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Office of Chief Counsel
November 3, 2026
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November 3, 2026

VIA E-FILING
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment Exemption – In Rockingham, Shenandoah, and Warren Counties, VA., AB 290 (Sub-No. 425X)

Dear Chief of Case Administration:

Norfolk Southern Railway Company hereby files, via e-filing, its "Reply to SVBF's Motion to Hold in Abeyance" in response to the Board's Decision served October 22, 2026, in the above-referenced proceeding. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@mullinslawgroup.net.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Attorney for Norfolk Southern Railway Company

Enclosure
cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 290 (Sub-No. 425X)

NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ROCKINGHAM, SHENANDOAH, AND WARREN COUNTIES, VA.

REPLY TO SVBF'S MOTION TO HOLD IN ABEYANCE

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REPLY TO SVBF'S MOTION TO HOLD IN ABEYANCE

INTRODUCTION

The Shenandoah Valley Battlefields Foundation ("SVBF") filed a Motion to Hold in Abeyance ("Motion") on October 14, 2026.[1] In a Decision served October 22, 2026, the Board imposed a housekeeping stay to permit consideration of the Motion and directed Norfolk Southern Railway Company ("NSR") to respond by November 3, 2026. NSR submits this Reply in response to that Decision. The Motion rests on SVBF's stated intention to file a responsive application in Union Pacific Corp. – Control – Norfolk Southern Corp., Docket No. FD 36873 ("Control Proceeding"),[2] seeking divestiture of the approximately 48.5-mile NSR rail line in Rockingham, Shenandoah, and Warren Counties, VA, which is the subject of this abandonment proceeding (the "Line"). The predicate for abeyance is theoretical in nature. SVBF asks the Board to suspend a pending abandonment proceeding based on relief that SVBF has not yet requested, through a responsive application that has not been filed and that bears no relationship

[1] SVBF, Motion to Hold in Abeyance, Docket No. AB 290 (Sub-No. 425X) (filed October 14, 2026) ("Motion").

[2] Union Pacific Corp. is identified as "UP" while Norfolk Southern Corp. is identified as "NS."

with any competitive effect of the proposed merger. Granting abeyance on this basis would be unprecedented, and SVBF cites no decision supporting such a request.

SVBF also has invoked the offer of financial assistance ("OFA") process available in this proceeding. Its asserted interest in acquiring the Line therefore does not require abeyance. Instead, SVBF expressly seeks to have its contemplated responsive application considered first because it believes that process imposes "fewer, less onerous requirements" than the OFA process.[3] The OFA process is demanding by design: a successful OFA compels a railroad to sell its property, and such a constitutional taking of property should not be done lightly. Rather than comply with the standards Congress deliberately imposed, SVBF, again without precedent, seeks to have a different standard applied simply because it is easier. The Board should reject this request.

A newly filed objection also raises an unresolved threshold question: whether SVBF's governing corporate documents authorize it to acquire and operate a commercial freight railroad at all.[4] NSR takes no position on how that state-law question will be resolved and does not ask the Board to await its resolution. But whether SVBF proceeds through the OFA it has invoked or through the divestiture it hopes to seek in the Control Proceeding, that contingency is a further reason not to suspend NSR's abandonment proceeding in favor of an acquisition SVBF has not shown it is authorized to complete.

Finally, contrary to SVBF's claim, abeyance would prejudice NSR by delaying resolution of the Line's regulatory status. Abeyance also would stall the OFA process under 49 U.S.C. §

[3] Motion at 3.

[4] Frank P. Cihlar, Objection to Shenandoah Valley Battlefields Foundation's Intent to File an Offer of Financial Assistance and Its Motion to Hold in Abeyance, Docket No. AB 290 (Sub-No. 425X), at 1-3 (filed November 2, 2026) ("Frank Cihlar Objection").

10904, a process designed to preserve rail service on an expedited timetable and would defer the Board's review of whether SVBF's Notice of Intent satisfies the financial responsibility requirements of 49 C.F.R. § 1152.27. Denying abeyance, by contrast, would not prejudice SVBF, which remains free to pursue its OFA in this proceeding. The Board should therefore deny the Motion, promptly lift the housekeeping stay, and permit this proceeding to continue under a clear procedural schedule.

