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Office of Proceedings
February 14, 2025
Part of
Public Record

February 14, 2025

VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001Re: Norfolk Southern Railway Company – Control Acquisition – Norfolk & Portsmouth Belt Line Railroad Company, FD No. 36836

Dear Ms. Brown:

Norfolk Southern Corporation and Norfolk Southern Railway Company collectively submit this Minor Application along with a corresponding Motion for Protective Order and a Petition for A Proposed Procedural Schedule in the above-referenced proceeding. The Minor Application is being filed as both a Public Version and a Highly Confidential Version. The relevant filing fee has been paid via Pay.gov.

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 Rose-Michelle Nardi, who can be reached at (202) 663-7852 or by e-mail at rnardi@mullinslawgroup.net.

Respectfully submitted,

/s/ William A. Mullins

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Attorney for Norfolk Southern Corporation and
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Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

MINOR APPLICATION

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I. INTRODUCTION

Pursuant to the directive of the Surface Transportation Board (“STB” or “Board”) in Footnote 25 of its June 17, 2022 decision in FD 36522,¹ Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR”) (collectively, “NS”) files this minor application pursuant to 49 U.S.C. § 11323(a)(2) and 49 C.F.R. Part 1180 (“Application”) seeking STB authority to control Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) (the “Transaction”).

NS understood the 1982 Control Transaction (as defined below) conferred to NSC its authority to control NPBL, and the 1991 and 1998 Family Exemptions (as defined below) conferred to NS its authority to control NPBL. However, the Board disagreed. Therefore, NS is now filing this Application to legally effectuate a corporate and shareholder structure that has been in place since 1982.

This is clearly a minor transaction. NPBL is not a Class I railroad, so this proceeding is not a “major” transaction involving the control of two or more Class I railroads. See 49 C.F.R. § 1180.2(b). Nor can this transaction be construed as a “significant” transaction. Under section 1180.2(b), a non-major transaction is not significant if either (1) “the transaction clearly will not have any anticompetitive effects”, or (ii) “any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs”. This Transaction clearly will not have any anticompetitive effects. The critical point to bear in mind is that NSC and/or NS have had

¹ Norfolk Southern Railway Company – Petition for Declaratory Order, FD 36522, slip op. at 17, n. 25 (STB served June 17, 2022) (“Petition for Declaratory Order”).

effective control over NPBL for more than 42 years, and as discussed herein, that 42-year history demonstrates that Board approval of this Transaction will not result in any anticompetitive effects. Accordingly, the approval of NS's effective control of NPBL is a minor transaction under the Board's statute and regulations.²

Granting NS official "control" authority will not change the manner in which NPBL operates today. Currently, NPBL has a tariff switch rate based on a uniform, cost-based structure, as directed by NPBL's 1897 governing agreement.³ NS does not intend to change the methods, means, or any of the bylaws, agreements, operations, or structure of the Board of Directors, or methodologies currently employed to establish NPBL's rates. NS merely seeks to obtain legal control authority as directed by the Board – nothing more and nothing less. As such, the Transaction will not likely result in the substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States and pursuant to 49 U.S.C. §11323(a)(2), the Board "shall" approve the Transaction. Approval simply recognizes what has been true for 42 years – NS, as majority owner of the shares of NPBL, controls NPBL.

² Because, as set forth herein, there will be no anticompetitive effects from the Transaction, the Transaction also qualifies to be exempted pursuant to 49 U.S.C. §10502 as the Transaction is limited in scope and regulation would not be necessary to protect shippers from the abuse of market power. However, due to procedural uncertainties inherent in the individual petition for exemption process under §10502, NS chooses to file the Transaction as a minor application.

³ Agreement between New York, Philadelphia & Norfolk R.R. Co., Seaboard and Roanoke R.R. Co., Norfolk and Southern R.R. Co., Norfolk and Western Ry. Co., Atlantic and Danville Ry. Co., Southern Ry. Co., Norfolk and Carolina R.R. Co., and Chesapeake and Ohio Ry Co., dated July 7, 1897 ("1897 Governing Document").

II. BACKGROUND

A. 1982 Control Transaction

In 1980, NSC,⁴ a noncarrier holding company, filed for STB approval to control, through stock ownership, Norfolk and Western Railway Company (“N&W”) (and its subsidiary companies) and Southern Railway Company (“SRC”) (and its consolidated system companies).⁵ One of SRC’s consolidated system companies was Norfolk Southern Railway Company, which was a Class II subsidiary of SRC (“Norfolk Southern”).⁶ The Board approved NSC’s control filing in 1982 (the “1982 Control Transaction”).⁷ At the time of Board approval, SRC owned 14.29% of the shares of NPBL, N&W owned 28.57%, and Norfolk Southern owned 14.29%. Accordingly, as a byproduct of the 1982 Control Transaction, NSC, with no further action, controlled 57.14% of the shares of NPBL. Subsequently, in 1991, SRC, which changed its name to Norfolk Southern Railway Company, invoked an ICC corporate family exemption to control N&W⁸, and in 1998, invoked another STB corporate family exemption for the merger of N&W and Norfolk Southern⁹ (together, the “1991 and 1998 Family Exemptions”).

⁴ At the time of the filing of the notice of intent for the 1980 control transaction, NSC was known as NWS Enterprise (“NWS”); by the time the application was approved, NWS had changed its name to Norfolk Southern Corporation.

⁵ NWS Enterprises, Inc. – Control – Norfolk and Western Railway Company and Southern Railway Company, FD 29430 (Sub-No. 1) (filed December 4, 1980) (“1980 Application”)

⁶ The subsidiary, Norfolk Southern, changed its name to Carolina and Northwestern Railway Company following the control transaction.

⁷ Approval was conferred pursuant to a decision in Norfolk Southern Corporation – Control – Norfolk and Western Railway Company and Southern Railway Company, FD 29430, (ICC served March 25, 1982 (“1982 ICC Control Decision”).

⁸ Southern Railway – Control Exemption – Norfolk & Western Railway Company, Chesapeake Western Railway, The Toledo Belt Railway Company, and Wabash Railroad Company, FD 31791 (ICC served January 14, 1991) (“SRC/N&W”).

⁹ Norfolk Southern Railway Company – Merger Exemption – Norfolk and Western Railway Company, FD 33648 (STB served August 31, 1998).

Neither SRC nor N&W owned a controlling share in NPBL; accordingly, NPBL was not identified on the list of N&W subsidiary companies or SRC consolidated system companies.¹⁰ However, the Application, pursuant to the then-requirements of 49 C.F.R. Sections 1111.1(c)(7) through (11), specifically provided a listing of the subsidiary companies of N&W, SRC, and D&H in Appendix 2 of the 1980 control application.¹¹ Appendix 2 specifically identified the respective percentage of all outstanding shares that each of N&W, SRC, and Norfolk Southern owned in NPBL, as well as the cumulative total interest in ownership (57.14%) that would result should the 1980 control application be approved.¹² CSXT Transportation (“CSXT”) held the remaining 42.86% of NPBL shares and continues to hold those shares today. Today, CSXT also holds two of the six seats on the Board of Directors.

