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November 13, 2025

VIA E-Filing

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Chief Counsel
November 13, 2025
Part of
Public Record

Re: Norfolk S. Corp. & Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line Rr. Co., FD 36836

Dear Chief of Case Administration,

Norfolk Southern Corporation and Norfolk Southern Railway Company collectively submit this Motion to Summarily Reject CSX Transportation, Inc.'s Responsive Application for Terminal Trackage Rights in the above-referenced proceeding. If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7823 or by e-mail: wmullins@mullinslawgroup.net. If I am unavailable, you may contact John V. Edwards, who can be reached at (202) 663-7853 or by e-mail at jedwards@mullinslawgroup.net.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

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

**MOTION TO SUMMARILY REJECT
CSX TRANSPORTATION, INC.'S
RESPONSIVE APPLICATION FOR
TERMINAL TRACKAGE RIGHTS**

EXPEDITED HANDLING REQUESTED

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November 13, 2025

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Corporation and Norfolk Southern Railway
Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836¹

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

**MOTION TO SUMMARILY REJECT
CSX TRANSPORTATION, INC.’S
RESPONSIVE APPLICATION FOR
TERMINAL TRackage RIGHTS**

EXPEDITED HANDLING REQUESTED

On September 18, 2025, CSXT² filed a Responsive Application (“CSXT-23”) seeking Terminal Trackage Rights over certain lines of NSR and NPBL in Hampton Roads, Virginia. The Board should summarily reject that Responsive Application. CSXT’s Responsive Application omits essential data, ignores statutory requirements, fails to comply with the Board’s environmental regulations, and provides no foundation upon which the Board could grant terminal trackage rights. It is wholly inadequate and fails to present a prima facie case. It should be dismissed as a matter of law and policy and should be dismissed with prejudice.³

¹ As a related application to an underlying control application, CSXT should have designated its application as a sub-docket to the main docket, which will be referred to hereinafter as the NS Control Docket. The Board should redesignate the related application appropriately.

² In this submission, 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 Norfolk and Portsmouth Belt Line Railroad shall be referred to as “NPBL.”

³ See, e.g., Decatur County Commissioners, et al. v. The Central Railroad Co. of Indiana, FD 33386, slip op. at 22 (STB served September 29, 2000) (“fail[ing] to make a showing of market

ARGUMENT

A responsive application is permitted to be filed in response to a significant control transaction. Once submitted, the Board will determine whether the responsive application is complete (and thus accept the responsive application for filing) or incomplete (and thus reject the responsive application). The burden of proof for the grant of a responsive application falls squarely on the responsive application proponent.⁴

“[T]he prescription of terminal trackage rights is an extraordinary remedy, one to be afforded only when less intrusive remedies such as rate relief, alternative through routes, or reciprocal switching are insufficient.”⁵ Especially in the context of the NS Control Docket, where CSXT already has access to NIT via an NPBL switch, the justification for, and the anticipated adverse effects anticipated from, such an extraordinary remedy must be fully documented. Against this backdrop, CSXT’s lack of documentation and data to justify a prescription of terminal trackage rights renders CSXT’s Responsive Application wholly inadequate and incomplete.

Although a responsive application is permitted to be filed in response to a significant control transaction, the Board will reject a responsive application if it is not complete. See,

dominance” in a rate reasonableness case “[is] a prerequisite to our consideration of a rate challenge”). See also, CSX Trans., Inc. – Abandonment Exemption – In Summit County, OH; Terminal Warehouse, Inc. v. CSX Trans., Inc., AB-55 (Sub-No. 631X), No. 42086, slip op. at 6 (STB served May 12, 2004) (in a decision involving unconsolidated proceedings, granting the CSXT request for dismissal of the complaint for its failure to make a prima facie case), reconsideration denied, CSX Trans., Inc. – Abandonment Exemption – In Summit County, OH; Terminal Warehouse, Inc. v. CSX Trans., Inc., AB-55 (Sub-No. 631X), No. 42086 (STB served May 3, 2005).

⁴ CSX Corp., et al. – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated R. Corp., FD 33388, Decision No. 40, slip op. at 2 (STB served October 2, 1997).

⁵ Western Fuels Service Corp. v. The Burlington Northern and Santa Fe Ry. Co., et al., STB Docket No. 41987 (“Western Fuels”), slip op. at 7 (STB served July 28, 1997).

Union P. Corp., et al. – Control and Merger – Southern P. R. Corp., et al., F.D. 32760, Decision No. 29, 1996 STB Lexis 123 (STB served April 12, 1996) (“UP/SP”) at *11-12 (rejecting a responsive application seeking trackage rights for the failure to provide, among other things, operational data, financial information, market analysis, and other supporting information).⁶ As was done in UP/SP, the Board should reject CSXT’s Responsive Application.

