

MULLINS LAW GROUP PLLC

Transportation Solutions for the 21st Century

2001 L Street NW, Suite 720
Washington, DC 20036

William A. Mullins
wmullins@mullinslawgroup.net
mullinslawgroup.net

Telephone: (202) 663-7850
Direct: (202) 663-7823
Facsimile: (202) 464-9123

July 6, 2026

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VIA E-FILING

Ms. Cynthia T. Brown
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Chief Counsel
July 6, 2026
Part of
Public Record

Re: Norfolk Southern Railway Company – Petition to Set Trackage Rights
Compensation – Norfolk & Portsmouth Belt Line Railroad Company, FD
No. 36223

Dear Chief of Case Administration:

Norfolk Southern Railway Company respectfully submits this Petition To End The Abeyance Period And Establish A Procedural Schedule 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 Railway Company

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36223

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

**PETITION TO END THE ABEYANCE PERIOD AND ESTABLISH
A PROCEDURAL SCHEDULE**

**Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208**

**William A. Mullins
Rose-Michele Nardi
JOHN V. EDWARDS
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7823
Attorneys for Norfolk Southern Railway
Company**

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**NORFOLK SOUTHERN RAILWAY COMPANY
– PETITION TO SET TRackage RIGHTS COMPENSATION –
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**PETITION TO END THE ABEYANCE PERIOD AND ESTABLISH
A PROCEDURAL SCHEDULE**

The Board’s Control Decision¹ removes the last asserted basis for keeping this case on hold. What began as a temporary pause tied first to CSXT’s failed federal litigation, and then to the control proceeding, has become an unjustified delay that leaves NS bearing uncompensated costs. The predicate for abeyance is gone. There is no longer any justification for CSXT to continue to postpone any reckoning on the one issue that has always needed to be decided: the compensation NPBL must pay for using NS’s lines. The Board should not permit CSXT to weaponize delay any longer. Accordingly, the Board should lift abeyance in this trackage rights compensation proceeding and allow it to move forward as soon as possible.

Ending abeyance is now both appropriate and necessary. Continued delay no longer serves any efficiency purpose, and it prevents the Board and the parties from resolving a central cost component of NPBL’s operations: the compensation NPBL must pay for its trackage rights over NS lines. Until that compensation is set, NPBL cannot fully align its switching charges and

¹ Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line R. Co., FD 36836 (STB served Apr. 6, 2026) (“Control Decision”). In this pleading, “NS” shall mean Norfolk Southern Railway Company, “CSXT” shall mean CSX Transportation, Inc., and “NPBL” shall mean Norfolk & Portsmouth Belt Line Railroad Company.

dividend obligations with the 1897 Operating Agreement, and NS and NPBL cannot fully implement the uniform, cost-based framework contemplated by the Control Decision.

Lifting the abeyance is also necessary to implement the Control Decision in the manner the Board anticipated. That decision imposed enforceable representation conditions, including that NS/NPBL trackage rights compensation be set using SSW cost-based principles and that NPBL operate on a uniform, cost-plus basis. One can only meaningfully apply the second of those requirements once the trackage rights compensation component is determined. NS therefore respectfully requests that the Board lift abeyance and establish a procedural schedule to bring this matter promptly to decision.

BACKGROUND

This dispute arises from NPBL's long-standing trackage rights over NS-owned facilities in Hampton Roads, Virginia. NPBL is a Class III switching and terminal railroad majority-owned by NS and minority-owned by CSXT. Among other operations, NPBL holds trackage rights over approximately 11 miles of NS-owned lines in the Norfolk/Portsmouth area that provide access to the Port of Virginia, including Norfolk International Terminal.

After the parties' prior trackage rights agreement terminated in 2016, NPBL continued operating month-to-month while the parties negotiated replacement terms. They could not agree on compensation. NS therefore filed a petition on September 13, 2018, asking the Board to institute a proceeding to set the appropriate trackage rights compensation. Shortly thereafter, CSXT intervened in this proceeding and filed related litigation against NS in the U.S. District Court for the Eastern District of Virginia.

On July 25, 2019, the Board granted CSXT's request to hold this proceeding in abeyance.² The Board reasoned that the district court litigation could reduce the number of disputed issues before the Board and that abeyance, at that time, would promote efficiency without unfairness to any party.