In connection with litigation initiated by CSXT in federal district court in 2018 against NS and NPBL (described below), NS sought confirmation that the approval of the 1982 Control Transaction included the approval of NSC to control the NPBL (and that the 1991 and 1998 Family Exemptions also authorized NS to control the NPBL) (“Declaratory Order Petition”).¹³ The issue was referred to the STB. The Board disagreed with NS’s view and ruled that neither the approval of the Interstate Commerce Commission (“ICC”) of the 1982 Control Transaction

¹⁰ At the time the 1980 control filing was being prepared, the rules that governed the contents of the application were voluminous and burdensome. Accordingly, N&W and SRC filed a Petition for Waiver and Clarification of the ICC’s merger rules (which, at that time, were in a state of flux). The Board granted that petition. The waivers permitted N&W and SRC to submit data on a “system-basis” (which did not include NPBL) and to limit the definition of “applicants” to N&W, SRC, NSC, and Delaware and Hudson Railway Company (“D&H”).

¹¹ See Appendix 2, page 10 of 18, of Volumes 2 and 2A of the 1980 control application.

¹² See, id. Each of the four NPBL shareholders (CSX, N&W, SRC and Norfolk Southern) participated in the 1980 ICC proceeding. See 1982 ICC Control Decision, slip op, at 2 (noting representatives of CSX who participated in the proceeding).

¹³ Norfolk Southern Railway Company – Petition for a Declaratory Order and Request to Set a Procedural Schedule, FD 36522, filed June 21, 2021.

nor the Board’s approval of the 1991 and 1998 Family Exemptions authorized NS’s control of NPBL. Accordingly, the Board noted that NS’s lack of authority to control NPBL should be addressed upon the resolution of CSXT litigation (including appeals thereof). As discussed below, not all “appeals” have been exhausted because on November 26, 2024, CSXT filed a petition for certiorari¹⁴ to the Supreme Court seeking a review of the Fourth Circuit’s opinion¹⁵ upholding the District Court’s determination that CSX’s antitrust claims were either time barred or without merit.¹⁶ Given the low percentage of cases for which such a certiorari petition is granted and the Board’s previous comments about NS’s unauthorized control of NPBL, NS is filing this Application now, in response to the Board’s directive to seek authority for its control of NPBL.

B. CSXT’s Litigation

CSXT filed an antitrust complaint in federal district court against NS and NPBL in 2018, alleging anticompetitive conduct by NS and NPBL. The crux of CSXT’s argument was that NS had prevented CSXT from serving Norfolk International Terminal (“NIT”)¹⁷ since 2009 when NPBL raised its applicable switch rate¹⁸ (effective January 1, 2010) to \$210 per loaded car well – the price it remains today. The US District Court for the Eastern District of Virginia strongly

¹⁴ CSX Transp., Inc. v. Norfolk S. Ry. Co., U.S. Supreme Court, Petition for Writ of Certiorari, No. 24-591, docketed December 2, 2024.

¹⁵ CSX Transp., Inc. v. Norfolk S. Ry. Co., 114 F.4th 280, 292 (4th Cir. 2024).

¹⁶ CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679 (E.D. Va. 2023) (“Summ. J. Op.”).

¹⁷ NIT is a port facility owned and operated by the Virginia Port Authority. It is one of several ports in Virginia and the East Coast that compete against each other for the movement of intermodal containers in international shipping.

¹⁸ Norfolk and Portsmouth Belt Line Railroad Company, Tariff NPB 8100-J, Item 70 (Line Haul Switching).

rejected CSXT's anticompetitive claims, granting summary judgment in favor of NS and NPBL. Pursuant to the summary judgment ruling standard, even when the court "view[ed] the evidence in the light most favorable to" CSXT, NS and NPBL still prevailed as a matter of law.¹⁹

Although the District Court did not address the merits of CSXT's anticompetitive claims allegedly occurring before 2013, finding that such claims were time-barred, the Court found that CSXT's anticompetitive claims allegedly occurring after October 2013 were wholly unsupported. CSXT appealed, and the Fourth Circuit upheld the District Court's judgment in favor of NS and NPBL.

C. NPBL Rail System

NPBL is a terminal switching company that is currently owned by NS (57.14%) and CSXT (42.86%). Its rail operations are entirely located in the Commonwealth of Virginia. NPBL operates over approximately 36 miles of rail line from Portsmouth, VA to Norfolk, VA, as also described in the attached map on Exhibit 1 (Map) hereto (the "NPBL Line"). The NPBL Line interchanges traffic with CSXT, NSR, the Buckingham Branch Railroad (in part formerly the Bay Coast Railroad), and the Chesapeake & Albermarle Railroad. NPBL's 1897 Governing Document provides that NPBL's switch rate shall be uniform and calculated largely on a cost basis (rather than on a profit/market-driven fee basis). Under the uniformity requirement, one rate applies to all carriers and to all types of traffic that may operate over the NPBL (rather than establishing customized rates for a single carrier or for a single type of traffic).²⁰ Under a cost-

¹⁹ CSX Transp. Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679, *690 (Jan. 3, 2023) (quoting Jacobs v. N.C. Admin. Off. Of the Cts., 78 F.3d 562, 568 (4th Cir. 2015)).

²⁰ The tariff sets different rates for Intra-Terminal Switching (Item 60), Line Haul Switching (Item 70), Inter-Terminal Switching (Item 80) and Intermediate Switching (Item 90) due to the different activities involved for each, but for each type of switching, the rates are uniform without regard to the party or the type of traffic being switched.

basis fee structure, NPBL's ability to substantially profit from its operations is restricted. NPBL's current switch rate satisfies both the uniformity and cost-based criteria of the NPBL's 1897 Governing Document.

In addition, NPBL operates trackage rights over approximately 27 miles of NS track, which extends from the City of Chesapeake, VA to the City of Norfolk, VA (the "NPBL Trackage Rights"). The NPBL Trackage Rights permit NPBL to access NIT, which is only accessible via NS-owned track. The trackage rights agreement governing the NPBL was entered into by the predecessors of NPBL and NS in 1917. The term of the trackage rights agreement was 99 years, and in 2015, NS gave notice of termination of the agreement as of July 31, 2016, in accordance with its terms. In the more than 8 years since the termination of the trackage rights agreement, NS has not exercised its control in any manner to divest NPBL of its trackage rights or to impose an unreasonable trackage rights fee on NPBL. To the contrary, since the termination of the trackage rights agreement, the parties have extended the terms of the terminated agreement on a month-to-month basis, while the two parties negotiated a new trackage rights agreement.