Here, despite seven months of preparation time,⁷ CSXT has failed to present operational data; financial information; a market analysis of the impacts of the terminal trackage rights application (as opposed to a market analysis of a reduction in the switching charge);⁸ any

⁶ It is not even clear that CSXT has filed the correct type of responsive application. In its legal comments, CSXT relies on the Board’s conditioning authority under 49 U.S.C. §11324(c) as the statutory basis for the Board’s legal authority to impose trackage rights as condition to the control application. See, e.g., CSXT-22 at 105, 117-119. Nevertheless, CSXT then filed a Responsive Application seeking trackage rights under 49 U.S.C. §11102. Imposition of trackage rights via §11324(c) or §11102 involve two wholly distinct and different statutory standards with distinct and different precedents. Yet, CSXT bases its entire alleged anticompetitive harms on the impacts from the control application and the ability of the Board to use §11324(c) to remedy that harm. As such, it should have filed its responsive application as a minor application seeking imposition of trackage rights under § 11324(c) and complied with the Board’s rules and regulations for the filing of a minor application. Having failed to file a minor application seeking application of §11324(c) or to make a prima facie case for the imposition of terminal trackage rights under § 11102, CSXT should be precluded from being granted trackage rights of any sort as condition of this control transaction.

⁷ On February 27, 2025, CSXT submitted evidence and argument that it intended to file a responsive application seeking the grant of “direct CSXT terminal trackage rights to NIT.” CSXT’s Petition to Reject Norfolk Southern’s Minor Application, CSXT-1 at 9. CSXT did not wait in filing that terminal trackage rights application. See, CSXT’s Application for Terminal Trackage Rights, FD 36859, submitted May 20, 2025. Accordingly, CSXT has had since February 27, 2025 to perfect its responsive application and present the relevant required prima facie elements. It has failed to do so.

⁸ CSXT’s comments and witness statements focus entirely on NPBL’s switching rates and NS’s actions to allegedly prevent NPBL from lowering that rate. The market analysis and traffic projections, especially the comments of Ms. Carey, are directed at the impacts of lowering the switching rate. Yet, the remedy sought is a request for terminal trackage rights. CSXT and its witnesses present absolutely zero market and financial analysis associated with a grant of terminal trackage rights, i.e., no discussion of what CSXT’s costs would be to operate terminal trackage rights and whether those costs would be lower or higher than drayage or an NPBL

analysis of service changes or adverse impacts to the numerous shippers served by NPBL; any environmental analysis and historic report related to the trackage rights or the reconstruction of the Connecting Track; an estimate of what CSXT's costs would be to operate the terminal trackage rights versus operating via the NPBL switch or via drayage; or traffic projections and evidence that terminal trackage rights would allow CSXT to attract more traffic and be more competitive. CSXT also has failed to define the "terminal" to which it seeks access or to address the practicability of operating the terminal trackage rights it seeks. As such, the Board, consistent with precedent, should reject the Responsive Application for the following reasons.

A. CSXT Fails To Define The "Terminal" To Which It Seeks Access.

Under 49 U.S.C. 11102(a), the Board may order terminal trackage rights over "terminal facilities, including main-line tracks for a reasonable distance outside of a terminal." That means that the applicant must identify the "terminal" and distinguish that from any main-line tracks that are to be included in the requested grant, but which lie outside of the terminal. See, e.g., Commuter Rail Division of the Regional Transp. Authority d/b/a Metra – Terminal Trackage Rights – Union P. R.R. Co., FD 36844, slip op. at 14 (STB served September 3, 2025) ("In considering the application, the Board must determine the scope of the terminal area and construe the term 'terminal facilities' for purposes of this case") ("Metra").

As an initial matter, CSXT has conceded that focusing solely on traffic to and from the Norfolk International Terminal ("NIT"), to the exclusion of other marine terminals in the Port of Virginia, is too narrow. CSXT clearly has identified the terminal area to which it seeks access as

switch. There is also no analysis of the "rate" per container CSXT could offer via terminal trackage rights. These are fundamental flaws in CSXT's Responsive Application.

“the Norfolk marine terminal area, *including* NIT” (emphasis added),⁹ with CSXT’s desired access to be to a single location within that Norfolk marine terminal area.

CSXT has provided a list of lines through that Norfolk marine terminal area over which it seeks trackage rights, but CSXT has failed to provide any information that defines the lines as falling into one bucket (terminal facilities) or another (main-line tracks for a reasonable distance outside of a terminal). The distinction is more than just hypothetical. The Board must be able to delineate the terminal in order to determine whether the mainline track sought to be included in the request for terminal trackage rights is also reasonable.¹⁰ This distinction was a critical element of the Metra case and it is important in this case as well for operational, environmental, and other reasons discussed below.

B. CSXT Fails To Address Whether The Proposed Trackage Rights Would Be Practicable From A Capacity And Operating Standpoint, Not Only Today But Also Tomorrow.

In order for the Board to impose terminal trackage rights, the statute requires the Board to find that CSXT’s use of such rights would be “practicable and in the public interest without substantially impairing” NS’s and NPBL’s own business.¹¹ As a threshold matter, no such practicability and impairment findings can be made without a clear understanding of what is being demanded. CSXT has failed to provide the Board with any clear answers to this most basic question. CSXT has not even attempted to address impacts on NS or NPBL’s ability to serve existing customers. Nor does CSXT assess the effect of projected growth at NIT or

⁹ CSXT-23 at 9.

