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Office of Chief Counsel
June 3, 2026
Part of
Public Record

June 3, 2026

VIA E-FILINGChief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001Re: Yookel, Inc. And B & J Group, Inc. Petitioners v. CSX Transportation, Inc., Norfolk Southern Railway Company, And Consolidated Rail Corporation, Respondents
FD No. 36930

Dear Chief of Case Administration:

Norfolk Southern Railway Company respectfully submits this Reply to the May 26 petition for declaratory order filed by Yookel, Inc. and B&J Group, Inc. 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. MullinsWilliam A. Mullins
Attorney for Norfolk Southern Railway Company

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36930

**YOOKEL, INC. AND B & J GROUP, INC.,
Petitioners,**

v.

**CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY,
AND CONSOLIDATED RAIL CORPORATION,
Respondents.**

REPLY OF NORFOLK SOUTHERN RAILWAY COMPANY

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INTRODUCTION

Norfolk Southern Railway Company (“NS”) respectfully submits this Reply in opposition to the Petition for Declaratory Order filed by Yookel, Inc. and B & J Group, Inc. (“Petitioners”). The Board should deny the Petition without instituting a declaratory-order proceeding. Petitioners do not present any genuinely new controversy warranting the Board’s discretionary intervention under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. Instead, they seek to relitigate a dispute over demurrage, notice, and the Fairless/Morrisville Shared Assets operating arrangement that they already chose to litigate in federal court—and lost. A declaratory-order proceeding is not a vehicle for obtaining a second merits determination by recasting old arguments as a request for “clarification.”

The Petition fails on the merits as well. The governing agreements are not ambiguous: they make clear that CSX Transportation, Inc. (“CSXT”) and NS are the “Trunk Lines” with authority to establish and negotiate line-haul, terminal, and accessorial freight charges, while Consolidated Rail Corporation (“Conrail”) performs switching and operating functions as their agent. Petitioners’ contrary theory depends on selective quotations, outdated regulatory

language, and material mischaracterizations of the Rail Operating Service Agreement, the Board's demurrage regulations, and the Board-approved post-Conrail operating structure. The Board should reject that effort and deny the Petition.

ARGUMENT

I. THE BOARD SHOULD DENY THE PETITION WITHOUT INSTITUTING A DECLARATORY-ORDER PROCEEDING BECAUSE THE PETITION PRESENTS NO NEW CASE OR CONTROVERSY

The Administrative Procedure Act authorizes an agency, in its sound discretion, to issue a declaratory order to terminate a controversy or remove uncertainty. 5 U.S.C. § 554(e). That authority is discretionary, not mandatory, and the Board has repeatedly declined to institute declaratory-order proceedings where the request would produce an advisory ruling, duplicate issues already being litigated or already resolved elsewhere, or otherwise fail to identify a genuinely new uncertainty requiring Board intervention. The Petition falls squarely within those categories.

Petitioners first elected to test these issues in federal court. In CSX Transportation, Inc. v. B&J Group, Inc., 381 F. Supp. 3d 438 (E.D. Pa. 2019), the district court considered and rejected B&J's challenge to demurrage assessed in the Fairless/Morrisville operating context, including the premise that demurrage could not be charged for private cars held on railroad property pending placement. The present Petition does not identify a materially different dispute. It challenges the same demurrage framework, the same Shared Assets operating structure, and the same alleged defects in notice. It simply repackages those issues under a declaratory-order label, adds NS and Conrail as defendants, includes new invoices and notices that were issued under the same process and procedures as were in effect at the time of the court proceeding, and then adds a demand for Board commentary on the same arrangement Petitioners already litigated in court.

That is not a proper use of declaratory relief. The petition should be denied outright. The Board recently precisely took this practical approach in Northeast Louisiana Multimodal District—Petition for Declaratory Order, FD 36809 (STB served Sept. 15, 2025), where it denied declaratory relief after concluding that the petition effectively reprised arguments a federal district court had already considered and rejected. The Board likewise has declined declaratory relief where the same demurrage charges were being litigated in federal court. See CL Consulting and Management Corp.—Petition for Declaratory Order, FD 36042, slip op. at 3 n.5 (STB served Jan. 25, 2017). Those principles apply with full force here.

Petitioners attempt to create the appearance of novelty by pointing to later-issued invoices, a different emphasis on 49 C.F.R. Part 1333, and the fact that NS and Conrail are named here as respondents. Those are not new operative facts. They are merely new labels attached to the same underlying dispute. Later invoices issued under the same tariffs, within the same operating relationship, and against the backdrop of the same alleged notice practices do not transform a resolved dispute into a new one fit for declaratory relief. Nor does adding parties alter the reality that the Petition asks the Board to revisit the same basic question: whether demurrage may be assessed in the Fairless/Shared Assets structure under the current arrangement.

