

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36223

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

CSX TRANSPORTATION, INC.'S
RESPONSE TO NORFOLK SOUTHERN'S PETITION TO END THE ABEYANCE
PERIOD AND ESTABLISH A PROCEDURAL SCHEDULE

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1. Introduction and Summary.

CSXT¹ hereby requests that the Board deny NSR's Petition to End the Abeyance Period and Establish a Procedural Schedule ("Petition"), filed in this proceeding on July 6, 2026.

NSR has made it clear that it intends to use this proceeding to obtain the Board's imprimatur to increase CSXT's costs to compete with NSR for on-dock rail access at NIT. (*See* NSR Mot. to End Abeyance Period 4-6, Apr. 30, 2025.) CSXT accesses NIT on-dock rail via an NPBL switching service operating over the NSR trackage rights line at issue here. CSXT recently announced a pilot program to begin to use those NPBL switching services to compete directly with NSR for on-dock rail at NIT. Immediately afterwards, NSR rushed to the Board to lift the abeyance here and adopt a procedural schedule providing the quickest possible path

¹ Unless otherwise defined, the acronyms and defined terms used herein are the same as those used in the Board's decision served on September 25, 2025 in this proceeding.

for NSR to seek an abrupt increase in the trackage rights fee that NPBL must pay NSR to switch CSXT's intermodal cars to and from NIT.

For the reasons set forth below, the Board should deny NSR's request and continue the abeyance at this time. In the alternative, should the Board decide to remove this proceeding from abeyance, the Board should adopt a procedural schedule that allows for substantial factual development and simultaneous submissions by the parties.

Recently, the Board decided to continue to hold the Related Proceedings² in abeyance. The same considerations relied on by the Board in those proceedings support continued abeyance here. The Board should allow the parties sufficient time to establish and evaluate the ability of CSXT to access NIT on-dock rail, as contemplated by the *Control Decision*,³ before initiating a complex trackage rights compensation proceeding that NSR intends to use to dramatically increase the costs of CSXT's access and that would otherwise rely on hypothetical inputs.

Continued abeyance is appropriate in this proceeding for several reasons. First, an important factor in any trackage rights compensation proceeding is the volume of traffic that moves under the trackage rights. Here, the Board and the parties would benefit from having accurate data based on actual experience, rather than projections and assumptions. Very little traffic presently moves under NPBL's trackage rights over NSR's line, making the fee-setting exercise an abstraction at this time.

² CSXT's complaint proceeding (Docket No. NOR 42183), CSXT's terminal trackage rights proceeding (Docket No. FD 36859), and the NSR and NPBL discontinuance proceedings (Docket Nos. AB 290 (Sub-No. 299X) and AB 1024X) are collectively referred to herein as the "Related Proceedings."

³ On April 6, 2026, the Board approved, subject to conditions, NSR's application seeking authority to acquire control of NPBL. *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (STB served Apr. 6, 2026) ("*Control Decision*").

Second, active litigation over the trackage rights fee that NPBL must pay to use NSR's line to serve NIT would add difficulty to CSXT's commercial discussions with its customers, just when CSXT is attempting to expand its use of NPBL's switching services to access on-dock rail at NIT. Potential customers may be wary about allotting resources toward CSXT's service if this litigation is underway. Furthermore, there is very little traffic moving under NPBL's trackage rights today. Thus, there is no harm in deferring any STB effort to reset the trackage rights fee until CSXT has demonstrated to the intermodal customer community its ability to effectively serve NIT.

Third, the Related Proceedings and this trackage rights fee proceeding should be kept on similar procedural bases. If NSR or its controlled subsidiary NPBL thwarts CSXT in its efforts to obtain on-dock rail access at NIT, CSXT would seek to restart the Related Proceedings, and those proceedings could substantially impact the development of this trackage rights compensation proceeding.

Thus, the Board should deny NSR's Petition and continue to hold this proceeding in abeyance. But if the Board decides to remove this proceeding from abeyance, it should adopt a procedural schedule that allows for substantial factual development and simultaneous submissions by the parties.

2. Background.

On April 6, 2026, the Board approved, subject to conditions, NSR's application seeking authority to acquire control of NPBL. *Control Decision*, slip op. at 1. The Board imposed as a condition on its approval a requirement that NSR adhere to certain representations that it made on the record in the proceeding. The Board concluded that "a requirement that [NSR] adhere to its commitments, combined with more intensive monitoring during an oversight period, are sufficient

to ensure that the competitive balance remains the same going forward.” *Id.*, slip op. at 23.

