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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836 (SUB-NO. 1)

CSX TRANSPORTATION, INC.
—TERMINAL TRACKAGE RIGHTS—
NORFOLK SOUTHERN RAILWAY COMPANY AND
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

CSX TRANSPORTATION, INC.'S REPLY TO MOTION TO STRIKE OF
NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY (NPBL-9)

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Dated: January 26, 2026

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1. Introduction.

CSXT¹ hereby submits this reply to NPBL's Motion to Strike portions of the Verified Statement of Mark Mayo and the corresponding sections of CSXT's rebuttal submission ("Motion"). CSXT submitted proper rebuttal evidence and argument and the Motion should be denied.

On September 18, 2025, CSXT filed its responsive application for terminal trackage rights ("Responsive Application") to serve NIT directly if the Board approves NS's application to control NPBL. CSXT established practicability of service to NIT as a replacement for NPBL's switching service because both NS and NPBL said that NPBL could move CSXT's international intermodal traffic to NIT.² After NS and NPBL filed replies contesting practicability and claiming severe operational disruption if CSXT served NIT directly, CSXT filed its rebuttal on December 19, 2025, supported by the verified statements of (i) Mark Mayo (CSXT

¹ The acronyms and defined terms used herein are the same as those used in the Board's *Decision No. 7*, served on July 10, 2025 in Docket No. FD 36836.

² (CSXT Responsive Appl. 14 & n.9, Sept. 18, 2025.)

General Manager, Southeast Region) and (ii) Robert Girardot (CSXT Director of Network Strategy & Analytics). Their statements debunk point-by-point NS's and NPBL's operational critiques, including those regarding capacity and operating patterns on NPBL lines, NS lines, and at NIT. That is precisely the purpose of rebuttal.

NPBL's Motion is just another indication that as long as NPBL is controlled by NS, it will do everything in its power to impede CSXT's on-dock rail access to NIT. CSXT's Final Brief catalogs NPBL's refusals, foot-dragging, insistence on a one-size-fits-all switch rate that effectively excludes CSXT, and resistance to commercially workable alternatives that would enable on-dock rail competition at NIT. NPBL also late-filed an improper supplemental response to CSXT's Responsive Application, collecting local opposition in an attempt to enable NPBL's controlling owner to maintain its monopoly on on-dock rail service at NIT.³ At bottom, NPBL's Motion and its broader participation in this proceeding emphasizes the need for the Board to deny NS's application for control.

As shown below, NPBL's Motion has no legal or factual basis. The Board should deny it. Should the Board decide to grant NS control of NPBL, it should decide CSXT's Responsive Application on a complete record.

2. CSXT's rebuttal properly responds to NS's and NPBL's operational arguments and evidence.

Rebuttal is for responding to issues raised in replies, not for relitigating the applicant's case-in-chief. As set out in 49 C.F.R. § 1112.6, "[r]ebuttal statements shall be confined to issues raised in the reply statements to which they are directed." *See also Decision No. 7*, slip op. at 10 (citing 49 C.F.R. § 1112.6). The Board has made it clear that "rebuttal evidence is permissible if 'confined to issues raised' in the filing to which it is directed, such as by 'appear[ing] to controvert facts

³ (See NPBL Letter, Dec. 19, 2025.)

and evidence’ in that filing.” *Canadian Pac. Ry. Ltd.—Control—Kan. City S.*, FD 36500, slip op. at 3 (STB served Oct. 19, 2022) (citing *Union Pac. Corp.—Control—Chi. & N. W. Transp. Co. (UP/CNW Decision No. 20)*, 1994 WL 498541 (ICC served Sept. 16, 1994)); see also *Burlington N. Inc.—Control & Merger—Santa Fe Pac. Corp. (BN/SF Decision No. 16)*, FD 32549, 1995 WL 232781, at *10-11 (ICC served Apr. 20, 1995) (“[R]esponsive applicants can answer arguments made in opposition to their application in rebuttal filings.”). CSXT’s rebuttal (and Mr. Mayo’s statement) does exactly that.

Notably, in *UP/CNW Decision No. 20*, the Board’s predecessor issued a lengthy decision directly addressing the “important issue [of] whether the material contained in the rebuttal filings is actually proper rebuttal in support of the responsive applications.” *UP/CNW Decision No. 20*, 1994 WL 498541, at *1. The ICC concluded that certain material was proper rebuttal in support of the responsive applications, including material that was responsive to evidence presented in opposition to the responsive application, *id.* at *5, material that controverted facts and evidence submitted in criticism of the responsive application, *id.* at *10, and material that properly and specifically rebutted testimony presented in opposition to the responsive application, *id.* at *20. Here, the Board should similarly find that the material NPBL’s Motion is seeking to strike is “proper rebuttal.”

In its Responsive Application, CSXT established practicability and lack of substantial impairment by showing that CSXT’s direct service to NIT would take the place of NPBL switching operations.⁴ Before CSXT filed its Responsive Application, NS and NPBL both took the position that NPBL could move CSXT’s

⁴ (See CSXT Rebuttal 15, n.8, Dec. 19, 2025 (citing Board precedent finding operations that would replace other operations on the subject lines would not create a substantial impairment).)

intermodal traffic to NIT today. In its control application, NS claimed that CSXT has direct access to NIT today via a switch with NPBL, and that CSXT will continue to have that direct access if the Board approves NS's application. (NS Appl. 6, 10, June 13, 2025.) Likewise, Cannon Moss, NPBL's President and General Manager, testified in August 2025 that { [REDACTED] }) (See Responsive Appl. at 14 & n.9 (citing Ex. 3, Moss Dep. Tr.126:11-14, Aug. 28, 2025) { [REDACTED] [REDACTED] }); (see also *id.* at 155:14-17) ({ [REDACTED] [REDACTED] })).)

