

SERVICE DATE – SEPTEMBER 25, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36223

NORFOLK SOUTHERN RAILWAY COMPANY—PETITION TO SET TRACKAGE
RIGHTS COMPENSATION—NORFOLK & PORTSMOUTH BELT LINE RAILROAD
COMPANY

Digest:¹ This decision denies Norfolk Southern Railway Company's motion to remove this proceeding from abeyance, grants a motion filed by CSX Transportation, Inc., (CSXT) to continue to hold the proceeding in abeyance, and denies CSXT's motion to dismiss the proceeding.

Decided: September 25, 2025

On April 30, 2025, Norfolk Southern Railway Company (NSR) filed a motion to remove this proceeding from abeyance. On May 20, 2025, CSX Transportation, Inc. (CSXT), filed a motion to dismiss the proceeding or to continue to hold it in abeyance. NSR, on June 9, 2025, and Norfolk & Portsmouth Belt Line Railroad Company (NPBL), on June 24, 2025, filed replies to CSXT's motion. For the reasons explained below, the Board will not dismiss this proceeding and will instead continue to hold it in abeyance pending resolution of the control application filed by NSR and Norfolk Southern Corporation in Docket No. FD 36836.

BACKGROUND

On March 29, 2019, in response to a petition filed by NSR, the Board instituted this proceeding to set compensation for the trackage rights of NPBL over approximately 11 miles of rail lines (the Lines) owned by NSR in Norfolk, Va., and Chesapeake, Va. Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R. (March 2019 Decision), FD 36223, slip op. at 5 (STB served Mar. 29, 2019). In the March 2019 Decision, the Board determined that it would establish compensation under the framework set forth in “SSW

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Compensation”² and granted a petition by CSXT to intervene.³ March 2019 Decision, FD 36223, slip op. at 5, 7. On July 25, 2019, the Board served a decision holding this proceeding in abeyance until antitrust litigation that CSXT had initiated against NSR and NPBL in federal district court,⁴ including any appeals, had been resolved. Norfolk S. Ry.—Pet. to Set Trackage Rights Comp.—Norfolk & Portsmouth Belt Line R.R. (July 2019 Decision), FD 36223, slip op. at 1, 3 (STB served July 25, 2019).⁵ The July 2019 Decision explained that resolution of the antitrust litigation could reduce the number of disputed issues between the parties before the Board, thereby promoting efficiency, and that holding the proceeding in abeyance would not be unfair to any party. July 2019 Decision, FD 36223, slip op. at 2.

During the federal district court proceeding, the court referred to the Board the question of whether the Interstate Commerce Commission (ICC), the Board’s predecessor agency, authorized NSR’s acquisition of NPBL in 1982. See Norfolk S. Ry.—Pet. for Declaratory Ord., FD 36522, slip op. at 1 (STB served June 17, 2022), aff’d sub nom. Norfolk S. Ry. v. STB, 72 F.4th 297 (D.C. Cir. 2023), cert. denied, 144 S. Ct. 1343 (2024). By decision served on June 17, 2022, the Board found that NSR had never obtained authorization to acquire control of NPBL. The Board stated that it “expects the parties to take appropriate steps to address the unauthorized control issue immediately following resolution of the district court proceeding, including any appeals.” Id. at 17 n.25.

The district court dismissed the antitrust litigation on various grounds, including on the ground that CSXT’s claims were untimely. The district court reached its final decision in the antitrust litigation on January 3, 2023. CSX Transp., Inc. v. Norfolk S. Ry., 648 F. Supp. 3d 679 (E.D. Va. 2023). The United States Court of Appeals for the Fourth Circuit affirmed the district court’s decision on August 29, 2024. CSX Transp., Inc. v. Norfolk S. Ry., 114 F.4th 280 (4th Cir. 2024). The United States Supreme Court denied CSXT’s petition for a writ of certiorari on

² The framework for calculating trackage rights compensation known as “SSW Compensation” was first established in St. Louis Southwestern Railway—Trackage Rights Over Missouri Pacific Railroad—Kansas City to St. Louis, 1 I.C.C.2d 776 (1984), and was modified by the subsequent decision, St. Louis Southwestern Railway—Trackage Rights Over Missouri Pacific Railroad—Kansas City to St. Louis, 4 I.C.C.2d 668 (1987).