BACKGROUND

This dispute arises from NSR's filing of a Verified Notice of Exemption for Abandonment[5] ("NOE") of the Line. NSR seeks authority to abandon the Line and is currently exploring opportunities to transfer or sell the Line for interim trail use at the request of the Virginia Department of Transportation ("VDOT"). No customers have been served on the Line for more than five years.[6] SVBF previously filed a description of its anticipated responsive application in FD 36873, through which it proposes to seek divestiture of the Line, and subsequently served discovery in that proceeding.[7] On October 14, 2026, SVBF filed a Notice of Intent to File an OFA in this abandonment proceeding.[8] SVBF then filed the Motion on the same day, requesting abeyance in this case.[9]

[5]NSR's Verified Notice of Exemption, Docket No. AB 290 (Sub-No. 425X) (filed October 5, 2026).

[6]See NOE.

[7]Description of Anticipated Responsive Application Filed by Shenandoah Valley Battlefields Foundation, FD 36873 (filed September 9, 2026); Motion at 1.

[8]Letter from John M. Scheib, Counsel for SVBF, to Chief of Case Administration, Docket No. AB 290 (Sub-No. 425X), at 1 (filed October 14, 2026) ("Notice of Intent").

[9] Motion at 1-3; Notice of Intent at 2.

In a Decision served October 22, 2026, the Board imposed a housekeeping stay, postponing the effective date of the exemption and tolling all deadlines, including those related to environmental review and the OFA process, to permit consideration of SVBF's Motion, and set November 3, 2026, as the deadline for NSR's response.[10]

ARGUMENT

NSR requests that the Board deny SVBF's Motion because abeyance is an improper vehicle in this proceeding. The Board has found that, when considering an abeyance, it must consider "whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party." See CSX Transportation, Inc. v. Norfolk Southern Corporation and Norfolk Southern Railway Company, NOR 42183 et al., slip op. at 5 (STB served September 25, 2025); see also Ballard Terminal R.R. – Petition for Declaratory Order, FD 36261, slip op. at 4 (STB served June 27, 2019). "The Board has broad discretion to determine whether to hold a proceeding in abeyance, and its decision 'to do so in any particular situation is highly dependent on the facts and circumstances of the case.'" NOR 42183 et al., slip op. at 5 (quoting Petition of the National Railroad Passenger Corporation for Relief Pursuant to 49 U.S.C. § 24905, FD 36048, slip op. at 3 (STB served October 3, 2016)) (quoting E.I. DuPont de Nemours & Co. v. Norfolk Southern Railway, NOR 42125 et al., slip op. at 4 (STB served November 29, 2012)). That discretion must be exercised through reasoned decision-making, under which the Board examines the relevant facts and articulates a rational connection between the facts found and the choice made. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); New York Cross Harbor R.R. v. Surface Transp. Bd., 374 F.3d 1177, 1181 (D.C. Cir.

[10]Norfolk Southern Railway Company – Abandonment Exemption – In Rockingham, Shenandoah, and Warren Counties, VA., Docket No. AB 290 (Sub-No. 425X), slip op. at 1-2 (STB served October 22, 2026).

2004). Here, the relevant facts point in only one direction: abeyance would neither promote efficiency nor avoid unfairness.

I. SVBF Has Identified No Present Conflict Requiring Abeyance

SVBF has identified no present conflict requiring abeyance. Its request rests on a responsive application SVBF states it intends to file in FD 36873.[11] Although SVBF has conducted discovery in that proceeding, it has not yet filed the responsive application on which its request depends. Meanwhile, this abandonment proceeding is pending, and SVBF has invoked the OFA process by filing a notice of intent to submit an OFA.[12] The Motion states that SVBF "has been preparing and will file a responsive application for divestiture."[13] SVBF argues that abeyance "would promote efficiency."[14] However, SVBF has not demonstrated that continuation of this abandonment proceeding would conflict with the Control Proceeding. Its assertion that this abandonment proceeding "could moot"[15] its contemplated responsive application identifies, at most, a potential future conflict. It does not establish that the two proceedings presently are incompatible or that this abandonment proceeding must be suspended. Abeyance is appropriate only where it would promote efficiency and avoid fundamental unfairness, NOR 42183 et al., slip op. at 5, and a speculative conflict premised on an unfiled application satisfies neither criterion. Nor is there any connection between SVBF's contemplated request and the proposed merger. The Board will order divestiture as a condition of a control transaction only to remedy anticompetitive effects of that transaction, and the UP/NS merger has

[11] Motion at 1, 3.

[12] Notice of Intent at 1.

[13] Motion at 3.

[14] Id.

[15] Id.

no effect on competition involving the Line. The Line is served only by NSR, and no customers have been served on it for more than five years. The merger will not reduce the number of carriers available to any shipper on the Line or otherwise alter its competitive circumstances, and no Union Pacific line parallels it, which is the circumstance Congress specifically identified when it authorized the Board to condition a transaction on "the divestiture of parallel tracks."[16] SVBF is thus asking the Board to halt an established, self-contained proceeding based on relief that depends on future events. The possibility of a future conflict does not justify halting this proceeding now.