That rationale has now expired. On January 3, 2023, the district court granted in part and denied in part NS's motion for summary judgment.³ The Fourth Circuit affirmed on August 29, 2024, and the Supreme Court denied certiorari on April 21, 2025.⁴ The federal litigation that originally supported abeyance is therefore complete.

A separate control proceeding then became the asserted basis for continued abeyance. After the Board directed NS to address the control issue following completion of the district court litigation, NS filed an application to obtain authority to control NPBL. NS moved on April 30, 2025, to remove this trackage rights compensation proceeding from abeyance, but CSXT opposed it. On September 25, 2025, the Board continued abeyance, stating that after reaching a decision in the control proceeding, it would evaluate any remaining issues in this proceeding.⁵

The Board has now done so. On April 6, 2026, the Board served a decision granting NS authority to control NPBL. The Control Decision also made this proceeding more—not less—important: it conditioned approval on NS's representation that NS/NPBL trackage rights compensation would be set by the Board using SSW cost-based principles and that NPBL would

² Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223 (STB served July 25, 2019).

³ CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679 (E.D. VA 2023).

⁴ CSX Transp., Inc. v. Norfolk S. Ry. Co., 114 F4th 280 (4th Cir. 2024), cert. denied, 145 S.Ct. 1921 (2025).

⁵ Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223 (STB served Sept. 25, 2025).

continue to operate as an impartial terminal railroad on a uniform, cost-plus basis. Resolving this proceeding is therefore necessary to determine a central cost component of NPBL's operations and to implement the Control Decision.

ARGUMENT

NS renews its request that the Board remove the current trackage rights compensation proceeding from abeyance. The underlying basis for the abeyance has been resolved: the federal district court litigation instituted by CSXT has now been complete for some time, culminating in a dismissal of all of CSXT's claims as to NS alleged antitrust behavior. And the Control Decision further clarified the record, clearing the path to a resolution of this long-pending proceeding.

The NPBL Trackage Rights Compensation Proceeding has been held in abeyance for almost 7 years. The sole outstanding issue impeding the execution of a new trackage rights agreement is the resolution of the level of compensation.⁶ There are no further ancillary or other hindrances impeding the STB from efficiently and effectively adjudicating a just and equitable trackage rights compensation amount as anticipated by the well-established precedent of SSW Compensation proceedings.

Lifting abeyance is also necessary to implement the Control Decision's conditions and to enable meaningful Board oversight. The Board's approval of NS's control of NPBL was subject to conditions that expressly required the NPBL Trackage Rights Compensation Proceeding to be resolved. The requirement that NPBL operate on a "uniform, cost-plus basis" presupposes identification of all material cost components—including the trackage rights compensation

⁶ Petition, Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223, submitted September 13, 2018.

NPBL must pay NS. Similarly, the Control Decision’s monitoring period for switching rates, tariffs, and operational changes will be substantially more informative once compensation is set.

In its abeyance decisions, the Board considers “whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party.”⁷ Reviving the trackage rights compensation proceeding would not be fundamentally unfair to any party. Since adoption of the 2010 switching rate, CSXT has used NPBL switching services to and from locations other than NIT. Far from causing any fundamental unfairness to CSXT, CSXT would benefit from knowing that the NPBL rail switching service available to CSXT is properly priced, particularly as it weighs using that service against the subsidized drayage service CSXT currently uses for that traffic.

Indeed, CSXT has now informed the STB that it intends to take advantage of that same NPBL switching service to NIT.⁸ CSXT can use the existing NPBL switching rate to serve NIT until the trackage rights compensation rate has been set. However, the NPBL switching rate, which will include the NPBL trackage rights component, needs to be set, so that all parties can plan for future service. As the Federal District Court noted in its opinion dismissing CSXT’s antitrust lawsuit, “any future ‘switch rate’ that NPBL charges to CSXT to access NIT will *necessarily include the NSR-NPBL rate as a cost factor because NPBL will have to pay NSR that rate for each car moved to NIT.*”⁹ Setting the rate is a critical component for all parties

⁷ Norfolk S. Ry. – Pet. to Set Trackage Rights Comp. – Norfolk & Portsmouth Belt Line R.R., FD 36223, slip op. at 4 (STB served December 19, 2019) (citing N. Am. Freight Car Ass’n v. Union Pac. R.R., NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017) (deciding not to grant an abeyance request)).