Finality, comity, and sound administrative discretion all weigh strongly against institution of a new declaratory-order proceeding. Once a federal court has already adjudicated the operative dispute, the Board need not—and should not—reopen the same controversy through discretionary declaratory relief. To do so would invite duplicative adjudication, undermine the finality of the court’s judgment, and create a risk of inconsistent pronouncements regarding the very same demurrage framework. There is no need to open a new declaratory-order proceeding

where the controversy is not new, the legal framework is already established, and Petitioners are simply attempting to obtain another merits determination after losing in court.

II. EVEN APART FROM FINALITY CONCERNS, THE PETITION DOES NOT WARRANT A DECLARATORY ORDER BECAUSE IT PRESENTS NO GENUINE UNCERTAINTY REQUIRING BOARD INTERVENTION AND WOULD, AT MOST, INVITE A PREMATURE OR ADVISORY RULING

The Administrative Procedure Act (“APA”) authorizes agencies, in their sound discretion, to issue declaratory orders to terminate a controversy or remove uncertainty.¹ But, as the APA explicitly states, that authority is discretionary, not mandatory. The Board has repeatedly declined to issue declaratory relief where the request is premature, unnecessarily advisory, or does not present the kind of genuine uncertainty that warrants Board intervention. Waste Management of Washington, Inc. is a recent Board example.²

This is precisely the same situation presented in this petition. Petitioners do not identify a genuinely new or unresolved controversy requiring declaratory relief. Instead, they seek a Board pronouncement on notice and demurrage liability issues that are already addressed by the Board’s regulations and that arise from the same factual and operational framework previously adjudicated in court. This is not a case in which a declaratory order is needed to fill a regulatory gap or resolve an otherwise unanswered question. See, e.g., Northwestern Pacific Rr. Co. – Petition for Declaratory Order, FD 35977 (STB served April 25, 2016) (request for issuance of a

¹ 5 U.S.C. 554(e).

² Waste Management of Washington, Inc., et al – Petition for Declaratory Order, FD 36511 (STB served Feb. 2, 2022) (declining to institute a proceeding as to issues currently pending before a state court). See, Michelin North America, Inc. – Petition for Declaratory Order – Certain Rates and Practices of PJAX, Inc., NOM 42011 (STB served January 28, 1998) (declining to open a declaratory order proceeding because “it does not appear that a declaratory order proceeding is necessary to terminate a controversy or remove uncertainty”).

declaratory order is denied when that request addresses the same arguments and essentially the same fact as those already adjudicated).

The Board's decision in Association of American Railroads³ is particularly instructive. There, the Board concluded that issuance of a declaratory order would be premature. The same principle applies here. If the Board believes any clarification is warranted at all, it can conclude that a binding declaratory ruling is neither necessary nor appropriate because the Petition does not present a sufficiently new, prospective, or concrete controversy distinct from the one already addressed by existing law and prior adjudication.

While Petitioners point to continuing invoices and an asserted ongoing dispute, the continuing application of the same tariffs and the same notice practices does not itself create a proper basis for declaratory relief. If it did, any party dissatisfied with an existing legal framework could repurpose recurring invoices into serial requests for agency reconsideration. The Board should reject that approach, just as it has rejected declaratory relief in other circumstances where a petition would amount to no more than an advisory or premature ruling.

The Petition does not present the sort of immediate, forward-looking uncertainty that has justified declaratory relief in other proceedings. Nor is this a matter of industry-wide uncertainty warranting Board intervention; it is a fact-specific commercial dispute arising from one operating arrangement and one set of parties, dressed up as a request for system-wide clarification. The legal standards governing demurrage liability are already set forth in 49 C.F.R. Part 1333 and are clear.

Granting declaratory relief here would therefore create, not remove, uncertainty. A Board declaration revisiting these issues after the federal court's judgment would risk duplicative and

³ Ass'n of Am. R.Rs.—Pet. for Declaratory Ord., FD 36369 (STB served Dec. 30, 2020).

potentially inconsistent rulings about the same demurrage framework. The Board has broad discretion to avoid that result, and should exercise it here. For these reasons, the Petition does not satisfy the standards that would warrant issuance of a declaratory order.