¹⁰ See, e.g., Metra, slip op. at 19-21.

¹¹ 49 U.S.C. § 11102(a).

account for the addition of a third freight carrier to an already constrained network that additionally accommodates substantial Amtrak passenger operations.¹²

Instead, CSXT is decidedly ambiguous and contradictory as to what it is requesting from the Board in terms of terminal trackage rights. For example, at one point, CSXT states that “CSXT is proposing to begin its operations over the subject lines within *one* six-hour window of time each day, leaving three six-hour windows of time for NS and NPBL operations.”¹³ At another point, CSXT states that “[s]hould NIT traffic volume increase at some future time to require a second daily CSXT train, CSXT would work with NS and NPBL to identify a *second* six-hour window for such operation.”¹⁴ In its recently filed Opposition,¹⁵ CSXT also asks the Board to impose the terminal trackage rights *as requested* in a separate proceeding filed back in May 20, 2025 in which it sought a definitive *two* six-hour windows.¹⁶ CSXT cannot argue that the terminal trackage rights sought in the NS Control Transaction are practicable and will not impair NS and NPBL if one cannot even determine whether CSXT is requesting one, two, or potentially more dedicated six-hour windows for its operations, to the exclusion of NS and NPBL, despite NS and NPBL providing service to their own customers over the same lines.

Moreover, CSXT fails to present any analysis regarding the practicability and substantial impairment tests of imposing the amorphous requested terminal trackage rights on the subject

¹² In addition to its weekend service, Norfolk is served by four Amtrak trains each weekday.

¹³ CSXT-23 at 18 (emphasis added).

¹⁴ CSXT-23 at 15.

¹⁵ CSXT-22 at 121 (“Concurrent with these opposition comments, CSXT is submitting a responsive application in this proceeding requesting that the Board grant CSXT these terminal trackage rights as a condition of any Board approval of NS’s application”) (specifically referencing the terminal trackage rights request embraced in FD 36859).

¹⁶ CSX Trans., Inc. – Terminal Trackage Rights – Norfolk S. Ry. Co. and Norfolk & Portsmouth Belt Line R. Co., FD 36859, CSXT-1 at 30 (emphasis added).

lines. CSXT raises in its pleadings the specter of no less than three conflicting scenarios related to its operations over the track for which it seeks terminal trackage rights: (a) no expansion of rail-served traffic; (b) conversion of drayage traffic to rail-served traffic; and (c) expansion of rail-served traffic in addition to conversion of drayage traffic to rail-served traffic. For none of these scenarios does CSXT provide any analysis that would enable the Board to make the statutory determinations of practicability and non-impairment. Although CSXT apparently seeks two dedicated service windows for its service, it fails to address how those service windows will accommodate not only NS and NPBL, but also Amtrak passenger operations to and from Norfolk station.

First, CSXT attempts to simplistically claim its terminal trackage rights operations should be found to be practical because “the new terminal trackage rights operations would replace other operations on the subject lines, thereby ensuring that sufficient capacity existed on the subject lines for the trackage rights operations”¹⁷ because “CSXT’s use of the Lines would largely just take the place of NPBL switching operations that NS and NPBL maintain could take place today.”¹⁸ However, CSXT’s current access via the NPBL switch is not at all comparable to adding a third carrier (CSXT) to the lines of NS and NPBL in the terminal area and imposing one or more CSXT-dedicated operational windows. CSXT includes no analysis or even discussion of the impacts of the proposed terminal trackage rights on NPBL’s or NS’s service to its existing customers (including customers served by NPBL on behalf of CSXT and NS) within and accessed through the terminal area, despite the fact that the terminal trackage rights sought by CSXT would physically insert a third railroad over the subject lines and would impose

¹⁷ CSXT-23 at 13.

¹⁸ Id. at 14.

substantial dedicated operating windows for the sole benefit of that third railroad. Accordingly, even if the only change were to convert to itself a portion of intermodal traffic that is currently moved by NS, the Board would be unable to determine whether the proposed terminal trackage rights are practicable and whether they would substantially interfere with NS's and NPBL's existing use of the subject lines to handle their own business.

Second, CSXT concedes that projected traffic could include significant traffic that does not currently move via rail to and from NIT, discussing CSXT's conversion of "its current drayage operations to on-dock rail."¹⁹ But, again, CSXT fails to address the complexity of adding a third carrier where only two exist today, or, as noted above, analyze the impacts of CSXT's proposal on NS's and NPBL's service to its existing customers.²⁰ Under this scenario, NS operations would remain the same, as would NPBL's. CSXT takes great pains to explain the route of its planned operations, but it does so as if CSXT's operations were being conducted in isolation of the other two carriers who are trying to also navigate on the line, and particularly fails to explain how one of them – NPBL – is to perform switching of its customers, especially in the tight confines of the portion of the tracks north of NIT.