On September 13, 2018, NS filed a petition with the Board to set the trackage rights compensation for the new trackage rights agreement governing the NPBL Trackage Rights²¹ ("Trackage Rights Compensation Petition"). This approach (1) was consistent with prior Board determinations that set the terms and conditions for expired trackage rights that were not being discontinued, and (2) would ensure the new trackage rights fees would be fair and reasonable for both parties. Upon the request of CSXT, the Board held the Trackage Rights Compensation

²¹ Norfolk Southern Railway Company – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line Railroad Company, FD 36223, filed September 13, 2018.

Petition in abeyance, pending the litigation initiated by CSXT against NS and NPBL.²² As noted above, both the District Court and the Fourth Circuit Court ruled in favor of NS and NPBL.

III. SUMMARY OF APPLICATION

The Board must approve NS's effective control of NPBL if such approval would not *likely* result in the *substantial* lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. The Board need look no further than the 42-year history of NS's effective control of NPBL to determine that there will be no lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation. This is not a case where a shipper's options or access will be reduced as a result of the Board's approval of NS's control of NPBL. Shippers currently have, and will continue to have, access to an NPBL route that includes a cost-based switching rate, including the cost of a trackage rights fee that is based on the SSW methodology.²³ Shippers will suffer zero competitive harm through the Board simply recognizing what all parties have known for over 42 years – NS has controlled NPBL since 1982 and has not used that control to deny shippers any transportation options.

²² See Norfolk Southern Railway Company – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line Railroad Company, FD 36223 (STB served July 25, 2019), reconsideration denied (STB served December 19, 2019).

²³ “The SSW Compensation methodology, which has consistently been used by the Board for setting trackage rights compensation, involves calculating the sum of three elements: (1) the variable cost incurred by the owning carrier due to the tenant carrier's operations over the owning carrier's track; (2) the tenant carrier's usage-proportionate share of the track's maintenance and operation expenses; and (3) an interest rental component designed to compensate the owning carrier for the tenant carrier's use of its capital dedicated to the track.” BNSF Railway Company – Terminal Trackage Rights – Kansas City Southern Railway Company and Union Pacific Railroad Company, FD 32760 (Sub-No. 46), Decision No. 8, (STB served February 21, 2020).

In order to ensure that shippers continue to have competitive access to NPBL, NS will commit to two important actions: (1) NSR will not establish a market-based trackage rights fee for NPBL, but instead will agree to have the Board set an SSW trackage rights rate, and (2) NS will not cause NPBL to change the nature of its switch rate, which shall remain a uniform, cost-based rate consistent with NPBL's 1897 Governing Document. These two actions will ensure that no anticompetitive impacts will result from NS's continued control of NPBL.

In the 8 years since the termination of the 1917 trackage rights agreement, NS has not exercised its control of NPBL to force NPBL to accept a higher trackage rights fee. Instead, NS agreed to extend the terms of the terminated agreement on a month-to-month basis and requested the Board to set the trackage rights compensation for the new agreement under the SSW methodology. NS understands and acknowledges that its trackage rights fee directly will affect the calculation of NPBL's switch rate; therefore, NS is willing to forego a market-based trackage rights fee in favor of recommencing its proceeding (which CSXT sought to hold in abeyance to further its litigation goals) for the Board to impose an SSW trackage rights fee. This commitment by NS will ensure that NS cannot exercise its control over NPBL to affect an anticompetitive trackage rights fee.

Similarly, NS is committing to continuing to adhere to the 1897 Governing Document and continuing NPBL's policy of establishing a switch rate that is uniform and cost-based. NPBL's current switch rate - \$210 per loaded car well - is a uniform switch rate for all NPBL line haul switching that moves beyond the local yard or switching limits of NPBL's connecting railroads. NPBL's current switch rate is also cost-based. As discussed in more detail in the Verified Statement of Mr. Daniel L. Fapp, Senior Vice President, L.E. Peabody & Associates, Inc., attached as Exhibit B, the current switching rate is *below* the weighted and simple averages

of NPBL's total per car operating expenses from 2010 through 2023 [REDACTED] [REDACTED].²⁴ For several years during that time period, including for 2023, NPBL's switch rate has been *below* NPBL's total per car operating expenses.²⁵ While NS remains committed to continuing NPBL's establishment of a uniform and cost-based switch rate, the current rate is below the existing costs. Therefore, NS may consider adjusting the rate to reflect current costs and to ensure compliance with the 1897 Governing Document. Failure to do so would result in NS subsidizing NPBL service to CSXT at below costs. Any such rate adjustment would not curtail any shipper's existing route options and would be entirely consistent with NPBL's past conduct and the 1897 Governing Document.

In light of CSXT's litigation, which focused on CSXT's access to intermodal traffic at NIT, it is important to point out that, even if NS immediately used its authorized control to make substantial changes to NPBL's rates and governance structure for the purpose of benefitting NS (which it has no intention of doing), the transaction *still* would not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. This is because the shippers using the Port of Virginia ("POV") have many options besides NS. Indeed, even if CSXT's access to NIT via the NPBL were terminated or the switching rate raised to a market-based rate (which it will not be), no intermodal shipper would see a reduction in its competitive options because CSXT still would be able to serve the intermodal container market (1) by rail at Virginia International Gateway ("VIG") (part of the POV complex and served indirectly by both NS and CSXT via

²⁴ See Verified Statement of Mr. Daniel L Fapp ("VS Fapp") at 4.

²⁵ Id.

Commonwealth Railway); (2) by drayage²⁶ from NIT to CSXT's nearby rail yard; and (3) through other ports that compete with POV and to which CSXT has access. And, for shorter distances from POV, shippers also have the option to forgo rail and rely wholly on trucking directly from NIT (which currently has the largest market share.)²⁷

The fact that the intermodal customers who use NIT have so many competitive options proves exactly why the ICC, years ago, exempted intermodal traffic from regulation.²⁸ All of the existing transportation options available to shippers who desire to use the POV will continue to exist after this Transaction is approved. Granting legal recognition of NS's 42 years of effective control of NPBL will simply maintain the status quo: no shipper will lose a competitive option, and CSXT will have all the same rights that it has had historically and has today. Accordingly, approval of this Transaction will certainly not result in a reduction in competition that is both likely and substantial, and this Transaction should be approved.²⁹

²⁶ Drayage, for purposes of this Application, "refers to the short-distance truck move between the on-dock facilities and the rail-car loading facilities." See Verified Statement of Mr. Michael McClellan, Senior Vice President, and Chief Strategy Officer at NS ("VS McClellan") at 9, note 24.

²⁷ See VS Fapp at 8.

²⁸ See American Trucking Associations v. I.C.C., 656 F.2d 1115 (5th Cir. 1981), Improvement of TOFC/COFC Regulation, 364 I.C.C. 731, 732, Ex Parte No. 230 (Sub-No. 5) (ICC served February 19, 1981).

