

MULLINS LAW GROUP PLLC*Transportation Solutions for the 21st Century*2001 L Street NW, Suite 720
Washington, DC 20036William A. Mullins
wmullins@mullinslawgroup.net
mullinslawgroup.netENTERED
Office of Chief Counsel
September 2, 2025
Part of
Public RecordTelephone: (202) 663-7850
Direct: (202) 663-7823
Facsimile: (202) 459-2115

September 2, 2025

NS-25

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

Dear Chief of Case Administration:

On August 29, 2025, CSXT¹ filed its second motion to modify the procedural schedule seeking to add another 10 days to its deadline to file its initial comments, protests, requests for conditions, and any other evidence in opposition to NS's control of NPBL, as well as to file its responsive application seeking terminal trackage rights. NS did not oppose CSXT's first motion to modify the procedural schedule,² which granted CSXT a 12-day extension to file its comments; however, for the reasons set for the below, NS opposes any further extension.³

¹ In this letter, CSX Transportation, Inc. shall be referred to as "CSXT," and Norfolk Southern Corporation and Norfolk Southern Railway Company shall be referred to as "NS." The Surface Transportation Board shall be referred to as the "Board" or the "STB." The Administrative Law Judge shall be referred to as the "ALJ." The Norfolk & Portsmouth Belt Line Railroad shall be referred to as "NPBL."

² NS did not oppose the first extension in large part because CSXT sought additional time for two items of discovery – that from NS and for the conduct of a deposition of Cannon Moss, President of NPBL. After receiving the extension, CSXT agreed that the Cannon Moss deposition could be held on August 28, 2025, the same day that NS completed its outstanding discovery. Both conditions supporting the first request for extension were thus satisfied on the same date, a date agreed to by CSXT.

³ CSXT originally requested 90 days from the date of the application to prepare and file its comments and requests for conditions. The Board rejected that request and set the deadline at 75 days. With the original deadline extended 12 days, CSXT now has 87 days to prepare and file its comments. CSXT now wants another 10 days, or 97 days – even more than what it originally

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CSXT argues that due to the voluminous amounts of discovery that NS produced (discovery that CSXT requested), it needs additional time to review that discovery before it files its comments and requests for conditions. But there is nothing in the regulations, the Board's procedural scheduling order in this proceeding, or Board merger/control precedent that indicates all discovery filed against an applicant, in this case NS, must be completed by the time an opponent's initial opposition comments are due, and CSXT has not shown otherwise.⁴ Under the Board's procedural schedule, discovery in these types of proceedings is an ongoing process.⁵ The Board's own order notes that discovery continues throughout the proceeding and that "all discovery in this proceeding should be complete by the deadline for the submission of rebuttals in support of responsive applicants." Decision No. 6 at 9. Indeed, early on Norfolk Southern had suggested the discovery should close on F+135, but CSXT, in its comments on the proposed procedural schedule, strongly opposed closing of discovery upon the filing of responses to comments, protests and other matters including responsive applications. Thus, to the extent CSXT claims that it cannot review all of the documents produced by NS in response to CSXT's extensive four sets of discovery requests by the time it must file its comments and responsive application on September 8, CSXT still has until November 26 to review those documents and submit them as part of its rebuttal evidence supporting its September 8 filing. Indeed, this is precisely what CSXT argued for – the right to conduct discovery and submit discovery documents on its responsive application rebuttal. There is no need for CSXT to obtain another 10 day extension to review documents that it can review and submit, if necessary and relevant, on November 26, especially given that the documents were produced by NS on the date that CSXT requested them to be produced, i.e., August 28.

It is not NS's actions that have delayed discovery, but rather CSXT's own extensive discovery requests that CSXT now wants relief from having to review in a timely fashion. CSXT claims that NS had delayed in responding to discovery, but that is entirely false. CSXT implies that CSXT had active discovery outstanding since March 2025 (see, e.g., CSXT-21 at 3), and that NS has purposely waited until the last minute to produce the discovery. Nothing could be further from the truth. It was not until the Board served Decision No. 7 on July 25, 2025 that

requested and was rejected by the Board. The Board should reject CSXT's attempts to again give it, and only it, additional time to file comments.