⁸ CSXT Letter, Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line R. Co., FD 36836, submitted May 13, 2026 (“CSXT Letter”).

⁹ See CSX v. NS, 648 F. Supp. 3d 679, 709, n.19 (emphasis supplied).

benefit.¹⁰ If any legitimate reason ever existed for holding this matter in abeyance, that has long expired. CSX's continued obfuscation of this matter needs to end in order for NPBL to fully understand its cost structure, consistent with its founding charter.

Similarly, lifting the abeyance would not be fundamentally unfair to NPBL. NPBL neither sought nor supported abeyance in this proceeding,¹¹ and NPBL is supportive of lifting the abeyance.¹² Indeed, the continuing delay of the trackage rights compensation proceeding arguably results in unfairness to NPBL, given NS's position that the determined compensation should be imposed retroactively.

And, continuing to hold this proceeding in abeyance is certainly unfair and prejudicial to both NS and CSXT in their role as the two equity owners of NPBL. As set forth in the docket for the control proceeding, the existing rate, which has not increased since 2010, does not cover NPBL's cost, yet alone provide a return to its owners. As such, the abeyance is not promoting any efficiencies.¹³ In fact, as discussed above, the conditions imposed on the Board's approval of NS's control of NPBL expressly include conditions based on the resolution of the trackage rights compensation issue.

¹⁰ This rate dispute is not some fabricated artificial dispute. Even the court dismissed CSX's argument that NS and NPBL fabricated the trackage rate dispute to deny access to NIT. Id., at 711. It is a necessary outgrowth of the Control Decision.

¹¹ "Reply of Norfolk and Portsmouth Belt Line Railroad Company to Norfolk Southern Railway Company's Petition for Reconsideration," Norfolk S. Ry. – Pet. to Set Trackage Rights Comp. – Norfolk & Portsmouth Belt Line R.R., FD 36223, submitted September 3, 2019, at 1.

¹² "Reply of Norfolk and Portsmouth Belt Line Railroad Company to CSX Transportation, Inc's Motion to Dismiss or to Continue to Hold in Abeyance," Norfolk S. Ry. – Pet. to Set Trackage Rights Comp. – Norfolk & Portsmouth Belt Line R.R., FD 36223, submitted June 24, 2025, at 1.

¹³ See e.g., Norfolk S. Ry. – Pet. To Set Trackage Rights Comp. – Norfolk & Portsmouth Belt Line R.R., FD 36223, slip op. at 2 (STB served July 25, 2019) ("resolution of the federal district court proceeding may reduce the number of disputed issues between the parties in this proceeding, thereby promoting efficiency").

A resolution of the trackage rights compensation issue is further supported by the well-established SSW cost-based framework the Board has directed be used. Under SSW principles, trackage rights compensation is determined from (i) the landlord's variable costs attributable to the tenant's use, (ii) an allocated share of relevant maintenance and related fixed costs based on pro rata usage, and (iii) a return component on the value of the relevant rail properties used, also based on pro rata usage.¹⁴ That objective methodology both promotes administrative efficiency and addresses competitive parity concerns.

Finally, and as is discussed above, CSXT has already informed the Board of its intent "to request that NPBL provide switching service for intermodal cars in CSXT's account to and from on-dock rail at NIT,"¹⁵ presumably in lieu of all or some of the subsidized drayage that CSXT currently uses for that traffic (which has been detrimental of the citizens of Norfolk as well as others).¹⁶ CSXT at the same time has asked the Board to continue in abeyance several other proceedings, referred to by CSXT as the Related Proceedings,¹⁷ which seek all sorts of other

¹⁴ BNSF Ry. Co. – Terminal Trackage Rights – Kansas City S. Ry. Co. and Union P. Ry. Co., FD 32760 (Sub-No. 46), Decision No. 8, slip op. at 11 (STB served Feb. 21, 2020).

¹⁵ CSXT Letter, at 2.