II. SVBF's Preference for a "Less Onerous" Means of Acquiring the Line Does Not Establish Good Cause for Abeyance

SVBF's preference for what it considers a less onerous means of acquiring the Line does not constitute good cause for abeyance. SVBF is not seeking abeyance because this abandonment proceeding provides no means of protecting its asserted interest in acquiring the Line. On the contrary, SVBF has already invoked the OFA process. Instead, SVBF argues that acquisition through a responsive application should be considered first because that process entails "fewer, less onerous requirements than the OFA process."[17]

SVBF's preference does not justify suspending this proceeding. SVBF remains free to pursue whatever relief is available in the Control Proceeding and to establish its entitlement to that relief under the governing standards. The possibility that SVBF may acquire the Line through another proceeding under standards it considers more favorable provides no basis for delaying NSR's pending abandonment proceeding.

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[16] 49 U.S.C. § 11324(c); cf. Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 35), FD 36500 et al. (STB served March 15, 2023) (approving transaction subject to conditions and denying responsive applications seeking divestiture of KCS lines).

[17] Motion at 3.

SVBF's Motion contrasts the responsive-application process with the financial-fitness and constitutional-minimum-value requirements it states apply to an OFA.[18] Its preference for avoiding what it considers the more demanding acquisition process weighs against, rather than in favor of, suspending this proceeding. There is no precedent for such a remarkable request, and rightly so: a constitutional taking of one party's property should be an extraordinary event justified under the more demanding standards, not lesser ones.

SVBF may pursue whatever relief is available to it in the Control Proceeding. However, having already invoked the OFA process in this abandonment proceeding, that process should take precedence and be permitted to run its course. Congress established the OFA process specifically to permit a financially responsible person to subsidize or acquire a line proposed for abandonment. Having invoked that process here, SVBF should not be permitted to suspend it in favor of a contemplated responsive application that it has not yet filed merely because it considers the requirements applicable in the Control Proceeding less onerous. The possibility that SVBF may obtain relief in the Control Proceeding therefore provides no basis for displacing the OFA process it already has invoked.

III. Abeyance Would Undermine the Purpose and Requirements of the OFA Process

The OFA process under 49 U.S.C. § 10904 exists for a specific purpose: to preserve rail service by allowing a financially responsible person to purchase or subsidize a line that otherwise would be abandoned. See Redmond-Issaquah R.R. Preservation Ass'n v. Surface Transp. Bd., 223 F.3d 1057, 1060 (9th Cir. 2000); Kulmer v. Surface Transp. Bd., 236 F.3d 1255, 1257 (10th Cir. 2001). Continuation of rail service is central to that process. Congress designed it to operate on an expedited timetable, and the Board's implementing regulations at 49 C.F.R. § 1152.27

[18] Id. at 2-3.

prescribe specific deadlines and financial responsibility requirements that every offeror must satisfy. Having invoked that process, SVBF should be required to proceed under it, not to suspend it while it pursues an alternative it considers more favorable.

Strict compliance with those requirements is mandatory. The financial responsibility showing required by 49 C.F.R. § 1152.27(c)(1) is a threshold condition that ensures only financially responsible parties may use the OFA process to forestall an abandonment. SVBF suggests that the preliminary financial responsibility requirement may not apply in this class exemption proceeding at all.[19] It does. Section 1152.27(a) conditions an offeror's access to the carrier's valuation data, including in a class exemption proceeding, on the offeror having "proven itself preliminarily financially responsible under paragraph (c)(1)(ii)," and the Board has applied that requirement in exemption proceedings, including in the very decisions SVBF attempts to distinguish.[20]

There is now an additional threshold question whether SVBF has the legal capacity to pursue the OFA it has invoked in this proceeding. On November 2, 2026, an SVBF member who is presently challenging SVBF's authority in Virginia state court filed an objection advising the Board that SVBF's Articles of Incorporation do not authorize it to own or operate a commercial freight railroad and instead limit its activities to those associated with management of the Shenandoah Valley Battlefields National Historic District and activities consistent with its tax-exempt purposes. The objector therefore contends that SVBF lacks corporate authority to acquire

[19]Letter from John M. Scheib, Counsel for SVBF, to Chief of Case Administration, Docket No. AB 290 (Sub-No. 425X), at 2 n.1 (filed October 22, 2026) ("SVBF Reply").