²⁹ Here, the Board must approve this Transaction unless it finds *both* that there will be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States *and* that such anticompetitive effects would outweigh the public interest in meeting significant transportation needs. Norfolk Southern Railway Company and the Cincinnati, New Orleans, and Texas Pacific Railway Company – Acquisition – Trustees of the Cincinnati Southern Railway, FD 36699, Decision No 2 (STB served September 20, 2023), slip op. at 3 ("CNOTP"). Here, the Transaction will not result in any anticompetitive effects because there will be absolutely no change in the level of competition or operations resulting from the Transaction (let alone a "substantial lessening" of competition). Furthermore, the Transaction will not result in the creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States. Accordingly, the Board does not

IV. APPLICATION INFORMATION

In proceedings that do not involve the merger or control of at least two Class I rail carriers, the Board shall approve a transaction unless it finds both “(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs”. 49 U.S.C. § 11324(d). In a minor transaction such as this, the Board must approve a transaction under Section 11324(d) unless adverse competitive impacts from the transaction are both “likely” and “substantial”.³⁰ And, even if anticompetitive impacts from the transaction are both likely and substantial, the Board then must consider the public benefits of the transaction. The Board may only disapprove of a transaction if the anticompetitive impacts outweigh the public benefits of the transaction.³¹

As it has done before in related transactions, the Board should find that it is unlikely that this Transaction would have any anticompetitive effects where, as here, no shipper would have

need to perform an analysis under to 49 U.S.C. § 11324(d)(2) to determine if the anticompetitive effects outweigh the public interest in approving the transaction. See Bessemer and Lake Erie Railroad Company – Acquisition and Operation – Certain Rail Lines of CSX Transportation, Inc. In Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, N.Y., FD 36347, slip op. at 14-15, 33-35 (STB served February 25, 2021).

³⁰ Canadian National Railway Company And Grand Trunk Corporation – Control – Iowa Northern Railway Company, FD 36744, slip op. at 6 (STB served Jan. 14, 2025) (“CN/IANR”); Norfolk S. Ry. – Acquisition & Operation – Certain Rail Lines of Del. & Hudson Ry., FD 35873, slip op. at 14 (STB served May 15, 2015) (“NS/DH”), petition for rev. dismissed sub nom, Riffin v. STB, No. 16-1043 (D.C. Cir. 2017); Canadian Nat’l Ry. & Grand Truck Corp. – Control – EJ&E W. Co., FD 35087, slip op. at 13 (STB served Dec. 24, 2008) (“CN/EJE”), petition for rev. dismissed sub. nom, Village of Barrington, Illinois v. STB, No. 09-1002 (D.C. Cir. 2011).

³¹ See 49 U.S.C. § 11324(d)(2); Paducah & Louisville Ry – Acquisition – CSX Transp., Inc., FD 34738, slip op. at 4 (STB served Nov. 18, 2005); CN/EJE, slip op., at 13; NS/DH, slip op. at 14.

fewer competitive rail options and longstanding operations would continue unchanged as a result of the transaction.³² As this Application demonstrates, shippers will continue to have access to the two³³ international intermodal cargo terminals that currently comprise the POV: NIT (by CSXT indirectly via the NPBL³⁴ and by NS directly) and VIG (by both CSXT and NS indirectly via the Commonwealth Railway)³⁵, and POV also includes Newport News Marine Terminal, a breakbulk and role-on/roll-off facility (directly served only by CSXT).³⁶ In addition to rail

³² See CSX Transp., Inc. – Lease – W. & Atl. R.R., FD 36220, slip op. at 5 (STB served Nov. 21, 2018) (finding “[n]othing in the record thus far suggesting] that the Lease would have anticompetitive effects, because the Lease proposes to generally maintain the status quo by allowing CSXT to continue operating over the Line as it and its predecessors have done since 1890” and that “[i]t does not appear, under the terms of the proposed Lease, that any shipper would have fewer competitive rail alternatives”); see also CSXT Transp., Inc. & Del. & Hudson Ry. – Joint Use Agreement, FD 35348, slip op. at 7 (STB served May 27, 2010) (stating it did not appear that “any shipper would have fewer competitive rail alternatives as a result of the transaction”); Norfolk S. Ry., Pan Am. Ry. – Joint Control & Operating/Pooling Agreements – Pan Am S., FD 35147, slip op. at 9 (STB served June 6, 2008) (stating “no shipper would have fewer competitive rail alternatives as a result of the [t]ransaction”); and CNOTP, slip op. at 4 (noting that the “record further indicates that no shipper will have fewer competitive rail options and that longstanding operations on the Line will continue unchanged”).

³³ Until 2020, CSXT and NS also both had access to the Portsmouth Marine Terminal (via NPBL) but that terminal has been repurposed to handle heavy and oversized cargo. See *Trump's Anti-Wind Farm Stance Brings Uncertainty for the Project Sector*, Port Cargo Journal, January 28, 2025, available at <https://www.projectcargojournal.com/offshore/2025/01/28/trumps-anti-wind-farm-stance-brings-uncertainty-for-the-project-sector/?gdpr=accept> (noting POV “is playing an important support role, namely the handling of large turbine components at [PMT], which has been specially repurposed to handle the complex needs of construction and transportation logistics”).

³⁴ Absent NS’s concurrence to allow NPBL to access NIT by providing a switch to CSXT, NIT would be solely served by NS. NPBL serves NIT via NS granting NPBL trackage rights over a small segment of NS track so NPBL may access tracks owned by the Port of Virginia and the NIT facility. NS has not sought to change that arrangement at any time since NS became the majority shareholder in 1982 nor has NS sought to charge an unreasonable rate for NPBL’s access over NS’s tracks.

³⁵ VS McClellan at 5.

³⁶ VS McClellan, at 5-6; <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-NNMT-1-Pager.pdf> (noting “Direct, on-dock rail service with CSX, with the ability to transfer with Norfolk Southern in Richmond”).

access at POV, shippers also will continue to have a variety of truck and alternative port options. Approval of NS's control of NPBL will not result in any change to NPBL's uniform and cost-based rail operations, and NPBL will continue to exercise trackage rights over NS to access NIT, as it has done since 1917. Accordingly, NS respectfully requests that the Board find this Transaction to be a minor transaction under 49 C.F.R. § 1180.2(c).

V. SUPPORTING INFORMATION

Pursuant to 49 C.F.R. Part 1180, NS submits the following information in support of this Application.