Following the Board’s decision, on May 13, 2026, CSXT filed a letter informing the Board that it planned to request that NPBL provide switching service for intermodal cars in CSXT’s account to and from on-dock rail at NIT. CSXT requested that the Board continue to hold the Related Proceedings in abeyance to allow the parties the opportunity to effectuate the oversight framework established in the *Control Decision*. (CSXT Letter 2, May 13, 2026, *CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co.*, NOR 42183 et al.)

By a decision served on July 6, 2026, the Board granted CSXT’s request for continued abeyance, finding that continuing to hold the Related Proceedings in abeyance would “allow the parties time to privately negotiate a service arrangement, which could narrow or moot the disputes before the Board.” *CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co.*, NOR 42183 et al., slip op. at 3 (STB served July 6, 2026) (“*July 6 Decision*”). The Board directed CSXT to submit a status report to the Board every 90 days “[t]o ensure the Board remains informed regarding the status of the parties’ negotiations.” *Id.*

CSXT has diligently pursued on-dock rail access to NIT. In recent weeks, CSXT has regularly discussed with NPBL CSXT’s request to begin utilizing NPBL switching service to move intermodal cars between NPBL’s Berkely Yard and NIT. CSXT’s first, small delivery of cars to NIT was made recently. This NPBL switching service is a limited pilot program. It will need to be scaled up dramatically to provide a meaningful opportunity for CSXT to compete for on-dock rail traffic at NIT. The pilot program will not provide CSXT with full commercial access to on-dock rail at NIT, nor is it sufficient to replace existing CSXT drayage service to and from NIT. The vast majority of CSXT’s service to and from NIT will continue to

need to use drayage services until CSXT is able to rely fully on NPBL switching service.

3. Argument.

3.1. Real-world traffic volumes and operating experience will be critically important to any compensation analysis.

The Board and the parties would benefit from having accurate real-world data regarding traffic moving under NPBL's trackage rights, rather than projections and speculative assumptions.

In this proceeding, NSR has asked the Board to set the level of compensation for NPBL's use of NSR's tracks under the *SSW Compensation* framework. The Board instituted a proceeding on March 29, 2019, and the Board preliminarily determined that it would establish compensation under the framework set forth in *SSW Compensation. Norfolk S. Ry. Co.—Pet. to Set Trackage Rights Compensation—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36223, slip op. at 5-6 (STB served Mar. 29, 2019).

Any trackage rights compensation analysis necessarily requires inputs including traffic levels, usage, costs, and allocation of expenses. Currently, NPBL does not extensively use its trackage rights over NSR's lines. CSXT's recent efforts to utilize NPBL switching service to move intermodal cars between NPBL's Berkely Yard and NIT should eventually result in a significant increase of traffic moving over NPBL's trackage rights. This, in turn, would impact many of the inputs necessary for a compensation analysis under the *SSW Compensation* framework.

The Board should allow CSXT to develop traffic further before the Board (and the parties) expend considerable time and resources to establish trackage rights compensation based on hypothetical projections. Additionally, the Board's ultimate compensation determination will be more reliable if it is based on actual operating data rather than estimates. Real-world data regarding traffic volumes, service

patterns, operating requirements, and costs will assist the Board in developing a more accurate evidentiary record and will reduce the risk that compensation will be based on assumptions that later prove incorrect.

Furthermore, the Board recently decided to monitor the implementation of CSXT's commercial access to NIT through CSXT's submission of periodic status reports. *July 6 Decision*, slip op. at 3. CSXT's first status report is due on October 5, 2026, and subsequent reports will be due every 90 days, until the Related Proceedings have been resumed or terminated. That reporting process should be allowed to generate meaningful information before the Board undertakes a compensation analysis.

3.2. NSR cannot demonstrate any meaningful prejudice from continued abeyance while CSXT seeks to establish a commercial foothold at NIT.

Contrary to NSR's assertions, continued abeyance in this trackage rights compensation proceeding is not prejudicial to any party. NSR has not, and cannot, demonstrate any meaningful prejudice from continued abeyance for several reasons, as discussed below. Indeed, the only reason that NSR wants to advance this proceeding on an expedited basis is to strangle CSXT's on-dock rail efforts before they get off the ground. This has been NSR's goal since it terminated the prior trackage rights agreement in 2016. (*See* CSXT Mot. to Dismiss, CSXT-MTD-18 to -20.)

First, NSR would not suffer prejudice from continued abeyance because very little traffic presently moves under NPBL's trackage rights. NSR's Petition does not identify any concrete financial or operational harm that would result from allowing a limited additional period for implementation of CSXT's commercial access to NIT with oversight from the Board. In contrast, litigation over the trackage rights fee could be a heavy commercial burden on CSXT as it attempts to establish its

viability as a service provider at NIT, given the explicit connection drawn by NSR between the NSR trackage rights fee and NPBL's switch fee.

