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CSXT-21

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
SECOND MOTION TO MODIFY THE PROCEDURAL SCHEDULE

EXPEDITED HANDLING REQUESTED

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Dated: August 29, 2025

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On August 21, 2025, the Board granted CSXT¹ an extension of the deadline to file comments in opposition to NS's control application, from August 27, 2025, to September 8, 2025, because NS had not timely fulfilled its discovery obligations.²

Now, NS is abusing the discovery process again. Yesterday, just one day before CSXT's deadline to file this extension request and just six business days before CSXT's deadline to file comments, NS finally certified completion of production, Ex. 1, with a final document dump of close to 5,000 documents and over 22,000 pages from over 20 custodians, almost tripling the number of document pages NS had previously produced (NS's total production prior to August 28, 2025 was 13,832 pages). CSXT's counsel is endeavoring to process these documents for

¹ All capitalized or abbreviated terms in this Motion are defined in the same manner as previous pleadings and/or decisions in this proceeding.

² In addition to NS's delayed discovery, CSXT sought the extension to resolve its pending motion to compel the deposition of NPBL's Cannon Moss. After the Board granted CSXT's motion, Mr. Moss's deposition took place yesterday, on August 28, 2025, and CSXT will incorporate that discovery into its comments in a timely manner. For further procedural history, see CSXT's Mot. to Modify the Procedural Schedule, August 15, 2025 (hereafter "CSXT's First Motion").

review as quickly as possible. But CSXT is hard pressed to review, analyze, and incorporate the relevant discovery produced by NS just yesterday into its comments by the current deadline.

This latest discovery gamesmanship from NS has forced CSXT to seek, pursuant to 49 C.F.R. § 1104.7(b), a limited 10-day extension of that deadline, from September 8, 2025, to September 18, 2025. As explained below, good cause exists for granting this short, necessary extension. NS is not prejudiced by the limited extension. There is no justification for short-cutting CSXT's opportunity to review, analyze and incorporate the discovery produced in this matter, particularly where NS has caused the delay. The Board should exercise its discretion to grant CSXT's motion. CSXT would not oppose similar limited extensions to later deadlines in the proceeding.

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." This additional time will allow CSXT to fully review and incorporate relevant materials produced by NS yesterday by the new September 18, 2025 deadline.

LEGAL STANDARD

CSXT refers the Board to the Standards set forth in CSXT's First Motion, which the Board granted on August 21, 2025.

ARGUMENT

- 1. NS finally fulfilled its remaining discovery obligations yesterday, after months of delays, prejudicing CSXT's ability to prepare comments in opposition to NS's control application.**

As explained above, NS dumped thousands of documents on CSXT just days before CSXT's comment submission deadline. This has been typical of NS's behavior throughout this proceeding: NS has repeatedly dragged its feet to prevent CSXT

from accessing information and relevant materials. CSXT sought relevant discovery from NS beginning in March 2025, but had received only 9,000 pages by July 29, 2025, 13,831 total pages by August 14, 2025, with over 60% of its production made yesterday, on August 28. Although NS made CSXT aware that NS had not completed its production before CSXT filed its First Motion, CSXT had no idea that NS had so many responsive documents to produce just under the wire.

Not only is CSXT entitled to full discovery before submitting comments, as recognized by the Board's decision to grant CSXT's First Motion, but 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. Anything less is prejudicial to its opposition.

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

CSXT understands that all parties have an interest in not extending this proceeding unnecessarily. Therefore, CSXT's request for a 10-day extension is narrow and focused solely responding to the significant and unexpected quantity of discovery that NS unceremoniously dumped on CSXT yesterday. This request is brought in good faith so that CSXT may fairly prepare comments in opposition to NS's Application.

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 CSXT's September 8 deadline for "comments, protests, requests for conditions, and any other evidence and argument in opposition to the application," and "responsive, including inconsistent, applications," 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.

Furthermore, because CSXT only seeks an extension to process discovery that NS should have provided weeks ago, and is not requesting any additional discovery, NS risks no additional expenditure of resources. And CSXT will comply with its existing discovery obligations under the current procedural schedule with respect to producing materials to NS.

4. Conclusion

CSXT accordingly requests that the Board modify the procedural schedule to include a limited 10-day extension for CSXT's comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, and responsive, including inconsistent applications, from September 8, 2025 to September 18, 2025.

Because the current procedural schedule calls for these filings to be made by September 8, 2025, just 10 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 September 2, 2025 and that the Board rule on this Motion no later than September 4, 2025. CSXT believes that expeditious relief is appropriate given the brief period before comments are due and the limited relief sought herein.

Dated: August 29, 2025

Respectfully submitted,

/s/ Peter W. Denton

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

Exhibit 1

August 28, 2025 Email and NS Production Letter

From: Spencer Naake <snaake@mullinslawgroup.net>
Sent: Thursday, August 28, 2025 10:26 AM
To: Denton, Peter
Cc: William Mullins; Crystal Zorbaugh; Rose-Michele Nardi; John Edwards; Mordi, Sally; Stein, Linda; Fox, Molly Bruder; Thomas J Litwiler; alj.soulikias.inbox@stb.gov
Subject: [EXTERNAL] FD 36836 - NS's Fifth & Final Production
Attachments: NS Fifth Production Cover Letter 8.28.25.pdf

Peter,

Please find attached the transmittal letter related to NS's fifth and final production in FD 36836. As indicated in the letter, we are providing an FTP Link to the production: <https://emerge.sharefile.com/d-s4ff2c14c9b57406f9f28e17439b1c860>. I will reply to this email with the password to the zip file.

Regards,

Spencer



Spencer Naake
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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.

MULLINS LAW GROUP PLLC

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August 28, 2025

Via E-mail

Peter W. Denton
Steptoe LLP
1330 Connecticut Ave., NW
Washington, DC 20036
Email: pdenton@steptoe.com

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

Dear Mr. Denton:

On behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”), please find instructions to access NS’s documents produced in the above-stated proceeding. These documents are produced in accordance with CSX Transportation, Inc.’s (“CSXT”) Second and Third Sets of Requests for Production of Documents (“Requests”), as modified by my June 19 letter and our discussions. NS’s fifth production represents NS’s final production in response to CSXT’s Requests.

NS’s fifth production begins at STB-NS-0013832 and ends at STB-NS-0036254.

The documents within this production are stamped with confidentiality levels in accordance with the Protective Order issued by the Surface Transportation Board on February 14, 2025. NS reserves the right to amend the level of confidentiality of any of its produced documents if NS learns that any document is properly considered to fall under a different category under the Protective Order. Further, any production of any document, including data, protected by an evidentiary privilege, is made unintentionally, and the enclosed production is made without waiver of any such privilege. Production of the documents herein does not mean that NS concedes to the relevancy of any of CSXT’s requests. Finally, NS’s act of production is not intended to be, explicitly or implicitly, a waiver of any rights or defenses that may be available to it.

A FTP link to relevant documents and passwords will be provided in a separate email. The zip file, specified below, contains NS’s fifth production, and the DAT and OPT files for NS’s fifth production are located within the zip file.

Mr. Peter Denton
August 28, 2025
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After accessing the FTP link, download the file titled STB-NS PROD005.zip.

Sincerely,

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company

cc: T.J. Litwiler
Judge Soulikias

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CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Second 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 29, 2025