1180.6(A)(1)(i): **A brief summary of the proposed transaction, the name of the applicants, their business address, telephone number, and the name of counsel to whom questions regarding the transaction can be addressed.**

Upon its formation in 1897, NPBL had 8 shareholders, but by the time of the 1982 Control Transaction, NPBL was owned by just four shareholders: CSX (which owned 42.86%), SRC, N&W, and Norfolk Southern (which was a Class II subsidiary of SRC). The 1982 Control Transaction approved NCS's control, through stock ownership, of N&W (and its subsidiary companies) and SRC (and its consolidated system companies, which included Norfolk Southern). At the time of Board approval, SRC owned 14.29% of the shares of NPBL, N&W owned 28.57%, and Norfolk Southern, owned 14.29%; therefore, with no further action, NSC obtained an effective controlling interest in NPBL (57.14%). Subsequently, NS also obtained effective control of NPBL in 1991 and 1998.

The 1982 Control Transaction was a large, complicated transaction involving numerous railroad entities. These entities were identified in two general groups: those that were controlled by *either* N&W *or* SRC and those that were not. As the Board pointed out, "it appears that NPBL is the only carrier listed in this Appendix in which either NW or SRC did not have a

controlling interest before the transaction but which, after the transaction, would be indirectly controlled by NSC as a result of the combined ownership interests of NW and SRC”.³⁷ NS understood that the 1982 Control Transaction had conferred the necessary authority to NS to control NPBL, but the Board disagreed.³⁸ The Board also disagreed that NS subsequently obtained Board authority in 1991, when NSR invoked an ICC corporate family exemption to control N&W,³⁹ and, in 1998, when NSR invoked an STB corporate family exemption to merge with N&W.⁴⁰ Accordingly, NS is now seeking Board approval for its effective control of NPBL.

The applicants of this Application are NSC and NSR:

Norfolk Southern Corporation
650 West Peachtree Street N.W.
Atlanta, GA 30308
(470) 463-6314

Norfolk Southern Railway Company
650 West Peachtree Street N.W.
Atlanta, GA 30308
(470) 463-6314

Question and correspondence regarding this Application may be addressed to:

William Mullins
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³⁷ Petition for Declaratory Order, slip op. at 4, at n. 8.

³⁸ Id. at 17.

³⁹ See SRC/N&W.

⁴⁰ Norfolk S. Ry. Co. – Exemption – Norfolk and W. Ry. Co., FD 33648 (STB served Aug. 31, 1998).

1180.6(a)(1)(ii): The proposed time schedule for consummation of the proposed transaction.

As set forth above, NSC has had effective control of NPBL since the 1982 Control Transaction, and NS has had control of NPBL since the 1991 and 1998 Family Exemptions. NS is now seeking Board approval of its effective control; there is no new transaction to be consummated.

1180.6(a)(1)(iii): The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

NS seeks authority for its effective control of NPBL, which occurred as a byproduct of the 1982 Control Transaction. There will be no changes in the day-to-day rail operations or the number of employees on the NPBL as a result of the Board's approval of control. NPBL will continue to provide a uniform, cost-based switch rate, and NPBL will continue to have trackage rights over the NS. This approval by the Board will simply formally authorize NS's long-standing control of NPBL. The Board's approval will not result in an increase or decrease in rail traffic on the NPBL Line. See Exhibit C (Operating Plan Minor – Exhibit 15).

1180.6(a)(1)(iv): The nature and amount of any new securities or other financial arrangements.

There will be no new securities or other financial arrangements in connection with the Board's approval of NS' control of NPBL.

1180.6(a)(2): A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including:

1180.6(a)(2)(i): The effect of the transaction on inter- and intramodal competition, including a description of the relevant market (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint

of trade in freight surface transportation in any region of the United States.

A. Effect on Competition

As demonstrated by the 42-plus years since NS has had effective control of NPBL, the attached Verified Statements of Mr. Daniel L. Fapp, Senior Vice President, L.E. Peabody & Associates, Inc., and Mr. Michael McClellan, Senior Vice President, and Chief Strategy Officer at NS, the Board's approval of such control will result in no adverse effects on intramodal and intermodal competition. The immediate relevant statutory question is whether NS's authorized control of NPBL will result in customers who utilize NPBL experiencing a reduction in their competitive transportation options that is both *likely* and would result in the *substantial* lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States? The answer is clear – no.

The Board needs to look no further than the 42-year history of NSC's effective control of NPBL to conclude there will not be any such lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation. With NS's support and approval, NPBL has established a tariff rate that (1) is both uniform and cost-based, consistent with the 1897 Governing Document (thereby restricting NPBL's ability to substantially profit from its operations), and (2) provides carriers interchanging with NPBL with access to POV and other locations served by NPBL. This is not a case where shippers will see their options or access reduced as a result of this Transaction. Not only will shippers retain all routes involving NPBL, but the carriers interchanging with NPBL will continue to benefit from NPBL's cost-based, below-market, switch rate (which will enable those carriers to offer a more competitive price to its shippers). NS has controlled NPBL since 1982. Since that time, no transportation options have decreased as a result of such control by NS, and none will decrease as a result of approving

this Application. Shippers will suffer zero competitive harm as a result of the Board formally approving the relationship between NS and NPBL that has been in place for the past 42 years.

1. FOR 42 YEARS, NS HAS NOT USED ITS CONTROL OF NPBL TO
DECREASE THE TRANSPORTATION OPTIONS OF SHIPPERS AND NS
HAS NO PLANS TO CHANGE THAT POLICY

NPBL was formed in 1897 under two guiding principles: (1) NPBL's rate should be uniform, and (2) the rate should be based largely on NPBL's operating costs (rather than on a pure market, profit-driven basis). See 1897 Governing Document, Ninth (providing "[t]hat a *uniform* rate shall be fixed for the movement of freight cars over [NPBL], regardless of distance, and that the rate per loaded freight car shall be so adjusted from time to time as to *yield a net revenue sufficient to pay the interest upon the bonds outstanding and a dividend of six percent on the stock*"). (Emphasis added.) The current line haul switch rate⁴¹ is fully consistent with both of these principles, and NS intends to continue to establish a line haul switch rate that complies with these two principles.

The current line haul switch rate is \$210 per loaded car well and has been effective since January 1, 2010. (For each round-trip of a car well, there is no charge for the portion of the trip in which the car well is empty.)⁴² At the time the switch rate was set to \$210, it was closely aligned with the NPBL's per car operating expenses. VS Fapp, Table 1 (noting total operating

⁴¹ The Application and supporting materials focus almost exclusively on the Line Haul Switching rate, reflected in Item 70 of the NPBL tariff, because that rate – dealing with the movement between the Port docks and CSXT in conjunction with domestic U.S. rail movement – was generally the subject of argument by CSXT in the antitrust case. But the uniformity principle is also applicable to other switching items in the NPBL tariff, such as those covered by Item 60 (Intra-Terminal Switching), Item 80 (Inter-terminal Switching), and Item 90 (Intermediate Switching).