Third, CSXT states, in one of its competitive access arguments set forth in its Opposition but unaddressed in its Responsive Application,²¹ that the Port of Virginia has an expansion currently underway at NIT, to be completed in 2027. This expansion is expected to create capacity for an additional 1.4 TEUs, allowing for more than 64% growth from NIT's 2023 capacity levels.²² CSXT states that if CSXT volumes grow, CSXT will require a second six-hour

¹⁹ Id. at 15.

²⁰ Id. at 14.

²¹ CSXT-22 at 94.

²² Id.

window,²³ much as is requested in the terminal trackage rights application filed in Finance Docket No. 36859.²⁴ Despite this potential for significant growth and additional operating restrictions for NS and NPBL, CSXT once again fails to provide any operational or capacity study on the impact of such growth and restrictions on NS's and NPBL ability to serve its customers.

For each of the three traffic scenarios raised by CSXT's pleading and discussed above: (a) no expansion of rail-served traffic; (b) conversion of drayage traffic to rail-served traffic; and (c) expansion of rail-served traffic in addition to conversion of drayage traffic to rail-served traffic, CSXT has wholly failed to provide the Board with any operational or capacity study. Without such studies, it is impossible to determine the practicality or the full extent of the impact of the CSXT terminal trackage rights, both on the lines over which CSXT proposes to operate and the lines that are accessed from, crossing, or otherwise operated in conjunction with those terminal trackage rights lines. Furthermore, without a clear understanding of the impact of CSXT's requested terminal trackage rights on all affected lines, it is similarly impossible for the Board to determine whether the standard for terminal trackage rights is satisfied – i.e., whether the requested rights would “substantially impair[] the ability of the rail carrier[s] owning the facilities or entitled to use the facilities to handle [their] own business.”²⁵

In addition, in its Opposition, rather than in its Responsive Application, CSXT asks the Board to “order NS to provide operational assent to CSXT direct movements to NIT” without

²³ CSXT-23 at 15.

²⁴ CSX Trans., Inc. – Terminal Trackage Rights – Norfolk S. Ry. Co. and Norfolk & Portsmouth Belt Line R. Co., FD 36859, CSXT-1 at *id.*

²⁵ 49 U.S.C. 11102(a).

explaining what that means.²⁶ Indeed, the definition of such operational assent could be a critical component in determining whether the no substantial interference test is met and could mean that CSXT would be claiming *more than* one half of the capacity of the subject lines.²⁷ This clarification, of course, would have a further significant impact on any operational and capacity analysis (had one been performed by CSXT), thereby also directly impacting the determination of whether the requested terminal trackage rights satisfy the practicable test.

CSXT's conclusory claim that the terminal trackage rights it requests are practicable and can be implemented without substantially interfering with NS's and NPBL's own operations to their respective customers, including any NPBL operations on behalf of CSXT and NS via an NPBL switch, all while accommodating Amtrak's preference service, is meaningless without sufficient specificity as to the scope of the operations and sufficient data and analysis as to the operational and capacity impacts.²⁸ Although each competitive access case is unique, the

²⁶ CSXT-22 at 127.

²⁷ If CSXT would continue to use NPBL's switching service to access customers in addition to access to NIT, by claiming two six-hour windows and retaining access to NPBL's switching service for those other customers, CSXT is actually claiming in its terminal trackage rights application rights to more than half of all capacity in the terminal area, including more than half of the capacity over NS's own lines, leaving NS and NPBL to scrape through on what is left, even as NS and NPBL are required to accommodate Amtrak operations through the terminal area. Maintenance and inspection of the NS track facilities and the NPBL track facilities that CSXT would operate would further erode the available capacity supposedly left for NS and NPBL. CSXT's claim for more capacity than is reserved for the owners of the track facilities is truly a remarkable and extremely "intrusive" remedy to impose on NS (as to the lines that NS owns in the terminal area) and on NPBL (as to the lines of a railroad that NPBL owns in the terminal area, with NPBL being a railroad that CSXT owns a minority interest in).

²⁸ In BNSF Ry. Co. – Terminal Trackage Rights – Kansas City S. Ry. Co. and Union P. R.R. Co., FD 32760 (Sub-No. 46) (Decision No. 3) (STB served July 5, 2016), the Board detailed the extensive data and analysis that the parties submitted with regard to the practicality of the proposed terminal trackage rights and whether the requested rights would substantially impair the ability of the underlying carrier to perform service over the affected lines. That stands in stark contrast to the failure of CSXT to do the same here.

character of the request and justification formulate the prima facie case that must be made and supported by sufficient data and analysis. Without sufficient data and analysis, the Board will be unable to determine if CSXT's requested terminal trackage rights will be practicable, in the interest of the public, and will not cause substantial interference with the operations of NS and NPBL.