³ NPBL is owned approximately 57% by NSR and 43% by CSXT. (NSR Pet. 3, Sept. 13, 2018.) Until 2016, NPBL operated over the Lines pursuant to a series of trackage and operating agreements dating back to 1917 (the 1917 Agreements). (Id. at 1.) NSR states that on July 31, 2016, it terminated the 1917 Agreements consistent with their terms but the parties have agreed to continue to operate under the terms of the terminated agreements on a month-to-month basis. (Id. at 1, 3.)

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

⁵ NSR filed a petition for reconsideration of the July 2019 Decision, which the Board denied in a decision served on December 19, 2019. See Norfolk S. Ry.—Pet. to Set Trackage Rights Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223, slip op. at 3-4 (STB served Dec. 19, 2019).

April 21, 2025. CSX Transp., Inc. v. Norfolk S. Ry., 145 S. Ct. 1921 (2025). Accordingly, the antitrust litigation has concluded.

On February 14, 2025, NSR submitted to the Board an application for a “minor” transaction in Docket No. FD 36836, seeking the Board’s authorization for acquisition of control of NPBL. By decision served March 14, 2025, the Board found that the transaction should be classified as a “significant” transaction. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 2), FD 36836, slip op. at 7-8 (STB served Mar. 14, 2025). Accordingly, the Board determined that it could not accept the February 14, 2025 submission as an application and treated the submission as a prefiling notification for a significant transaction. Id. at 7. On June 13, 2025, NSR supplemented its February 14, 2025 submission, and on July 10, 2025, the Board accepted the supplemented submission for consideration as an application for a significant transaction. Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 3, 7 (STB served July 10, 2025). On September 18, 2025, CSXT filed evidence and argument in opposition to NSR’s control application and a responsive application seeking terminal trackage rights over certain trackage owned by NSR and by NPBL in the Norfolk and Chesapeake areas.

Meanwhile, on April 30, 2025, NSR and NPBL filed a motion asking the Board to remove this proceeding from abeyance and establish a procedural schedule to complete the submission of compensation evidence. CSXT, however, filed a motion on May 20, 2025, asking the Board to dismiss the proceeding or to continue to hold it in abeyance.⁶

Positions of the Parties. NSR argues that this proceeding should now be removed from abeyance because the purpose of the abeyance was to allow CSXT to adjudicate its claims against NSR in federal district court and that litigation is now complete.⁷ (NSR Motion 5, April 30, 2025; NSR Reply 9, June 9, 2025.) According to NSR, removing the proceeding from abeyance would not be unfair to CSXT because it no longer has claims before a court that could impact this proceeding. (NSR Motion 5, April 30, 2025.) NSR claims, however, that keeping this proceeding in abeyance would prejudice NSR because the current switching rate is below cost and therefore results in NSR subsidizing NPBL’s operations. (Id. at 4-5.)

⁶ CSXT concurrently filed with the Board: (1) a complaint in Docket No. NOR 42183 alleging that (a) NSR has exercised and continues to exercise unlawful control of NPBL, and (b) NSR unlawfully removed certain track assets without first obtaining abandonment authority from the Board; and (2) an application in Docket No. FD 36859 for terminal trackage rights pursuant to 49 U.S.C. § 11102 over certain trackage owned by NSR and by NPBL in the Norfolk and Chesapeake areas, which would enable CSXT to directly access the Norfolk International Terminals (NIT).

⁷ In the complaint filed by CSXT in federal district court, CSXT alleged that NSR and NPBL have taken actions to prevent CSXT from competing to serve intermodal traffic at NIT and that these actions constitute a violation of federal antitrust laws, a breach of contract, and a violation of state law in several respects. Compl. at 25-38, CSX Transp., Inc. v. Norfolk S. Ry., No. 2:18-cv-00530 (E.D. Va. filed Oct. 4, 2018). CSXT filed a copy of its complaint with the Board on October 5, 2018.

In its motion to dismiss, CSXT argues that “[t]he [Board] needs to dismiss [NSR’s petition to set trackage rights compensation] to protect the integrity of its processes from abuse by parties seeking an anticompetitive goal.” (CSXT Mot. to Dismiss 2.) According to CSXT, NSR and NPBL “manufactured a ‘disagreement’ over trackage rights fees to attempt to use the [Board] to advance their longstanding anticompetitive scheme to exclude CSXT from access to NIT.” (*Id.*) CSXT claims that NSR is using the compensation proceeding to increase the trackage rights fees paid by NPBL and thereby increase the switching fees NPBL charges to CSXT. (*Id.*) CSXT argues that NSR sought to increase the trackage rights fee through a Board proceeding rather than using its control over NPBL to direct it to do so because NSR wants to avoid the appearance of acting anticompetitively given CSXT’s antitrust suit and related state law claims in federal court. (*Id.* at 3, 23.) In addition, CSXT claims that this proceeding should be dismissed because NPBL is using its pendency as a pretext to refuse to consider CSXT’s rate and service proposals regarding NIT. (*Id.* at 26-27.)