⁴ CSXT prominently cites a number of STB and ICC decisions where one or another request for an extension of time was granted. CSXT fails to note that the extensions granted in almost of those cases were unopposed. In contrast, the Board does not look favorably on repeated requests for extensions of time. Application of the National Railroad Passenger Corporation under 49 U.S.C. 24308(e) – CSX Trans., Inc. and Norfolk S. Ry. Co., 2022 STB Lexis 191 served July 22, 2022, FD 36496. It should not look favorably upon CSXT's second request for an extension of the procedural schedule in this proceeding, especially when NS objects.

⁵ As explained in its letter to The Honorable Glenn Youngkin, dated August 29, 2025, even the Board itself notes that this "case is now in the evidentiary phase, and discovery is ongoing." STB Filing No. 310014.

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a requirement to produce the discovery at hand was even decided. Since that time, NS has worked tirelessly to respond in a timely manner to CSXT's four sets of discovery consisting of over 109 requests. Indeed, NS has reviewed over 20,000 documents and produced 7,016 documents and over 36,254 pages. To the extent CSXT feels "time crunched" it is largely due to CSXT's own action in seeking such extensive and overboard discovery, and then when NS responds with the exact documents requested and by the deadline requested by CSXT, CSXT complains that it does not have sufficient time to review the very same documents it requested and that were produced during the time period CSXT requested. CSXT should not be rewarded with extra time due to a "time crunch" of its own making, especially when CSXT has until November 26 to review any produced documents and file them.⁶

Finally, contrary to CSXT claims NS would be materially adversely impacted by the grant of the extension of time sought by CSXT. NS has already lost 12 days from the procedural schedule for it to review, analyze and develop a response to the comments in opposition to the NS application that were originally due on August 27, an extension that was instigated, as much as anything else, by an outstanding demand for the deposition of the president of NPBL. CSXT now asks for another 10 days, for a total of 22 days. If another 10 days is added, then NS should be granted an additional 22 days to respond to CSXT's filings. Otherwise, absent a corresponding extension in NS's deadline to respond, NS will have only 38 days to respond to CSXT's comments, which NS response to comments, requests for conditions and responsive applications is now due on October 27, 2025. This is substantially less than what the Board granted NS in Decision No. 7, which granted NS 60 days to file its response to any protests, requests for conditions, or responsive applications. It would be a fundamental abuse of due process for CSXT to be granted 97 days to take discovery, prepare its opposition, and file comments and a responsive terminal trackage rights application while providing NS with only 38 days to reply and respond to CSXT.⁷

⁶ If anybody has delayed its discovery production, it is CSXT. CSXT states that it "will comply with its existing discovery obligations under the current procedural schedule with respect to producing discovery materials to NS," CSXT-21 at 4. Yet, CSXT has failed to produce to NS a single page in response to discovery in response to discovery served on it on July 11 and July 31, 2025. Given NS's limited time to prepare its response to any September 8 filings by CSXT, the Board or the ALJ should require CSXT to promptly produce the requested documents that CSXT said it would produce.

⁷ Indeed, to ensure fairness and due process to both sides, the Board should extend NS's deadline to reply to any comments, protests, requests for conditions, and any other evidence and argument, and response to any responsive application, to correspond with CSXT's already 12 day granted extension, or until November 10, 2025. And if the Board grants CSXT's second request, which it should not do, NS should be granted a corresponding 10 day extension. CSXT has noted that it would not oppose any corresponding extensions in the procedural schedule. See CSXT-21 at 3-4.

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Throughout this proceeding, CSXT has complained that NS has failed to expeditiously seek STB consent for the Board's consent to control NPBL. Yet, throughout this proceeding, it has been CSXT that has caused delays and imposed roadblocks in NS's attempt to do so. It is CSXT that has sought to have special rules for thee but not for thou. The Board should reject CSXT's request for yet another extension. CSXT has more than sufficient time to review all of the documents produced by NS, documents requested by CSXT and produced no later than the deadline requested by CSXT, and to use them, if relevant, in its September 8 comments and its November 26 rebuttal in support of its responsive application.

Sincerely,

//s// William A. Mullins

William A. Mullins

cc: Judge Soulikias
Parties of Record