C. CSXT Fails To Provide Any Financial Documentation Or The Costs Associated With The Grant Of Terminal Trackage Rights.

CSXT has also failed to detail the fundamental economics of the requested relief for the Board to determine that such relief would be in the public interest. It has failed to present any evidence:

- Establishing the costs necessary to operate some undefined trainset from its yard to NIT and back (labor, equipment and fuel, and other costs in addition to trackage rights).
- Establishing whether those costs would be less than operations via NPBL switching or drayage (costs which are alluded to but not described in detail).
- Establishing whether the line haul rate that CSXT would charge for movements using its terminal trackage rights would be less than for movements using either the existing NPBL switch or drayage services.
- Any financial projections indicating that any anticipated additional revenues would cover any anticipated additional costs, and it does not indicate whether potential savings (if any), assertedly garnered for advancement of the public interest, would be passed along to the shipping public or retained by CSXT.

- Any analysis demonstrating that projected volume levels would tip the scale and cause CSXT to serve NIT via its requested terminal trackage rights as opposed to the other two alternatives it has available to it (drayage and NPBL switch).

CSXT also does not account for the costs associated with its own demands and requests to install the Connecting Track, the turnout at Carolina Junction, or the double diamond for the sole purpose of accommodating CSXT's terminal trackage rights remedy. CSXT does not say whether such costs would be the responsibility of NS, CSXT or even NPBL,²⁹ and, if it is NPBL, whether NPBL could even afford to pay for such construction elements without raising its own switching rate. In addition, CSXT does not account for the cost of maintenance and inspection of the reinserted double diamonds, the switch, and the Connecting Track, and whether those costs would impact the NPBL trackage rights compensation, or the rates otherwise borne by the shippers located in the Port of Virginia terminal area. Likewise, CSXT's analysis fails to account for the trackage rights rate that it would have to pay to NS and NPBL to access NIT.

CSXT's conspicuous failure to state both whether it is willing to pay for the rehabilitation and reinstallation of the Connecting Track, turnout, and double diamond and whether it is willing to pay the full costs to maintain and inspect those facilities -- facilities which will be installed solely for CSXT's purposes -- leaves unanswered whether CSXT is asking the Board to make a decision that would impose a cost on NS and NPBL to subsidize CSXT's operations to and from NIT. In addition, CSXT has failed to address whether CSXT has included such a subsidy to support its claim that the trackage rights requested are economically better for it than its current access via NPBL or via dray.

²⁹ CSXT-22 at 128-29.

Although the typical terminal trackage rights proceeding often does not require the final terms and conditions of the trackage rights granted to be settled prior to the grant of the terminal trackage rights, this is not a typical case. First, the terminal trackage rights here are being sought to permit CSXT direct access to a location in which *it already has rights to access through both NPBL's switch and an established drayage program*. CSXT bases its argument for access largely upon the cost of the NPBL switch. In presenting its prima facie case for access, CSXT ignores its obligation to present sufficient information to meet the practicability, public interest, and substantial interference tests and to present the cost factors associated with its direct access as a substitute for its NPBL switch access or drayage.

Second, it is unreasonable (or consistent with the regulatory requirements for a responsive application) for CSXT to fail to present any of the relevant cost information and then simply state that it will work with NS and NPBL to resolve these issues, especially given that they involve the very same issues that CSXT brought to the Board because the parties were not able to resolve those disputes themselves.³⁰ Moreover, the cost elements in this case not only involve liability, insurance, and trackage rights compensation, but go to the heart of the STB's ability to determine that the proposed rights are justified, practicable and in the public interest without substantially impairing the ability of NS and NPBL and Amtrak -- the rail carriers owning the facilities or entitled to use the facilities -- to handle their own business.

Third, in connection with its request for terminal trackage rights, CSXT is demanding the reinstallation of an STB-authorized discontinued line of rail, as well as a set of double diamonds

³⁰ CSXT has for years refused to even let the Board determine the trackage rights compensation to be paid by NPBL over the very trackage that CSXT seeks trackage rights over.

and a connection.³¹ CSXT has already filed a separate action to have NS replace what CSXT claims to be unlawfully removed infrastructure.³² CSXT has already demanded changes in the accommodation of NPBL operations. The Board cannot ignore those facts in determining the threshold issues of whether terminal trackage rights should be granted. Even if terminal trackage rights were granted, CSXT is simply wrong when it states that it could begin to use its terminal trackage rights while it negotiates the terms and conditions. By statute, operations under §11102 cannot even commence until the compensation “shall be paid or adequately secured.”³³

These are fundamental elements that are absent from CSXT’s trackage rights application and are necessary for the Board to determine whether CSXT’s Responsive Application can even be considered. And while CSXT claims that it will be able to provide terminal trackage rights at a cost less than the subsidized dray CSXT currently utilizes (and presumably less than the existing NPBL switching rate), it presents no analysis to support either of these claims. This lack of evidence and analysis completely undermines the ability of NS, NPBL, and other interested

³¹ See, e.g., CSXT-23 at 15 (arguing that the use of terminal trackage rights would allow CSXT “to compete with NS for the traffic that NS is currently handling”).

³² See Complaint in CSX Trans., Inc. v. Norfolk S. Corp. And Norfolk S. Ry. Co., NOR 42183 (filed May 20, 2025).