CSXT further argues that NSR has ignored the requirements under 49 U.S.C. §§ 11323-25 that a party obtain prior Board approval for any substantial change to an existing trackage rights agreement and demonstrate to the Board that such a change is consistent with the public interest.⁸ (CSXT Mot. to Dismiss 30.) According to CSXT, although the Board has occasionally exercised its authority to prescribe trackage rights compensation without a public interest analysis, it has done so only for agreements that have previously received Board approval; and the 1917 Agreements were entered into before the ICC was required to authorize trackage rights agreements. (*Id.* at 32-33.) CSXT argues that, because NSR has not addressed the statutory requirements, its petition should be dismissed. (*Id.* at 30, 34.)

CSXT states that if the Board denies the motion to dismiss, the Board should keep this proceeding in abeyance until the later of the conclusion of either (1) NSR’s application for authority to control NPBL in Docket No. FD 36836, or (2) CSXT’s complaint and application for terminal trackage rights in Docket Nos. NOR 42183 and FD 36859, respectively. (*Id.* at 34-35.) CSXT argues that these proceedings involve the same issues of alleged anticompetitive behavior by NSR that were raised in the federal court proceedings. (*Id.* at 35.) According to CSXT, the court dismissed CSXT’s claims on procedural grounds and therefore did not reach the merits. (*Id.*) CSXT claims that because the Board found that abeyance was warranted to allow these issues to be resolved in court, abeyance is now warranted to allow these issues to be addressed by the Board. (*Id.*) In addition, CSXT argues that abeyance will not be fundamentally unfair to any party. (*Id.*) According to CSXT, very little NPBL traffic moves under trackage rights service over the Lines today. (*Id.* at 36.) CSXT further notes that NSR and NPBL have been operating under the current compensation scheme for over a century and that

⁸ Under 49 U.S.C. § 11324(c) the Board must approve a trackage rights transaction “when it finds the transaction is consistent with the public interest.” Under 49 U.S.C. § 11324(d), if the transaction does not involve the merger or control of at least two Class I railroads, the Board must approve the transaction unless the Board finds that: “(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.”

NSR waited for years after it terminated the 1917 Agreements in 2016 to file its petition asking the Board to set the trackage rights compensation. (Id.)

NSR claims that CSXT's motion constitutes an impermissible motion for reconsideration of the Board's prior decisions in this proceeding. (NSR Reply 10-11, June 9, 2025.) NSR argues that CSXT chose not to seek reconsideration of those Board decisions and the deadline for doing so has now passed. (Id. at 11-12.) NSR further claims that CSXT has not demonstrated that there is new evidence or changed circumstances that would warrant reopening those decisions. (Id. at 13.)

NPBL argues there is no basis to dismiss the proceeding. NPBL asserts that, contrary to what CSXT suggests, the Board's authority to determine trackage rights compensation does not turn on whether the previously terminated trackage rights agreement was subject to agency approval when it was first executed. (NPBL Reply 6-7, June 24, 2025.) In addition, NPBL argues that CSXT's claim that NSR and NPBL manufactured a dispute to get the Board to set new, higher trackage rights fees is unsupported. (Id. at 7.) According to NPBL, the record in this proceeding shows that NPBL has consistently acted to protect its own interests and opposed NSR on various issues. (Id. at 7-8.) NPBL further argues that it is not using the pendency of this proceeding as a pretext to refuse to consider CSXT's rate and service proposals regarding NIT. (Id. at 9-10.) NPBL states it is reasonable for NPBL to avoid locking itself into a new service agreement with CSXT now given that the trackage rights fees are a major cost component in providing service to CSXT and given that the Board has not decided whether new trackage rights fees will be made retroactive. (Id. at 10.)

NPBL further argues that it would be prejudiced by continued abeyance. (Id. at 11.) NPBL claims that because of the potential retroactivity of new trackage rights fees, NPBL could be liable for retroactive fee increases that it would be unable to recoup through its switching fees or other means. (Id.) According to NPBL, the longer this proceeding is held in abeyance, the bigger its potential liability becomes. (Id.)