Second, NSR would not suffer prejudice from continued abeyance because the existing situation has persisted for many years. NPBL was granted the subject trackage rights by NSR's predecessor under a 1917 trackage rights agreement. The agreement was in place for almost 100 years, until NSR terminated it on July 31, 2016. (*Id.* at CSXT-MTD-9 to -10, -19.) Since then, NPBL has continued to operate on a month-to-month basis while NSR and NPBL negotiated a replacement agreement. (NSR Pet. 2.)

NSR's efforts to increase the trackage rights fee began soon after CSXT attempted to use NPBL switching services in 2015. At the time, NSR used its control over the line and NPBL to impede the movement of CSXT's traffic. Once NSR successfully quashed CSXT's 2015 efforts, NSR began implementing a longer-term strategy to permanently exclude CSXT from competing with NSR for on-dock rail access at NIT. Part of that strategy was to use the STB trackage rights fee-setting process to dramatically raise the NPBL trackage rights fee, thereby increasing CSXT's costs to move this traffic.

To start, NSR moved to terminate the 1917 trackage rights agreement by serving its required one-year termination notice, and NSR duly terminated the agreement on July 31, 2016. Next, NSR began a process to replace that 1917 agreement with a new agreement charging higher trackage rights fees and imposing other costs and limitations on NPBL access to NIT. (CSXT Mot. to Dismiss, CSXT-MTD-18 to -19.) NSR then filed its petition to set trackage rights compensation on September 13, 2018, shortly after CSXT put NSR and NPBL on notice of potential litigation over their anticompetitive conduct. Rather than add to the long history of anticompetitive conduct that NSR would need to address in the antitrust lawsuit, NSR sought an increase in trackage rights fees through the STB's

intervention, rather than directly by exercising its control over NPBL. (*Id.* at CSXT-MTD-26.)

The Board held this proceeding in abeyance on July 25, 2019, to see whether developments in litigation over NSR's conduct would affect any fee-setting exercise. *Norfolk S. Ry. Co.—Pet. to Set Trackage Rights Compensation—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36223 (STB served July 25, 2019). The proceeding has remained in abeyance ever since. NSR has not identified any immediate operational crisis or changed circumstances requiring urgent Board intervention. And there is none. Until recently, CSXT has had zero intermodal traffic moving to and from NIT using the NSR trackage at issue, although CSXT is now trying to follow the STB's guidance to use the existing infrastructure to develop commercially viable access. The STB should give CSXT time to follow that approach.

3.3. Continued abeyance avoids potentially unnecessary litigation.

Continued abeyance in this proceeding would avoid potentially unnecessary litigation, as future developments in the Related Proceedings could substantially affect the development of this trackage rights compensation proceeding.

As noted above, in the *July 6 Decision*, the Board granted CSXT's request to continue to hold the Related Proceedings in abeyance. The Board stated that “[d]oing so will allow the parties time to privately negotiate a service arrangement, which could narrow or moot the disputes before the Board.” *July 6 Decision*, slip op. at 3. The Related Proceedings remain available if the commercial solution the Board anticipated in the *Control Decision* does not provide CSXT with meaningful on-dock rail access to NIT.

The outcome of CSXT's efforts to obtain on-dock rail access at NIT via NPBL switching, and the outcome of the Related Proceedings, could substantially impact

the development of this trackage rights compensation proceeding and CSXT's need to participate in this proceeding. For example, if the Board ultimately grants CSXT's request in Docket No. FD 36859 for terminal trackage rights over certain lines owned by NSR and NPBL, CSXT would have the ability to serve NIT directly, and its interest in this compensation dispute would be materially altered.

Thus, the Board should avoid expending substantial agency and party resources on a complex trackage rights compensation proceeding that may be affected by developments in the Related Proceedings.

3.4. In the alternative, if the Board decides to remove this proceeding from abeyance, it should adopt a procedural schedule that allows for substantial factual development and simultaneous submissions.

The Board should continue to hold this proceeding in abeyance for the reasons discussed above. However, if the Board decides to remove the proceeding from abeyance, the Board should adopt a procedural schedule that allows for substantial factual development, including meaningful discovery and development of a complete record, and simultaneous submissions by the parties.

The compensation issues presented in this proceeding involve potentially complex questions concerning traffic volumes, usage patterns, cost allocation, operating assumptions, and asset valuation. These issues cannot be adequately addressed under the expedited procedural schedule proposed by NSR.