³³ The governing statute is clear: “The compensation shall be paid or adequately secured *before* a rail carrier may begin to use the facilities of another carrier under this section.” 49 U.S.C. 11102(a). Compensation cannot be paid or secured until it is determined. Ordering access immediately upon the effectiveness of a decision by the Board on the NS Control Application would violate the plain language of the statute. Accordingly, CSXT could not begin to use NPBL’s and NS’s tracks via Board granted terminal trackage rights until compensation was agreed to by the parties and paid by CSXT, and compensation cannot be determined until CSXT, NS, and NPBL either agree on the appropriate trackage rights fee or until that fee is set by the Board.

parties to review and respond to CSXT's claims. This lack of evidence and analysis leaves the Board without the information that it needs in order to make an informed decision.³⁴

Further, the terms and conditions of the access sought also affect the economics of both NS and NPBL insofar as CSXT is seeking dedicated operating windows³⁵ that would preclude NS and NPBL rail operations. CSXT wholly fails to address NS and NPBL's ability and cost to serve its customers in the face of operating windows sought by CSXT, particularly in light of substantial Amtrak operations through the terminal. Any analysis of the public interest test by necessity should include an analysis of the cost (as well as the operational) impacts of the potential imposition of terminal trackage rights on all of the affected parties, including not only Amtrak, CSXT, NS, and NPBL, but also all of their customers, both inside and outside the terminal. As discussed in more detail in Section B, CSXT desires to devote a full half (or more) of the daily capacity of the terminal area to one intermodal facility (NIT), over lines of the respective two host carriers (NS and NPBL), for the sole benefit of CSXT, without performing the necessary analysis to consider the impact on all the carriers and their respective customers or to even make a *prima facie* case to permit the Board to consider if the statutory requirements could be met.

³⁴ Some of this information was readily available to CSXT but was not presented or discussed. For example, CSXT notes that it "currently has certain access to NPBL's line between Seaboard Junction and Berkley Yard" that "is limited to interchange." CSXT-23 at 7, note 3. CSXT does not detail the costs in connection with its rights to interchange with NPBL, but that cost, regardless of its amount, directly implicates whether direct service bypassing the NPBL switch is economically more advantageous than service via either the NPBL switch or drayage.

³⁵ CSXT is particularly ambiguous as to what it is requesting from the Board. As discussed previously, Section B, *supra*, the operational issues in connection with the dedicated operating windows sought by CSXT are a key factor in determining if the practicability, public interest and no substantial interference tests are satisfied.

The terms and conditions of the proposed trackage rights are at the heart of CSXT's claims that the proposed NPBL control transaction requires the requested CSXT terminal rights, and that the public interest is served in large part by the economic impact on the replacement of both drayage and the NPBL switch for the trackage rights. And yet CSXT fails to submit anything of substance with regard to those terms and conditions, much less analyze the economic impact on the affected parties of such terms and conditions.

D. CSXT Has Failed To Address Any Environmental Effects Of The Proposed Terminal Trackage Rights Application.

CSXT has completely failed to even acknowledge the need to address the environmental impact of the grant of terminal trackage rights that CSXT requests in its Responsive Application. An applicant seeking changes to operations and infrastructure must provide information to permit an assessment of the environmental impact, enabling (if true) a determination that the federal action of the Board to impose the terminal trackage rights will not affect the quality of the human environment or the conservation of resources.³⁶ That requirement is without regard to how the action is proposed, as long as it involves the initiation of a formal Board proceeding as

³⁶ See generally Responsive Application – Capital Metro. Trans. Authority, et al., FD 32760 (Sub-No. 10), 1996 STB Lexis 123, at *14 (STB served April 12, 1996). See also Canadian National Ry. Co., et al. – Control – Illinois Central Corp., et al., FD 33556, Decision No. 6, slip op. at 10 (STB served August 14, 1998) (“CN/IC Decision No. 6”) (in that major transaction, requiring any responsive applicant to file either a verified statement that the responsive application would have no significant environmental impact or an responsive environmental report consisting of “detailed environmental information regarding the responsive (including inconsistent) application”); Id. at 11 (“The purpose of an RER [a responsive environmental review] is to provide us the information we need to assess the potential environmental impacts of all inconsistent and responsive applications in the context of the overall merger proposal...In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants must consult with SEA as early as possible.”).

would be the case if the Board were to act to accept the CSXT Responsive Application.³⁷ CSXT is required to provide environmental impact analysis, but CSXT provides none.

Although the Board has determined that normally no environmental documentation would have to be prepared for the voluntary common use of rail terminals and voluntary trackage rights,³⁸ that is not the case for a related proposal that also involves construction. An environmental assessment is normally prepared for construction of connecting tracks within existing rail rights-of-way.³⁹

A proposal that includes in the alternative the common use of rail terminals and trackage rights that is enabled by rail construction of the type CSXT proposes to be undertaken here generally would require the environmental assessment of the entirety of the proposal.⁴⁰ The Board has been clear that when a proposal envisions one alternative with a construction element,

³⁷ 49 C.F.R. 1105.6(e).