But, in their oppositions to CSXT's Responsive Application, NS and NPBL backed away from their positions and claimed that CSXT's proposal would cause severe operational interference in the terminal area—from alleged capacity constraints to blocked crossings. (NS Opp'n 23-25, Nov. 20, 2025; NPBL Reply 3-6, 11-15, Nov. 20, 2025.) To respond to NS and NPBL's evidence, CSXT offered responsive, fact-based demonstrations that (1) NIT has capacity to handle at least one additional intermodal train per day; (2) NS's lines can accommodate one additional intermodal round-trip to NIT without substantial interference; and (3) NPBL already manages long trains across the same corridor that pose similar operational challenges. (CSXT Rebuttal Sections 4.2.1-4.2.3.) These are direct and specific responses to the operational critiques presented by NS and NPBL in opposition to the Responsive Application and therefore are proper rebuttal. *See, e.g., UP/CNW Decision No. 20*, 1994 WL 498541, at *20 (finding that a verified statement that specifically rebutted material presented in opposition to the responsive application was proper rebuttal); *see also Commuter Rail Div. of the Reg'l Transp. Auth. d/b/a Metra—Terminal Trackage Rts.—Union Pac. R.R. Co. (Metra/UP)*, FD 36844, slip op. at 13 (STB served Sept. 3, 2025) (finding that a

proposal submitted by Metra on rebuttal was “a permissible response to a new position expressed by UP”).

NPBL’s reliance on *Metra/UP* and similar authorities is misplaced. (See NPBL Mot. 4-5.) Consistent with STB precedent, those decisions caution that a party may not introduce a new affirmative case on rebuttal, to which other parties would have no ability to respond. See, e.g., *Metra/UP*, slip op. at 11-12. The decisions do not bar a party from offering “evidence and argument focused on discrediting [a replying party’s] claims and contentions” or evidence responding to a new position expressed by a replying party. *Id.*, slip op. at 12-13; see also *UP/CNW Decision No. 20*, 1994 WL 498541, at *18 (declining to strike rebuttal material that responded to arguments and evidence submitted in opposition to the responsive application). Here, in opposition to the Responsive Application, NS and NPBL argued that the practicability and substantial impairment disputes turn on granular operational claims; CSXT’s rebuttal properly and specifically responded to those claims.

Additionally, NPBL suggests that it is problematic that CSXT presented “an entirely new witness” on rebuttal. (NPBL Mot. 5.) However, in *UP/CNW Decision No. 20*, the ICC declined to strike rebuttal evidence containing testimony from certain new witnesses, stating, “although [the responsive applicant’s] rebuttal evidence . . . contains testimony from new witnesses, their statements appear to directly and specifically controvert statements made by Primary Applicants’ witnesses in Primary Applicants’ opposition to the requested conditions.” *UP/CNW Decision No. 20*, 1994 WL 498541, at *25. The same reasoning applies here: although Mr. Mayo is a new witness, his verified statement and the corresponding discussion in CSXT’s rebuttal directly and specifically controverts the claims made by NS and NPBL in opposition to the Responsive Application.

In fact, NS introduced testimony from three new witnesses in its rebuttal in support of its application. (NS Response to Comments, Ex. A, Ex. C, Ex. D, Nov. 20, 2025.) In that instance, NS—as the party with the burden of proof—had the right to have the last word on its application. Likewise, CSXT, as the party with the statutory burden of proof on the Responsive Application,⁵ is entitled to the last word on the Responsive Application. *See, e.g., UP/CNW Decision No. 20*, 1994 WL 498541, at *2 (“Parties have the right to submit the final evidence and close the record on the merits of their application.”); *BN/SF Decision No. 16*, 1995 WL 232781, at *11 (“Traditionally, applicants, whether they are primary or responsive applicants, have the right to close the evidentiary record on their case.”). By design, the Board’s schedule gives the burdened party a rebuttal filing to meet the criticisms that emerge in replies.⁶ The relief NPBL seeks—striking the operating witness who directly responds to reply-phase objections—would be fundamentally unfair, both distorting the process and depriving the Board of important facts.

3. Conclusion.

For the foregoing reasons, the Board should deny NPBL’s Motion to Strike in its entirety, consider the Mayo and Girardot verified statements and CSXT’s rebuttal in full, and proceed to decide CSXT’s Responsive Application on a complete, accurate record, if the Board decides to condition any approval of NS’s control application.⁷

⁵ NPBL acknowledges that CSXT bears the burden under 49 U.S.C. § 11102(a) to establish that it is entitled to terminal trackage rights. (NPBL Mot. 1-2.)

⁶ *See Decision No. 7*, slip op. at 9 (quoting *UP/CNW Decision No. 20* for the proposition that “[p]arties have the right to submit the final evidence and close the record on the merits of their application,” and noting that “[t]his includes both primary applicants and responsive applicants”).

⁷ The Motion also goes well beyond seeking to strike and includes improper surrebuttal argument (NPBL Mot. 6, n.10) without seeking leave to do so, in contradiction of the Board’s procedures. *See* 49 C.F.R. § 1104.13(c); *Sunflower State*

Respectfully submitted,

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Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025).

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Reply to Motion to Strike of Norfolk and Portsmouth Belt Line Railroad Company (NPBL-9) in Finance Docket No. 36836 (Sub-No. 1) 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
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