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April 22, 2026

311161

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Chief Counsel
April 22, 2026
Part of
Public Record

***Buckingham Branch Railroad Company – Discontinuance Exemption – in
City of Virginia Beach and the City of Norfolk, VA, Docket No. AB-1349
(Sub-No. 1X)***

Response to Norfolk Southern Railway Company’s Abeyance Request

Dear Chief of Case Administration:

Buckingham Branch Railroad Company (“BBRR”) hereby responds to the April 6, 2026 Norfolk Southern Railway Company (“NSR”) letter filing in the above-referenced docket, in which NSR seeks delayed processing of BBRR’s discontinuance petition for exemption via abeyance. As detailed below, there is no basis for an abeyance order, and, accordingly, the Board should proceed to a merits determination in the ordinary course.

As an initial matter, BBRR may file this reply pursuant to 49 C.F.R. § 1104.13 because NSR seeks affirmative relief in the form of an abeyance.¹

¹ Pursuant to the notice served by the Board in this proceeding on March 27, 2026, “replies” to the petition were due by April 16, 2026. No replies were filed.

FLETCHER & SIPPEL LLC

Chief of Case Administration

Office of General Counsel

April 22, 2026

Page 2

NSR's April 6 letter filing seeks to stay this proceeding while bypassing the Board's well-established and stringent standards for such injunctive relief.² NSR does not address any of the standards for a stay, much less satisfy them, and on that basis alone the abeyance request fails. Furthermore, the Board's ability to put an abandonment or discontinuance proceeding indefinitely "on hold" is constrained by the statutory framework governing an offer of financial assistance ("OFA"). Under 49 U.S.C. § 10904, Congress established strict timelines for the OFA process to ensure that lines are either preserved for continued rail service or promptly permitted to be discontinued or abandoned. The OFA statute contemplates an outside boundary (120 days from the filing of the petition) for these processes to conclude. Imposing an abeyance based on a private contractual dispute would frustrate this statutory mandate and the Board's procedural schedule here that tacitly acknowledges this time frame.

Substantively, the sole reason offered for abeyance is an alleged breach of the 2018 BBRR-NSR Lease Agreement (the "Lease") governing BBRR's operations over the NSR line (the "NSR Line") that is the subject of this discontinuance proceeding.

BBRR disputes that it is substantively in default under the Lease. For more than a year, NSR has been aware through BBRR of the Navy's proposed acquisition of a portion of the adjoining Canonie Atlantic Co. ("CAC") line, and how the Navy's conversion of CAC's Little Creek Yard facilities (and the termination of traffic originating and terminating there) would render BBRR's continued operations over the NSR Line physically and economically impracticable. While, of late, NSR has begun to recognize BBRR's untenable situation, NSR's reliance on an alleged breach and delay in its April 6 filing is an improper stall tactic, particularly given that BBRR has consistently aimed to be a strong NSR partner.

Although BBRR objects to NSR's attempt to delay this proceeding, BBRR remains in direct, constructive dialogue with NSR concerning the future of the NSR Line (over which NSR, of course, has an underlying common carrier obligation). BBRR believes that such dialogue could produce a mutually acceptable alternative service arrangement, albeit one that would not delay the Navy's Little Creek development plans.

Furthermore, BBRR's alleged breach of the Lease is entirely a matter of state contract law outside the Board's purview,³ and is, rather, a matter better left to an appropriate state court. In that vein, if NSR can demonstrate substantive breach (based

² See *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958).

³ *Ingredion Incorporated – Petition for Declaratory Order*, STB Finance Docket No. 36014, slip op. at 4 (served Sept. 30, 2016).

FLETCHER & SIPPEL LLC

Chief of Case Administration

Office of General Counsel

April 22, 2026

Page 3

upon NSR's objection to BBRR's discontinuance effort), NSR is entitled to relief set forth in the Lease, and it may seek to terminate the arrangement outright.

There is no basis for a stay or so-called "abeyance."⁴ The relief BBRR seeks depends upon satisfying the applicable discontinuance standards, and NSR has not contested the merits of BBRR's petition. For evident reasons, BBRR has chosen to yield to the national imperatives of the Navy (and Virginia's strong support for the Navy's facility expansion), having determined that cooperating in joint abandonment and discontinuance efforts (encompassed by the related AB 1266 (Sub-No. 2X) and AB 1349 (Sub-No. 1X) proceedings) was the only viable option.

For these reasons, the Board should deny NSR's requested abeyance.

Respectfully submitted,

/s/ *R.A. Wimbish*

Robert A. Wimbish

**ATTORNEY FOR BUCKINGHAM
BRANCH RAILROAD COMPANY**

cc: All parties of record

⁴ NSR's reliance upon *Ballard Terminal*, FD 36261 (STB served June 27, 2019) for a stay order here is misplaced. In that case, the Board was asked to issue a declaratory order regarding preemption where the dispute centered around an interpretation of a contract – and the interpretation of that contract was the subject of state court proceedings. *Ballard Terminal*, slip op. at 4. This proceeding involves neither a request for Board exercise of its discretionary authority, and the requested discontinuance is not dependent upon Lease interpretation.