³⁸ 49 C.F.R. 1105.6(c)(3).

³⁹ 49 C.F.R. 1105.6(b)(1). “NEPA requires the Board to consider direct, indirect, and cumulative impacts. Direct and indirect impacts are both [impacts] caused by the action. A cumulative impact is the ‘incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.’” R.J. Corman R.R. Co./Pennsylvania Lines Inc. – Construction and Operation Exemption – in Clearfield County, PA, FD 35116, slip op. at 10, note 14 (STB served May 21, 2012). The CSXT proposal includes both the construction of the Connecting Track, restoration of the diamond, and new trackage rights. All of these actions will have a direct and cumulative impact on the environment that needs to be addressed but was not.

⁴⁰ See generally 49 C.F.R. 1105.7(e) (concerning the content of an environmental assessment); 49 C.F.R. 1105.6(a); 49 C.F.R. 1105.6(b). See, e.g., CN/IC Decision No. 6, slip op. at 13 (STB served August 14, 1998) (noting that the anticipated environmental assessment “will address potential environmental impacts of activities associated with the proposed merger, including ... rail yard and intermodal facility activity changes, and new construction”). See also Burlington Northern Inc. and Burlington Northern R.R. Co. – Control and Merger – Santa Fe P. Corp. and The Atchison, Topeka and Santa Fe Ry. Co., FD 32549 (ICC served August 23, 1995) (“Under the National Environmental Policy Act (NEPA) and related environmental laws, the environmental effects of the merger and the ancillary construction projects envisioned by applicants must be considered”).

and one alternative without a construction element, environmental evidence must be submitted in order to permit the Board to determine whether use of an existing line would be environmentally preferable to construction of a new route.⁴¹

Even if normally the Board would not require an environmental analysis for the common use of terminal tracks or the reconstruction of previous Connecting Track, the Board should do so here because there is absolutely no analysis of the number of trains or any additional impacts on air, noise, cultural resources, or other general environmental impacts. Indeed, “the Board may reclassify or modify these requirements for individual proceedings” and “[f]or actions that generally require no environmental documentation, the Board may decide that a particular action has the potential for significant environmental impacts and that therefore the applicant should provide an environmental report and either an EA or an EIS will be prepared.”⁴² Even when an action is normally subject to a so-called “categorical exclusion,” the Board can, and has, ordered additional information to be submitted to evaluate the potential significant environmental impacts with the possibility that the action would require further environmental review under NEPA.⁴³ With regard to what information may be helpful in making its determinations to satisfy

⁴¹ Dakota, Minnesota & Eastern R.R. Corp. and Cedar American Rail Holdings, Inc. – Iowa, Chicago & Eastern R.R. Corp., FD 34178, Decision No. 7, slip op. at 18 (STB served February 3, 2003) (taking note of the environmental evidence submitted in the proceeding).

⁴² 49 C.F.R. 1105.6(d).

⁴³ CSX Trans., Inc. and Delaware and Hudson Ry. Co., Inc. – Joint Use Agreement, FD 35348 (STB served May 27, 2010) (requiring, based on the information provided by the applicants to the Board’s Office of Environmental Assessment (OEA), OEA to issue an environmental notice for public comment as part of a proceeding seeking authority to implement a categorically excluded action). See also CSX Corp. and CSX Trans. Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (STB served December 10, 2021) (“If an agency determines that a categorical exclusion applies to a proposed action, the agency ‘shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect,’ thus requiring preparation of either an EA or an EIS.”). Norfolk S. Ry. Co. – Trackage Rights Exemption – Meridian Speedway LLC – Between Meridian, MS and Shreveport, LA, FD 34821, slip op. at 2-3 (STB served April 6, 2006) (discussing the applicants’ consultation with the

its environmental review requirements, the Board may require applicants to submit different or additional information regarding the environmental or energy effects of the proposed action.⁴⁴

There is zero indication that CSXT consulted with the Board's Office of Environmental Assessment (OEA) over the seven-plus months involved in the preparation of CSXT's Responsive Application. OEA, the public, NS, and the Board cannot assess whether the CSXT proposed construction and operations covered by the Responsive Application, including but not limited to the construction and the operations associated with that construction of the Connecting Track and restoration of a connection and a double diamond, would trigger the need for further environmental review. Without any information whatsoever, the Board does not have the tools to determine whether CSXT's Responsive Application even qualifies for an environmental exclusion or whether the Board should require additional environmental information.⁴⁵ The lack of this information is another reason why the Board should reject the application.

E. The Board Should Not Permit CSXT To Submit A Revised Application.

For almost a decade, CSXT has been engaged in a protracted argument about the NPBL. In all that time, and despite the fact that CSXT has been working on this trackage rights application for over seven months, and CSXT already filed the Responsive Application 10 days

Board's Section of Environmental Assessment to make the determination that no extraordinary circumstances required environmental review of the proposed application notwithstanding the Board's environmental exclusion of trackage rights provisions); Norfolk S. Ry. Co. – Trackage Rights Exemption – Meridian Speedway LLC – Between Meridian, MS and Shreveport, LA, FD 34821, Environmental Notice: Request for Public Comment (STB served March 7, 2006) (requesting public comment on whether the proposal would result in environmental impacts notwithstanding the Board's categorical exclusion).