[20]See CSX Transportation, Inc.—Abandonment Exemption—In Trumbull County, Ohio, Docket No. AB 55 (SuN-No. 779X) (STB served June 21, 2018); Norfolk Southern Railway Company—Abandonment Exemption—In the City of Baltimore, MD., Docket No. AB 290 (Sub-No. 420X) (STB served January 12, 2026).

the Line for the purpose of restoring commercial freight service and that expenditures in furtherance of that objective are ultra vires.[21] NSR takes no position on how that state-law issue will be resolved. But although Section 10904(c) permits a financially responsible person to make an OFA, that does not answer the distinct question whether the particular person proposing to acquire the Line has the legal authority to make and perform that offer,[22] and the OFA process, which exists to preserve continued rail service, presupposes an offeror legally capable of acquiring and operating the Line. Nothing in this Reply is intended to suggest that this proceeding should await the outcome of the state-court action. The point is narrower. SVBF's abeyance request already rests on an application it has not yet filed in the Control Proceeding. The objection to its authority adds a further contingency to the acquisition on which that request depends. A request resting on that many contingencies does not promote efficiency.

The sufficiency of SVBF's Notice of Intent bears directly on whether abeyance is warranted. As NSR previously noted, in calculating its financial responsibility showing, SVBF failed to apply the "times two" multiplier that the regulation requires.[23] SVBF now seeks leave to "correct this minor error"[24] and points to the cash and credit it says are available to it. The issue for present purposes is not the size of SVBF's bank balances.[25] It is that SVBF invoked a

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[21] Frank P. Cihlar Objection at 1-3 (filed November 2, 2026).

[22] 49 U.S.C. § 10904(c).

[23] Letter from William A. Mullins, Counsel for Norfolk Southern Railway Company, to Chief of Case Administration, Docket No. AB 290 (Sub-No. 425X) (filed October 21, 2026); see Notice of Intent, Ex. A.

[24] SVBF Reply at 1.

[25] Even if the Board accepts SVBF's correction to what it calls a "minor error," having sufficient cash available to meet the formulaic nature of a preliminary financial fitness finding does not establish SVBR will have sufficient funds to acquire the Line, either through an OFA or divestiture in the Control Proceeding. Indeed, based upon the value of the Line at issue in the trails negotiations with the Virginia Department of Transportation, SVBF will not have sufficient funds available to it to meet the VDOT offered price, yet alone the constitutional minimum value

process that demands strict compliance, did not comply, initially, and now asks the Board to suspend that process rather than hold SVBF to its requirements. That failure, and SVBF's request to repair it after the fact, illustrate the problem with SVBF's Motion: SVBF asks the Board to freeze this proceeding, and with it any scrutiny of its deficient OFA showing, while it pursues a route that it characterizes as imposing "fewer, less onerous requirements." The Board should not permit the abeyance process to be used to sidestep the requirements of § 10904 and § 1152.27.

IV. Abeyance Would Prejudice NSR, While Denial Would Not Prejudice SVBF

Granting an abeyance here will, contrary to SVBF's belief, prejudice NSR and other parties. Indeed, the Town of Mount Jackson, Virginia, has also asked the Board to deny the Motion and lift the housekeeping stay imposed by the Decision served October 22, 2026.[26] NSR has filed for abandonment authority in this proceeding and has a legitimate interest in bringing that process to a conclusion. No customers have been served on the Line for more than five years, and NSR is exploring opportunities to transfer or sell the Line to VDOT for interim trail use.[27] An abeyance tied to a separate proceeding in which SVBF has not even filed its responsive

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of the Line that would be set in the OFA process or through a mandated taking as part of any divestiture ordered in the Control Proceeding. A value that is higher than that offered by VDOT.

[26] Reply of the Town of Mount Jackson, Virginia, in Opposition to Motion to Hold Proceeding in Abeyance, Docket No. AB 290 (Sub-No. 425X), at 1 (filed October 30, 2026). In addition, almost all the communities along the Line support the establishment of a trail, not continued rail service that has not existed for many years. See Norfolk Southern Railway Company, Revised Combined Environmental and Historic Report, Docket No. AB 290 (Sub-No. 425X), at 5-6 & App. C (filed October 5, 2026) (summarizing responses from Timberville, Toms Brook, Mount Jackson, Edinburg, Woodstock, Strasburg, Front Royal, and Warren County supporting preservation of the corridor through railbanking and interim trail use).