Furthermore, as the Board has recognized in prior *SSW Compensation* proceedings, the landlord (NSR) is “the only source for some of this information.” *New England Cent. R.R., Inc.—Trackage Rights Order—Pan Am S. LLC*, FD 35842, slip op. at 5 (STB served Feb. 12, 2016). In such proceedings, parties that are not the owner of the subject line (such as CSXT and NPBL here) are at an informational disadvantage at the outset of the proceeding. CSXT and NPBL can only obtain such information through discovery. Thus, CSXT and NPBL “should have an opportunity

to build a record through discovery and obtain the data” they will need to make their respective case before the Board. *Id.*, slip op. at 4.

Any merits phase in this proceeding should provide sufficient time for document discovery, data production, expert analysis, rebuttal submissions, and any other factual development necessary to create a reliable record for the Board’s decision-making. To that end, CSXT proposes that the Board adopt the following procedural schedule:

Day	Event
D	Board order removing the case from abeyance; discovery opens
D+120	Last day for service of written discovery
D+180	End of written discovery period, final resolution of all discovery disputes
D+240	Simultaneous filing of opening statements and evidence (including expert reports)
D+260	Last day for submission of written discovery on opening statements and evidence
D+285	Last day for depositions of experts
D+315	Simultaneous filing of reply statements and evidence
D+345	Simultaneous filing of rebuttal briefs (30-page limit inclusive of exhibits)
D+435	Board decision determining the trackage rights compensation

CSXT’s proposed schedule differs from NSR’s proposed schedule in two primary ways. The first key difference concerns discovery. NSR proposed a 270-day schedule that includes “limited discovery,” beginning with the Board’s order to remove the case from abeyance, with no defined end date.

In contrast, CSXT's proposed schedule provides 180 days for discovery prior to the submission of opening evidence, and 45 days for discovery on opening evidence. CSXT's proposed schedule clearly defines the beginning and end of the discovery periods. Discovery will be crucial in this proceeding, and CSXT and NPBL should have sufficient time to build a record through discovery.

Furthermore, CSXT's proposed approach largely follows the approach adopted by the Board in a recent *SSW Compensation* proceeding. *See BNSF Ry. Co.—Terminal Trackage Rights—Kansas City S. Ry. Co. & Union Pac. R.R. Co.*, FD 32760 (Sub-No. 46), slip op. at 2 (STB served Apr. 1, 2020) ("*Lake Charles*") (providing 150 days for discovery prior to the submission of opening evidence and 45 days for discovery on opening evidence).

The second key difference concerns the issue of which parties have an opportunity to file certain submissions. Under NSR's proposal, NSR alone would file opening evidence, CSXT and NPBL would file responsive evidence, and NSR alone would file reply evidence. (NSR Pet. 8.) In other words, NSR would have two opportunities to present its case to the Board, while CSXT and NPBL would only have one.

In contrast, CSXT's proposal provides for simultaneous filings by all three parties of opening evidence, reply evidence, and rebuttal briefs. CSXT's approach is fair to all parties and is consistent with the procedural schedules ultimately adopted by the Board in recent *SSW Compensation* proceedings. *See Lake Charles*, slip op. at 2 (providing for simultaneous filings of opening evidence, reply evidence, and rebuttal briefs); *Atchison, Topeka & Santa Fe Ry. Co.—Operating Rights—S. Pac. Transp. Co.*, FD 22218, at 2 (STB served Dec. 5, 2023) (providing for simultaneous filings of opening evidence, reply evidence, and final briefs).

4. Requested Relief.

In sum, CSXT respectfully requests that the Board grant the following relief:

- The Board should deny NSR's request to remove this trackage rights compensation proceeding from abeyance at this time.
- The Board should continue to hold this proceeding in abeyance while the parties continue to implement and evaluate CSXT's use of NPBL switching service to NIT. Continued abeyance will promote efficiency, avoid potentially unnecessary litigation, permit development of a more complete record, and impose no meaningful prejudice on NSR.
- In the alternative, if the Board decides to remove this proceeding from abeyance, the Board should adopt a procedural schedule that allows for substantial factual development and simultaneous submissions by the parties. CSXT's proposed procedural schedule presented above would achieve these goals.

5. Conclusion.

For the reasons set forth above, the Board should deny NSR's request to remove this proceeding from abeyance at this time. Rather, the Board should continue to hold this proceeding in abeyance to allow the parties to develop and test the viability of their commercial arrangement.

Alternatively, should the Board decide to remove this proceeding from abeyance, the Board should adopt a procedural schedule that allows for substantial factual development, including meaningful discovery and development of a complete record, and simultaneous submissions by the parties.

Respectfully submitted,

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Dated: July 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Response to Norfolk Southern's Petition to End the Abeyance Period and Establish a Procedural Schedule in Finance Docket No. 36223 to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi

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July 27, 2026