DISCUSSION AND CONCLUSIONS

NSR's Motion to Remove the Proceeding from Abeyance. "The Board has broad discretion to determine whether to hold a proceeding in abeyance, and its decision 'to do so in any particular situation is highly dependent on the facts and circumstances of the case.'" Pet. of the Nat'l R.R. Passenger Corp. for Relief Pursuant to 49 U.S.C. § 24905, FD 36048, slip op. at 3 (STB served Oct. 3, 2016) (quoting E.I. DuPont de Nemours & Co. v. Norfolk S. Ry., NOR 42125 et al., slip op. at 4 (STB served Nov. 29, 2012); see also Ballard Terminal R.R.—Pet. for Declaratory Order, FD 36261, slip op. at 4-5 (STB served June 27, 2019); Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc., 435 U.S. 519, 543 (1978) ("Absent constitutional constraints or extremely compelling circumstances, the 'administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'") (quoting FCC v. Schreiber, 381 U.S. 279, 290 (1965)). In deciding whether to hold a docket in abeyance, the Board considers whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party. E.g., Ballard Terminal R.R.—Pet. for Declaratory Ord., FD 36261, slip op.

at 4 (STB served June 27, 2019). In the present case, the Board finds that it is appropriate to continue to hold this proceeding in abeyance.

This proceeding was previously held in abeyance pending completion of antitrust litigation that CSXT initiated in district court; in holding this proceeding in abeyance, the Board anticipated that completion of the antitrust litigation could narrow the issues in this proceeding. The antitrust litigation has since been concluded, but a critical issue underlying the trackage rights petition is yet to be resolved. That issue—control of NPBL—is pending before the Board in the control proceeding in Docket No. FD 36836. Continued abeyance in this fee proceeding is therefore warranted by the same interests of efficiency that originally warranted abeyance. After reaching a decision in the control proceeding, the Board will evaluate any issues that require resolution in this trackage rights proceeding.

Continued abeyance would not be fundamentally unfair to any party. The procedural schedule in the control proceeding anticipates a final decision by the Board in early April 2026, only seven months from now, after which the Board can address how to move forward in this fee proceeding. For these reasons, NSR’s motion to remove the proceeding from abeyance will be denied.

CSXT’s Motion to Dismiss or Continue to Hold in Abeyance. CSXT argues that the proceeding should be dismissed, or if the Board does not dismiss the proceeding, it should continue to hold the proceeding in abeyance. CSXT’s motion to dismiss rests largely on the assertion that a fee set by the Board would facilitate anticompetitive conduct by NSR and NPBL. (CSXT Mot. to Dismiss 22-29.) However, while the Board remains open to evidence and argument on the subject, at this juncture it is not clear how NSR could use this proceeding to establish trackage rights compensation at a level that harms competition since SSW Compensation is designed to set compensation for the trackage rights to “put the tenant in the same competitive position as the owning carrier.” CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. 955, 963 (1998) (citing St. Louis Sw. Ry.—Trackage Rts. Over Mo. Pac. R.R.—Kan. City to St. Louis, 1 I.C.C.2d 776, 786 (1984)); see also W. Coal Traffic League v. STB, 169 F.3d 775, 781 (D.C. Cir. 1999).

CSXT also argues NSR’s petition must be dismissed because it fails to address the statutory requirement under 49 U.S.C. § 11324 that any significant change to a trackage rights agreement be consistent with the public interest. (*Id.* at 30-34.) The Board will defer resolution of that issue to the merits stage in this proceeding and today’s decision to continue to hold this proceeding in abeyance does not prejudice CSXT in arguing later that NSR has not met statutory requirements. CSXT is free to renew that argument in its substantive pleadings as necessary following the resolution of the control proceeding.

For the reasons explained above, the Board will deny CSXT’s motion to the extent it seeks dismissal of the proceeding. CSXT’s motion will be granted to the extent it asks the Board to continue to hold the proceeding in abeyance. This proceeding will remain in abeyance

pending resolution of the control proceeding in Docket No. FD 36836, at which time the Board will reevaluate how to proceed in this case.

It is ordered:

1. NSR's petition to remove this proceeding from abeyance is denied.
2. CSXT's motion is denied the extent it seeks dismissal of the proceeding and is granted to the extent it asks the Board to continue to hold the proceeding in abeyance.
3. This proceeding will remain in abeyance as described above.
4. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, and Schultz.