[27] Several parties have also questioned the financial feasibility of restoring rail service over the Line. Friends of the Shenandoah Trail ("FST") states that a recent VDOT study estimated that restoring the 48.5-mile corridor to federal standards for 25-mph freight or excursion rail operations would cost approximately $315 million in 2025 dollars. See Friends of the Shenandoah Trail Reply in Opposition to Abeyance, Docket No. AB 290 (Sub-No. 425X), at 2 (Nov. 2, 2026). The Town of Edinburg likewise asked the Board to evaluate whether an OFA could realistically result in the restoration of freight rail service and whether such restoration

application would leave the Line's regulatory status unresolved. SVBF's incorrect observation that service over portions of the Line previously has been discontinued (actually, there has been no service over the Line for at least five years) does not establish that further delay would be harmless.[28] Prior discontinuance does not eliminate NSR's interest in obtaining a final determination on its request for abandonment authority. The Board has discretion to deny abeyance where it would unfairly delay a proceeding, see NOR 42183 et al., slip op. at 5, and it should exercise that discretion here by denying the Motion, lifting the housekeeping stay, and allowing this proceeding to move forward.

Similarly, denying the abeyance would not be fundamentally unfair to SVBF. SVBF has already initiated the OFA process in this proceeding. Nothing in the Motion demonstrates that SVBF cannot protect its asserted interest through that process while also pursuing whatever relief is available to it in the Control Proceeding. SVBF's preference for the latter mechanism because it regards its requirements as less onerous does not constitute cognizable prejudice.

Therefore, the Board should use its discretion to deny SVBF's improper and unprecedented use of the abeyance process to stop an abandonment proceeding in favor of the "less onerous" standards allegedly applicable in the Control Proceeding.

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would be economically feasible, citing a VDOT evaluation estimating that approximately $300 million in restoration work would be required to permit 25-mph use. See Letter from Daniel J. Harshman, Mayor, Town of Edinburg, to Surface Transportation Board, Docket No. AB 290 (Sub-No. 425X), at 1 (Nov. 1, 2026). These estimates further underscore that satisfying the preliminary financial-responsibility threshold established in 49 C.F.R. § 1152.27 does not establish that SVBF has the financial resources necessary to acquire and rehabilitate the Line.

[28] Motion at 2.

V. The Housekeeping Stay Should Be Lifted Promptly and the Procedural Schedule Reinstated

In its Decision served October 22, 2026, the Board imposed a housekeeping stay, postponing the effective date of the exemption and tolling all deadlines, solely to permit full consideration of SVBF's Motion. That interim measure should not become the indefinite abeyance SVBF seeks. Once the Motion is resolved, the housekeeping stay should be lifted promptly to avoid unnecessary delay. NSR further requests that the Board publish notice of the exemption in the Federal Register and reinstate the procedural schedule prescribed by 49 C.F.R. §§ 1152.50(d)(3) and 1152.27(c)(2), which allows this proceeding to move forward while preserving SVBF's ability to pursue its OFA in this proceeding. That approach serves both efficiency and fairness: it permits each proceeding to be resolved under its own governing standards, without allowing a contemplated filing in one proceeding to halt the other.

CONCLUSION

For these reasons, SVBF has not shown that abeyance would promote efficiency or that denial of abeyance would be fundamentally unfair. SVBF has identified no present conflict requiring abeyance, and its preference for a less onerous means of acquiring the Line does not establish good cause to suspend this proceeding. Abeyance would also frustrate the OFA process under 49 U.S.C. § 10904, which exists to preserve rail service on an expedited basis and requires strict compliance with 49 C.F.R. § 1152.27, and would defer scrutiny of a financial responsibility showing that does not satisfy those requirements. The unresolved challenge to SVBF's legal authority to acquire and operate the Line, whether through the OFA process it has invoked or the divestiture it hopes to seek in the Control Proceeding, is an additional reason not to halt NSR's abandonment proceeding. Additional delay instead would prejudice NSR by postponing resolution of its pending request for abandonment authority on a Line that has had no customers

for more than five years and for which there are numerous communities along the Line, and VDOT, who desire to see a trail, not restored rail service

NSR therefore respectfully requests that the Board (1) deny SVBF's Motion to Hold in Abeyance; (2) lift the housekeeping stay imposed by the Decision served October 22, 2026, and restore the effective date and deadlines in this proceeding; and (3) direct publication of notice of the exemption in the Federal Register and reinstate the procedural schedule for this proceeding.

Respectfully submitted,

/s/ William A. Mullins

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Attorneys for Norfolk Southern Railway Company

November 3, 2026

CERTIFICATE OF SERVICE

I certify that, on November 3, 2026, I have caused to be served a copy of the foregoing "Reply to SVBF's Motion to Hold in Abeyance" on all parties of record in this proceeding.

/s/ William A. Mullins
William A. Mullins
Attorney for Norfolk Southern Railway Company