⁴² Tariff NPB 8100-I (effective January 1, 2010) was replaced by Tariff NPB 8100-J (effective February 1, 2015). The rate did not change between the two cited tariffs. For articulated railcars, the switching rate is levied per well.

expenses per car in 2010 was [REDACTED]). Fluctuations in total operating expenses during the past 14-year period has resulted in several years in which NPBL's switch rate was *lower* than NPBL's total per car operating expenses. *Id.* Despite these occurrences, NPBL has not increased (and NS has not caused NPBL to increase) the switch rate over the past 15 years.

As noted in the Fapp VS, NPBL's switch rate for the years 2010 through 2023 has been "calibrated to cover the variable operating expenses NPBL incurs in the normal course of business and contribute to the railroad's fixed operating expenses, capital expenses and profits."⁴³ The weighted average and simple average of NPBL's per car total operating expenses for the years 2010 through 2023 were [REDACTED] and [REDACTED], respectively. Table 1 of the Fapp VS shows (1) NS is exercising its effective control in a manner that it wholly consistent with the cost-based criteria of the 1897 Governing Document; (2) in 2023, the rate was below existing total operating costs per carload; and (3) CSXT's request for even a lower rate could require NPBL to operate at rates below its variable cost per carload of service, which, to NS's knowledge and belief, the Board has never required a rail carrier to do.

At a minimum, any NPBL switch rate would need to cover NPBL's variable operating costs, which necessarily include the cost to operate trackage rights over NS's rail line. Generally, an owner of a rail line, such as NS, would have an unequivocal right to require a market-based fee as a condition to granting trackage rights over its line – even if there were no control relationship between the owner and the tenant. In 2016, the trackage rights agreement between NPBL and NS reached the end of its 99-year term, and NS, by the agreement's terms, terminated the agreement. However, NS did not seek to use its effective control of NPBL to impose an unreasonable trackage rights fee on NPBL. Instead, NS and NPBL agreed to *extend*

⁴³ VS Fapp at 4-5.

the 1917 trackage rights agreement on a month-to-month basis, while the two railroads negotiated the terms of a new agreement. Then, after NS and NPBL had reached a consensus on all the terms of the trackage rights agreement other than the trackage rights fee, NS filed a petition with the Board to set the trackage rights compensation.⁴⁴ Although that proceeding was held in abeyance at the request of CSXT,⁴⁵ NS is committed to recommencing the Trackage Rights Compensation Petition.

The fact that NS, once it took control of NPBL, has not sought to charge NPBL a market-based trackage rights fee, but rather is willing to accept an SSW rate, is prima facie evidence that NS is not using its exclusivity of the tracks serving NIT to act in an anticompetitive manner. Rather, NS's actions reflect a willingness to maintain the status quo and a willingness to maintain shipper transportation options (which includes CSXT rail access, via switching, to NIT). And once that trackage rights fee is established, the NPBL switching rate can be updated to reflect existing costs. At that point, as it does now, NS will use its control of NPBL to ensure that a single uniform rate consistent with the uniformity criteria of the 1897 Governing

⁴⁴ Norfolk Southern Railway Company – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line Railroad Company, FD 36223, filed September 13, 2018.

⁴⁵ CSXT requested the Trackage Rights Compensation Petition be held in abeyance so it could initiate a lawsuit against NPBL and NS over the very same rate that the Trackage Rights Compensation Petition would have protected. See Summ. J. Op. at *84 (court noting that, during 2018, “the rate that NPBL would pay NS for track access going forward (a critical input for analyzing CSX's service proposal) was being negotiated and was presented to the STB for expedited review, placing NS and NPBL in opposition on this issue”, but that “[t]here is...no evidence in the summary judgment record suggesting NS and NPBL were colluding to abuse the STB process, and it is CSX that acted to halt (i.e., delay) that process.”).

Document will continue to be applied. This will ensure that CSXT and NS are both treated in a non-discriminatory manner.⁴⁶

Completion of the Trackage Rights Compensation Petition will ensure two important aspects of NPBL's operations: (1) it will ensure that the trackage rights fees will be based upon the Board's precedents for ensuring that a tenant can compete with the landlord without the landlord being disadvantaged or subsidizing the tenant; and (2) it will ensure that NPBL's switch rate (which would necessarily account for the cost of the trackage rights fee) will continue to be based on costs that are not inflated due to NS's effective control of NPBL.

Despite CSXT's actions in federal district court and its attempts to avoid STB setting an SSW-based rate, NS remains committed to (1) ensuring that its control of NPBL will not be used in a manner to artificially inflate NPBL's costs through the imposition of an unreasonable trackage rights fee, (2) establishing a trackage rights fee that is fully consistent with the STB's trackage rights rate methodology imposed by the Board to preserve competition; and (3) establishing and maintaining a uniform cost-based switching rate. Accordingly, NS remains committed to and supports recommencing the proceeding before the Board to establish NS's trackage rights fees under the SSW methodology.⁴⁷ VS McClellan at 22.

⁴⁶ If anything, to the extent CSXT seeks a lower rate for its traffic than that charged to all other users and NS, it is CSXT who seeks to impose a discriminatory rate in favor of its operations and at NPBL's and NS's expense.

⁴⁷ Rather than simply using its control of NPBL to require NPBL to approve whatever trackage rights fee NS desires to charge NPBL for NPBL's use of NS's tracks, NS has sought to obtain a consensus with CSXT over that trackage rights fee, given that the fee is a cost component of NPBL's switching rate. But CSXT has refused to negotiate over a reasonable trackage rights fee. As such, given that the trackage rights agreement has expired, NS has sought to use SSW because it is the Board's preferred methodology for setting trackage rights fees where trackage rights agreements have expired and is designed to ensure that a tenant is not unfairly discriminated against. It is also reflective of the principles underlying the 1897 Governing Document, i.e., to apply a non-discriminatory cost-based rate with a reasonable return to the landlord.

2. NS HAS NO INCENTIVE TO RAISE EITHER NS'S OR NPBL'S RATES AT NIT BEYOND A COST-BASED RATE STRUCTURE BECAUSE DOING SO RISKS LOSING MARKET SHARE TO OTHER EAST COAST PORTS SERVED BY CSXT, TO DRAYAGE TO CSXT'S YARD, OR TO TRUCKS

While CSXT is NS' primary rail competitor for intermodal traffic to/from NIT and at the POV, the simple fact is that NIT is only one of the terminals in the POV system, and the POV competes against other ports and terminals, such as Baltimore and NY/NJ to which CSXT has access. Rail also competes strongly against trucks. Thus, if NS were to take steps in the future to use its majority ownership to increase either its own rates at NIT or NPBL's rate to NIT, such efforts would be self-defeating. This is because CSXT and the shippers who desire to use CSXT have other intensely competitive options. Raising either NS rates at NIT or NPBL's rates for interchange with CSXT risks making NIT either non-competitive with CSX-served POV terminals, encourage movement of more drayage from NIT to CSXT's yard, encourage more movements to trucks,⁴⁸ or simply make NIT non-competitive with other East Coast Ports. Any increase in either NS's or NPBL's rates would likely cause shippers to either use other terminals and ports served by CSXT, increase their use of CSXT's drayage services to CSXT's nearby rail yard or shift to trucks altogether. Indeed, trucks to/from NIT already have the largest share of traffic in and out of NIT.⁴⁹ Accordingly, any actions NS may take to disadvantage CSXT or to increase NPBL's or NS's rates beyond a uniform cost-based formula would not only be contrary to the 1897 Governing Document but would also be adverse to both NS and NPBL's interests.

a. POV Competes Against Other Ports

The POV consists of two active terminals for ocean carriers to load and unload international intermodal cargo: VIG and NIT. Both of these ports are operated by Virginia

⁴⁸ As noted by Mr. Fapp, trucks already have a 59% market share at the POV. VS Fapp at 8.