III. THE PETITION IS AN IMPROPER ATTEMPT TO REVISE—NOT MERELY “CLARIFY”—THE BOARD’S DEMURRAGE LIABILITY FRAMEWORK ESTABLISHED IN EP 707 and EP 759 AND CODIFIED IN PART 1333

Petitioners style their request as one for “clarification,” but the relief they seek would do far more than clarify existing law. The governing regulation asks whether the person receiving rail cars was given actual notice of the governing demurrage tariff before placement. It does not require that notice originate from a particular affiliated railroad entity; it does not require that the notice explain the internal allocation of responsibilities within a Shared Assets structure; and it does not create a categorical exemption for private cars merely because Petitioners characterize certain trackage as “private.” Demurrage Liability establishes the same point in the rulemaking history.⁴

In substance, Petitioners seek to graft onto Part 1333 at least three new substantive requirements: first, a source-of-notice requirement, under which notice would be ineffective unless it came from Conrail; second, a content-of-notice requirement, under which the notice would have to explain the Shared Assets relationship among CSX, NS, and Conrail; and third, a location-based carveout, under which demurrage could not be assessed for private cars held in the operating yards and trackage at issue here. None of those requirements appears in the rule text adopted in EP 707. These requests confirm that they are not seeking application of the existing rule, but a new rule requiring either notice from Conrail or a mandatory explanation of

⁴ Demurrage Liability, EP 707, 79 Fed. Reg. 21407 (Apr. 16, 2014).

the CSXT/NS-Conrail relationship—requirements found nowhere in Part 1333 and requirements that would require new notice and comment proceedings.

The proposed private-track limitation is especially inconsistent with the Board’s own explanation of the rule. In the EP 707 final rule, the Board expressly clarified that demurrage may apply to privately owned cars when held on railroad property because demurrage compensates the railroad for the use of its assets—specifically, “the space on its track or at its yards”—and promotes efficient car use. Petitioners’ proposed carveout would therefore not merely apply existing policy; it would materially revise it.

The same is true of Petitioners’ notice theories. EP 707, as subsequently modified by EP 759,⁵ and Part 1333 establish an actual-notice framework. They do not require that notice come from a specific corporate affiliate, and they do not require a narrative explanation of Shared Assets relationships before notice can be effective. By asking the Board to impose those additional conditions, Petitioners seek a substantive alteration of the current regulatory scheme, not a straightforward application of existing law to a discrete set of facts.

This is why this Petition is not a true request for declaratory clarification. It is, instead, a request for the Board to alter the substantive content of the current demurrage-liability framework through adjudication. If Petitioners believe Part 1333 should require notice from a specific corporate entity, should mandate explanatory content about Shared Assets relationships, or should recognize a new categorical exception for these circumstances, that is a policy-change request—not a proper basis for declaratory relief in a bilateral dispute.

The Board should apply the framework it adopted in EP 707 and EP 759, as codified in Part 1333—not impose new notice-source, notice-content, or private-track exceptions through

⁵ Demurrage Billing Requirements, EP 759, 85 FR 26858 (May 6, 2020).

declaratory adjudication. To do otherwise would circumvent the Board's established policymaking framework and invite future litigants to seek regulatory revision through case-specific petitions dressed up as requests for "clarification."

The Board should therefore deny the Petition rather than permit a bilateral dispute to become the vehicle for rewriting the rules adopted in EP 707 and EP 759, as codified in Part 1333.

IV. EVEN IF THE BOARD REACHES THE MERITS, THE GOVERNING CONTRACTS AND THE BOARD-APPROVED POST-CONRAIL STRUCTURE SHOW THAT CSXT AND NS—NOT CONRAIL—MAY IMPOSE DEMURRAGE, AND THE PETITION MISSTATES THE RELEVANT LANGUAGE

A. Petitioners' Underlying Contractual Theory of the Case is Wrong

Petitioners' merits theory depends on the assertion that Conrail, rather than CSXT and NS, holds the relevant commercial authority for service at Fairless and that only Conrail could lawfully stand behind the demurrage charges at issue. That assertion cannot be reconciled with the governing contracts. Petitioners misleadingly cobble together two sections of the 2000 Rail Operating Service Agreement, incorrectly citing language from Sections 3 and 10 as if they were drafted contiguously to produce a meaning plainly not contemplated by the agreement itself. This disingenuous citation on its own is sufficient basis for the Board to refuse to use its discretionary authority to grant the Petition.

Section 3 of the 2000 Rail Operating Service Agreement⁶ grants **Conrail** "the right to operate the Industrial Park Track and the Joint Use Track." Section 10 of the same 2000 Rail Operating Service Agreement, entitled "Railroad/Shipper Relations," provides that the "Trunk Lines shall be solely responsible for negotiating suitable commercial arrangements based on

⁶ The Rail Operating Service Agreement §§ 3, 10 (effective Jan. 1, 2000) is attached as Exhibit C to the Petition.

common transportation characteristics with Shippers for line-haul, terminal and accessorial freight charges, in order to maintain the competitive attractiveness of the Fairless Industrial Park.” The agreement’s definition of “Trunk Lines” identifies Norfolk Southern and CSX Transportation—and/or any other trunk line railroads that may in the future provide rail service—not Conrail. The contract draws a straightforward distinction: Conrail has operating rights; the Trunk Lines have the commercial authority to assess accessorial freight charges (e.g., demurrage).