¹⁶ There is no reason to continue to hold this trackage rights proceeding in abeyance during any attempt to by CSXT to "test" service to NIT via an NPBL switch. The trackage rights fee is unrelated to the operational aspects that CSXT seeks to "test." As noted, the trackage rights fee is a critical component of the overall switching rate, which needs to be updated and set in accordance with NS's commitment during the control proceeding.

¹⁷ Those proceeding consist of: (1) STB Docket No. NOR 42183, CSX Transp., Inc. v. Norfolk S. Corp. and Norfolk Southern Ry. Co. (complaint alleging damages from unlawful control); (2) STB Docket No. FD 36859, CSX Transp., Inc.—Terminal Trackage Rights—Norfolk S. Ry. Co. and Norfolk & Portsmouth Belt Line R.R. Co. (demanding terminal trackage rights for CSXT's direct trackage rights operations in substitution for the NPBL switching services that CSXT already has access to and which are the subject of CSXT's May 13, 2026 letter to the Board); (3) STB Docket No. AB 290 (Sub-No. 299X), Norfolk S. Ry Co.—Discontinuance of Service Exemption—In Chesapeake, VA (adverse abandonment petition); and (4) STB Docket No. AB 1024X, Norfolk & Portsmouth Belt Line R.R. Co.—Discontinuance of Trackage Rights Exemption—In Chesapeake, VA (adverse discontinuance petition).

relief, each of which proceedings would benefit from a finalization of the issues raised in this NPBL Trackage Rights Compensation Proceeding.¹⁸

PROPOSED PROCEDURAL SCHEDULE

To move this proceeding forward in an orderly, balanced manner and to complete the record under SSW principles, NS proposes the following procedural schedule:

NS Opening Evidence (60 days): NS files opening evidence and testimony establishing the variable cost component, maintenance allocation, and return element under SSW principles within 60 days of the Board's order lifting abeyance.

Responsive Evidence (90 days): CSXT and NPBL file responsive evidence and testimony within 90 days after NS's opening submission.

NS Reply Evidence (30 days): NS files reply evidence and testimony within 30 days after responsive submissions.

Limited Discovery: Beginning with the Board's order to remove the case from abeyance, the parties conduct limited, targeted discovery focused on SSW inputs, including cost data, usage metrics, and property valuations needed to apply the three-component SSW methodology.

Decision: (90 days) Following completion of the evidentiary record, the Board issues a decision determining the trackage rights compensation under SSW cost-based principles.

CONCLUSION

For all of these reasons, the justification for continued abeyance has been fully extinguished, and the conditions the Board itself identified for lifting the abeyance have been

¹⁸ Although none of the other proceedings can withstand scrutiny on the merits, NS has no objection to holding those proceedings in continued abeyance pending this proceeding.

unequivocally satisfied. There is no remaining legal, factual, or prudential basis to delay this proceeding any further. To the contrary, continued inaction now frustrates the implementation of the Board's Control Decision, perpetuates uncertainty in a critical cost component, and imposes ongoing and unnecessary prejudice on all parties.

The Board should therefore act without further delay to restore this proceeding to its active docket. NS respectfully requests that the Board (1) lift the abeyance immediately and (2) adopt a procedural schedule that will bring this long-pending matter to a prompt and final resolution under the SSW cost-based framework the Board has already endorsed. Prompt action is not only warranted—it is essential to ensure compliance with the Board's own directives, promote administrative efficiency, and finally resolve a dispute that has remained outstanding for far too long.

Respectfully submitted,

/s/ William A. Mullins

Joseph H. Carpenter
Thomas E. Zoeller
Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 West Peachtree St., NW
Atlanta, GA 30308
Tel: (470) 571-5208

William A. Mullins
Rose-Michele Nardi
John V. Edwards
MULLINS LAW GROUP PLLC
2001 L St., NW
Suite 720
Washington, DC 20036
Tel: (202) 663-7823

July 6, 2026

Attorneys for
Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I certify that, on July 6, 2026, I have caused to be served a copy of the foregoing Petition To End The Abeyance Period And Establish A Procedural Schedule on all parties of record in this proceeding.

/s/ **William A. Mullins**

William A. Mullins

Attorney for Norfolk Southern Railway Company