⁴⁹ Id. at 15.

International Terminals, Inc.⁵⁰ NS has direct access to NIT and CSXT has access to NIT via NPBL.⁵¹ Neither CSXT nor NS has direct access to VIG; instead, both have indirect access through Commonwealth Railway, a short-line railroad.⁵² In addition, both CSXT and NSR have rail access via NPBL to PMT, which is being repurposed to handle heavy and oversized cargo but formerly (and still could be) used as a container terminal.⁵³

When examining the competitive landscape, one cannot look only at the POV as the relevant market. CSXT reaches the same major Midwest locations through the Port of NY/NJ that are served through POV, including Chicago, Cleveland, Cincinnati, Columbus, Detroit, Louisville, and St. Louis. POV must compete for international intermodal traffic with other East Coast ports, because a single ocean carrier could stop at all three of the following ports: the Port of NY/NJ, the POV, and the Port of Savannah. *See* Bill Mangelluzzo, “Mega-ships dealing worst congestion head to LA-LB, NY-NJ,” *Journal of Commerce*, July 1, 2015 (noting that “vessel strings usually call at three or four East Coast ports”); VS Fapp at 12. And, port competition, in general, is so strong that “even small increases in costs of unloading/loading and transporting containers to or from a port location can lead to loss of volumes moving through a port.”⁵⁴ In fact, by throughput volume, 14 of the 25 biggest, US intermodal container ports are located in the East Coast.⁵⁵

⁵⁰ VS McClellan at 5.

⁵¹ *Id.* at 3.

⁵² *Id.* at 5.

⁵³ *Id.*

⁵⁴ VS Fapp, at 11. *See also*, *id.* at 12 (noting “even a one percent increase in port and transportation related costs could lead to a 15 percent long-term decline in volumes through a port”), *citing* a 2010 study prepared for the Southern California Association of Governments.

⁵⁵ VS McClellan at 6-7.

The POV's primary competitors for ocean container traffic are the Port of NY/NJ and the Port of Savannah.⁵⁶ As of 2024, POV, Port of NY/NJ and Port of Savannah were all ranked in the top five of US container ports measured by TEUs, with POV ranking behind Port of NY/NJ and Port of Savannah as the top 3 ports on the East Coast.⁵⁷ Similarly, by total tonnage, POV is the 9th largest port in the United States, while the Port of NY/NJ ranks 4th.⁵⁸

But, of course, these rankings could change as the competitive landscape will continue to incentivize East Coast ports to invest to maintain and increase their portion of the market in competition with the POV. Recent investment developments demonstrate the POV is a strong competitor in the fiercely competitive marketplace that consists of Eastern U.S. ports. Competitive efforts that have been encouraged and supported by NS.

As set forth in more detail in VS McClellan, NS, CSXT, private and public terminal companies, and governmental entities all have significantly invested in the international intermodal container market, both reflecting, and continuing to encourage, the intense competition for intermodal traffic at the POV.⁵⁹ For example, in the early 2000s, NS began the groundwork for the Heartland Corridor project, a private-public partnership that raised or removed overhead obstacles (such as bridges) to accommodate double stack service between POV and the Midwest, which by 2010 resulted in NS shortening its route between Norfolk and

⁵⁶ VS Fapp at 12.

⁵⁷ VS McClellan at 7. "TEUs" refers to "twenty-foot equivalent units." *Id.* at 13, note 32.

⁵⁸ *Id.* at 8 (citing 2022 figures).

⁵⁹ *See, e.g., id.* at 8-9 (describing the development of the Mason Mega Rail Terminal development at the Port of Savannah. *See also*, Joseph Bonney, "CSX Raises the Roof," *Journal of Commerce*, October 18, 2010, available at www.joc.com/maritime-news/csx-raises-roof_20101018.html ("Bonney Article") (discussing the improvements of intermodal connections between the Port of New Jersey and the Midwest and quoting Frank Harder, principal at a consulting firm, for the principle that "competition between ports is intense, and if they don't make these kinds of investments, they'll fall behind").

Chicago by nearly 115 miles.⁶⁰ In 2007, APM Terminals, a sister company of Maersk-Sealand shipping line invested more than \$500 million in Portsmouth, Virginia to create a new 300-acre international container terminal.⁶¹ The Port of Savannah just this year completed its Mason Mega Rail Terminal, which it called the “largest on-terminal rail facility in the Western Hemisphere.”⁶² The Mason Mega Rail Terminal is served by both CSXT and NS.⁶³ And CSXT recently broke ground on the clearance of the Howard Street Tunnel, giving CSXT a very important double-stack clearance route from the Port of Baltimore and the Port’s on-dock rail facilities operated by CSXT.⁶⁴

As detailed in VS McClellan, the POV also has made substantial investments, known as the Gateway Investment Program, to remain competitive as a premier port in the East Coast region. In August 2024, NIT completed an \$83 million rail yard expansion project.⁶⁵ Last year also brought the announcement that work on development of a two-way passage for ultra-large container vessels had been completed.⁶⁶ These substantial investments reflect the intense competitive marketplace that currently exists for international intermodal containers that has been sustained throughout NS’s effective control of NPBL, and that will continue to flourish upon approval of this Transaction.

⁶⁰ VS McClellan at 11.

⁶¹ Id. at 10.

⁶² Id. at 8.

⁶³ Id. at 9.

⁶⁴ The Howard Street Tunnel project is just one element of CSXT’s comprehensive investment program, the National Gateway Freight Rail Clearance Project, consisting, in part, of its own initiative to provide double-stack service to the East Coast and Midwest regions, and which included a link not only to the Port of Baltimore, but also the POV.

⁶⁵ Id. at 15.

⁶⁶ Id. at 13.