Petitioners misleadingly and incorrectly cobble together these two standalone provisions to assert that: “Pursuant to the Rail Operating Service Agreement, Conrail acquired ‘the right to operate [Fairless Yard]’ and was ‘solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal [,] and accessorial freight charges’ Id.: Rail Operating Service Agreement §§ 3, 10.” Petition at 6. This is a plainly incorrect reading of the agreement. Their failure to correctly disclose the definition of “Trunk Lines” assigns to Conrail commercial rights that Conrail does not have – not under the 2000 Rail Operating Service Agreement nor under Conrail’s STB approved operating authority.

The Board-approved post-Conrail structure is equally clear. The Conrail control decision states that, following the transaction, “CSXT and NSR will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the SAAs.” It further explains that Conrail “will not hold itself out to the public as performing transportation services directly and for its own account,” “will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services,” and will perform transportation services

only “as agent or subcontractor of CSXT or NSR.”⁷ Petitioners’ theory that Conrail possesses independent rate authority, or that only Conrail could be the proper party for demurrage purposes, is incompatible with that Board-approved framework. But even assuming Conrail remains a rail carrier for some purposes, as Petitioners argue, that premise does not answer the relevant question here, because the Board-approved Shared Assets structure assigns the authority to establish rates and charges to CSXT and NS, not to Conrail. Thus, whether Conrail is or is not a common carrier is not a determinative element of this proceeding.

B. Petitioners Misleadingly Quote Outdated Demurrage Regulations in Support of Their Flawed Arguments

Petitioners also materially misstate the Board’s current demurrage regulations. The Petition quotes superseded versions of 49 C.F.R. §§ 1333.2 and 1333.3 in a manner designed to imply that only the railroad physically switching a car may assess demurrage and that the current rules do not contemplate direct billing and related intermediary arrangements. But the current text of § 1333.2 no longer contains the language Petitioners quote, and the current text of § 1333.3 includes the direct-billing provisions adopted in Demurrage Billing Requirements, EP 759, 85 Fed. Reg. 26,858 (May 6, 2020). Petitioners’ omission of those revisions is material because the omitted language undermines the very inference Petitioners ask the Board to draw.

Once the contracts and governing legal framework are read accurately, the merits are straightforward. CSXT and NS are the trunk lines with the authority to negotiate commercial arrangements with shippers and to establish and apply the relevant transportation charges, including demurrage. Conrail, by contrast, performs operating and switching functions as their

⁷ CSX Corp. & CSX Transp., Inc., Norfolk S. Corp. & Norfolk S. Ry. Co.—Control & Operating Leases/Agreements—Conrail Inc. & Consol. Rail Corp., STB Finance Docket No. 33388, Decision No. 89, slip op. at 438 (STB served July 23, 1998).

agent and does not possess independent rate authority in this setting. Petitioners' contrary theory rests not on any genuine ambiguity in the agreements or regulations, but on selective quotations and mischaracterizations that materially mislead the Board as to what the controlling documents and authorities actually provide.

For these reasons, if the Board reaches the merits at all, it should reject the Petition on the merits and strike or disregard the portions of the Petition and declaration materials that misquote or mischaracterize the governing contracts, regulations, statutes, and precedent. The Board should not permit Petitioners to create apparent uncertainty by distorting the texts that resolve the issue.

CONCLUSION

For the foregoing reasons, the Board should deny the Petition without instituting a declaratory-order proceeding. Petitioners do not present a genuinely new controversy warranting discretionary relief; instead, they seek an advisory ruling that would relitigate issues already addressed in prior litigation and governed by existing Board regulations and precedent.

Even if the Board were to reach the merits, it should reject Petitioners' position and hold that the governing agreements and the Board-approved post-Conrail operating structure make clear that CSX Transportation, Inc. and Norfolk Southern Railway Company—not Conrail—possess the relevant commercial authority to establish and apply the charges at issue, including demurrage, while Conrail acts only in an operating and agency capacity. The Petition should therefore be denied in its entirety.

Respectfully submitted,

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June 3, 2026

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CERTIFICATE OF SERVICE

I certify that, on June 3, 2026, in accordance with 49 C.F.R. § 1114.21(f), I caused a copy of the foregoing Reply of Norfolk Southern Railway to be served upon each Party of Record in this proceeding.

/s/ William A. Mullins

William A. Mullins