⁴⁴ 49 C.F.R. 1105.7(f).

⁴⁵ See, e.g., Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al., Decision No. 20, FD 36500, slip op. at 5, note 12 (STB served July 1, 2022) (noting that CN had consulted with, and provided information to, the OEA in conjunction with the submission of its responsive application).

after the original due date for its submission, CSXT has egregiously failed to submit an application in compliance with the Board's regulations. Like its failed litigation, CSXT continues to rely upon inuendo and unsupported claims rather than data and analysis. Under such circumstances, any additional time for CSXT to cure the failures of its Responsive Application cannot be justified.

Moreover, if the Board were to allow CSXT additional time, the Board also would need to afford NS, NPBL, shippers, and other parties of interest sufficient time to review CSXT's new analysis, conduct appropriate discovery in connection with the analysis and file a response to the new information and analysis. CSXT's failure to adequately and timely support its Responsive Application would substantially extend the procedural schedule for NS's control proceeding, at the expense of NS, and cause the Board not to comply with its statutory requirement to issue a decision by April 6, 2026, effective May 6, 2026. 49 U.S.C. 11325(c). Accordingly, the Board should exercise its authority to dismiss the application with prejudice to its refiling. Such an action is wholly appropriate in this case, where (1) CSXT had many months, if not years, to prepare an adequate application, but failed to do so, (2) CSXT seeks the prescription of terminal trackage rights, despite the fact that it already has access to the terminal area through switching with NPBL at a cost-based rate, (3) the alleged anticompetitive actions that CSXT seeks to remedy with terminal trackage rights result from a cost-based rate that simply is not as low as CSXT desires,⁴⁶ and (4) the rejection of the extraordinary remedy of terminal trackage rights

⁴⁶ Because NPBL's switch rate is cost-based, it cannot be unreasonable. There is absolutely zero statutory authority for the Board to impose a lower switching rate in the absence of a finding that the existing rate is unreasonable. Knowing that, CSXT has instead sought terminal trackage rights, but CSXT and the Board know full well that "[t]he prescription of terminal trackage rights is an extraordinary remedy" that cannot be imposed when the lesser intrusive remedy of switching is available. See, footnote 5, *supra*. See also, Philadelphia Belt Line R.R. Co. v. Consolidated Rail Corp., CP Rail System, and CSX Trans., Inc., FD 32802, 1996 STB Lexis 336

does not leave CSXT without sufficient, less intrusive remedies, should the Board determine a remedy is appropriate.⁴⁷

CONCLUSION

The Board should summarily reject the CSXT Responsive Application as incomplete, unsupported and inconsistent with the Board's regulations and precedent. The Board's should dismiss CSXT's Responsive Application. CSXT knew that it must present a prima facie case with sufficient information for the Board to be able to make its statutory determinations as to whether such an application is practicable, in the public interest and would not otherwise substantially impact the ability of NS and NPBL to continue to serve their customers. CSXT chose not to do so.

CSXT has presented little to no details and virtually no analysis to address these statutory standards in a manner consistent with what has been required and accepted in the past. More specifically, CSXT has failed to present any of the following:

- operational data;
- financial information;
- a market analysis of the impacts of the terminal trackage rights application (as opposed to a market analysis of a reduction in the switching charge);
- any analysis of service changes or adverse impacts to the numerous shippers served by NPBL;

(STB served July 2, 1996) at *19. This is a remedy CSXT already has, which further justifies the rejection of the application as it seeks a remedy beyond the legal authority of the Board to grant.

⁴⁷ CSXT itself acknowledges the applicability of lesser intrusive remedies than its requested terminal trackage rights. See, e.g., CSXT-22 at 128-130.

- any environmental analysis and historic report related to the trackage rights or the reconstruction of the Connecting Track;
- an estimate of what CSXT's costs would be to operate the terminal trackage rights versus operating via the NPBL switch or via drayage; or
- traffic projections and evidence that terminal trackage rights would allow CSXT to attract more traffic and be more competitive.

CSXT has had years to properly consider and prepare this responsive application. And in the last seven months in particular, has had two opportunities to get this application right. It has failed on all counts. The Board, consistent with precedent, should summarily reject CSXT's Responsive Application as woefully incomplete, unsupported, and devoid of a prima facie case.

Respectfully submitted,

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November 13, 2025

CERTIFICATE OF SERVICE

I certify that, on November 13, 2025 in keeping with 49 CFR §1114.21(f), I have caused to be served a copy of the foregoing Motion to Summarily Reject CSX Transportation, Inc.'s Responsive Application for Terminal Trackage Rights upon the Secretary of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, and each Party of Record in these proceedings.

/s/ William A. Mullins
William A. Mullins

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