decision No. 8, a decision that was served on July 25, 2025. So with regard to the vast majority of the production

¹ See NS-15, NS’s Reply in Opposition to CSXT’s Restated and Amended Motion to Compel Production of Documents (explaining that contrary to CSXT’s claims, NSR never acknowledged that the entire District Court record, which included addressing antitrust laws and the Virginia state laws, was relevant to this proceeding, and offering several other reasons why the scope of the discovery sought by CSXT was not appropriate). See also, Decision No. 8, slip op. at 4 (“On reply, Applicants argue that not all discovery from the district court case is relevant. Applicants argue that the district court proceeding focused on different statutes and laws than the Board proceeding will; according to Applicants, the district court proceeding was concerned with past actions, whereas Applicants’ submission to the Board pertains to future control of NPBL.”).

in this proceeding, there was no determination until *a few weeks ago* (and NOT “over five months” ago) that the requirement to produce the discovery that was the subject of the CSXT motions to compel was decided. Again, a material fact that CSXT omits in its presentation to the ALJ and the Board.

B. CSXT has already sought, and the Board has rejected, the Requested Relief.

On March 28, 2025, CSXT filed a Response to Norfolk Southern’s Revised Motion for Proposed Procedural Schedule, CSXT-5. CSXT argued that “the Board should extend the deadline for the submission of written comments to 90 days after the application is filed so that the comment deadline is synchronized with the deadline for responsive, including inconsistent, applications,” CSXT-5, a synchronization that CSXT now seeks again. NS had proposed a 60-day comment period. The STB considered CSXT’s request, considered the NS proposal, and decided to permit 75 days for the submission of comments, noting that the added 15 days would not “unduly shorten[] the time for Applicants to prepare their rebuttal filing.”² Decision No. 7, served July 10, 2025.

C. NS will not object to the CSXT Specific Procedural Request.

CSXT alludes to further requests for extensions of time. NS limits its response to the specific request that the Board provide CSXT an additional 12 days for CSXT to file its comments. To that specific request, and notwithstanding the fact that NS was not consulted by CSXT prior to filing its motion, NS does not object.

Conclusion

A more comprehensive discussion of the proceedings, unfortunately, was required to put the asserted facts and arguments into their proper context. Viewed collectively, these additional facts show discovery has been progressing per the Board’s procedures, as modified by the decisions served in this docket. The recitation of whether diligence in response to discovery requests is especially appropriate when viewed in the light of the failure of CSXT to produce even a single document in response to discovery requests propounded upon it.³ Nevertheless, NS is not objecting to the narrow request made by CSXT in its Procedural Schedule Motion, while

² Granting the relief sought by CSXT would erode the time for NS to prepare its rebuttal filing. As noted, despite being served with two sets of discovery, CSXT has yet to produce even a single responsive document, even though NS has produced literally thousands. NS does not now ask for an extension of time to file its rebuttal, but notes its concern should CSXT continue to be derelict in its discovery response.

³ NS served two rounds of discovery on CSXT on July 11, 2025 and July 31, 2025. NS received objections to the first round of requests on July 28, 2025 and earlier this evening received rejections to NS’s second set of discovery requests.

Chief of Case Administration

August 15, 2025

Page 4 of 4

also reserving the right in the future for NS to request appropriate similar requests if CSXT continues to obfuscate on the discovery propounded upon it.

Sincerely,

//s// John V. Edwards

John V. Edwards

Enclosure

cc: ALJ Soulikias
Parties of Record