Given the intense competition among the East Coast ports, it is not surprising that railroads serving these ports also compete with each other. In fact, when the Heartland Corridor opened, providing double stacked access between to the POV and the U.S. Midwest, Clarence Goodwin, CSXT's executive vice president and chief financial officer, responded as follows: "You hear a lot about the Heartland Corridor. My statement is, 'Bring them on.' We can handle them here in New Jersey and beat them head-on, straight up every day."⁶⁷ Indeed, CSXT has several ways to compete for the POV international intermodal container traffic: (1) CSXT has on-dock access to NIT through NPBL; (ii) CSXT has on-dock access to VIG (though Commonwealth Railway, just as NS does); (iii) CSXT has access to drayage to its nearby Portsmouth rail yard (as discussed below); and (iv) CSXT has access to the Port of NY/NJ, Port of Baltimore (where CSXT operates the Intermodal Container Transfer Facility's on-dock railyard⁶⁸), and the Port of Savannah, all of which are direct competitors to POV. Thus, even if NS exercised its control over NPBL to prevent CSXT from effectively serving NIT (which it has not done and will not do), this would not result in competitive harm to either CSXT or its customers because both have ample competitive options to move intermodal containers to/from NIT or via other ports.⁶⁹

⁶⁷See Bonney Article.

⁶⁸ See, VS McClellan at 11.

⁶⁹ It is important to note that 9 out of 12 other East and Gulf Coast terminal railroads have higher switch rates per container, based on an average of 2.5 containers per railcar well. And, based on a per container per mile basis, NPBL's current switch rate is vastly lower than all 12 other terminal railroads serving these other ports. VS Fapp at 6. It cannot be said that NPBL's switch rate is the cause of CSXT's inability to effectively serve NIT via a NPBL switch. If anything, it is CSXT's own line-haul rate and division requirements that contribute to CSXT's inability to use NPBL effectively.

b. Drayage is an Effective Competitive Alternative to On-Dock Rail

Drayage in the railroad industry generally refers to moving traffic a short distance by truck from the on-dock facilities in a port to a nearby rail loading facility for further transport by rail.⁷⁰ The Virginia Port Authority lists over 100 trucking companies that serve the port terminals in various capacities, over 80 of which provide trucking services to nearby rail yards (e.g., drayage).⁷¹ And, according to the Virginia Beach Department of Economic Development, in 2023 trucks moved 59% of Virginia Port Authority cargo, followed by rail (36%) and barge (5%).⁷² Indeed, trucks have the largest market share of NIT intermodal traffic. And, beginning in April 2018, the POV initiated its PROPASS system⁷³, dramatically increasing the performance efficiencies of drayage companies, thereby enhancing trucking even further as a competitive influence on rail service at the Port.

Generally, trucks and rail can compete for international intermodal traffic movements up to 500 miles⁷⁴ (which from NIT would include, for example, Cleveland, OH). Between 2009 and 2024, an average of 10% of NS's container movements through the POV were destinations within 500 miles,⁷⁵ and CSXT's nearest rail yard is only approximately 7 miles from NIT.⁷⁶ As pointed out in the VS Fapp, "[r]egardless of rail's ability to now more effectively compete on

⁷⁰ VS McClellan at 9, note 24.

⁷¹ VS Fapp at 8.

⁷² Id.; see also <https://www.yesvirginiabeach.com/business-environment/the-port-of-virginia>.

⁷³ VS Fapp at 8-9. This proprietary POV system enables truckers to conduct administrative tasks, as well as certain scheduling-related functions, on-line prior to arrival at the port, which reduces idling time and processes the trucks and containers more efficiently.

⁷⁴ VS Fapp at 15.

⁷⁵ VS McClellan at 14.

⁷⁶ VS McClellan at 9.

shorter haul moves, the fact remains that trucks dominate in such moves”.⁷⁷ For example, CSXT’s historic practice of using drayage to access NIT for intermodal container traffic demonstrates that drayage is an effective competitive option for shippers at POV. This is not surprising since intermodal traffic typically is so competitive that such traffic is exempted from Board regulation.

In addition to drayage, one other transportation alternative is movement by barge.⁷⁸ According to the POV, the Richmond Marine Terminal (RMT) has “[t]hree barges in rotation with a combined capacity of 500 FEU, with the potential for six days a week service”.⁷⁹ RMT is linked to the Port of Virginia for barge traffic and CSXT has direct service to the RMT, with NSR having access via switch.⁸⁰ For FY 2024, the Port of Virginia reported 64,106 barge containers.⁸¹ As such, if NS were somehow to use its effective control of NPBL to raise NPBL’s rates or its own rates at NIT, this would simply disadvantage NS as shippers have other intensely competitive options in the form of drayage, barges, the use of alternative terminals, and

⁷⁷ VS Fapp at 15.

⁷⁸ According to one article, Savannah, NY/NJ, and Charleston are exploring barge services. Savannah’s barges would go via an existing waterway to Augusta. Adam Van Brimmer, *Private Port Terminal Stokes Traffic Fears*, The Atlanta Journal-Constitution, February 8, 2024, available at <https://www.ajc.com/politics/private-port-terminal-planned-for-savannah-stokes-traffic-fears/4VNATXR5PVCAXEXRDK4CWIPJ7E/>.

⁷⁹ See <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-RMT-1Pager.pdf>.

⁸⁰ VS McClellan at 6.

⁸¹ See Virginia Complete FY 2024 with Growth in Cargo Volumes and Progress on Infrastructure Projects, July 30, 2024, available at <https://www.portofvirginia.com/who-we-are/newsroom/virginia-completes-fy-2024-with-growth-in-cargo-volumes-and-progress-on-infrastructure-projects/#:~:text=NORFOLK%2C%20VA%20%E2%80%93%20The%20Port%20of,performance%20in%20the%20port's%20history.>

the use of CSXT via drayage to the CSXT yard. These options will not change if this Transaction is approved.

3. THE CLAIMS BY CSXT THAT NPBL AND NS WERE ACTING IN AN ANTICOMPETITIVE MANNER IN SETTING NPBL'S SWITCHING RATE WERE SOUNDLY REJECTED IN COURT

As the discussion above reflects, NS and NPBL have no incentive to increase NPBL's switching rate beyond that required by the 1897 Governing Document. But rather than focus on these broader market factors as creating disincentives for NS to raise either its rates or NPBL's rates, CSXT insisted (and continues to insist) on an even lower switching rate for CSXT intermodal traffic to/from NIT via NPBL, which rate would only apply to CSXT traffic. CSXT ignores that the rate is already a uniform, cost-based rate, is already below current cost,⁸² and is already one of the lowest switching rates (and the lowest on a per container per mile basis) out of 12 other terminal railroads serving the East Coast and Gulf Coast Ports that compete against POV.⁸³ Instead, CSXT claimed that NS's failure to support an even lower rate for CSXT/NPBL switched traffic was the result of anticompetitive conduct between NS and NPBL and filed an antitrust suit (discussed *supra*). CSXT also raised similar allegations to the Board when requesting the Board to stay the trackage rights compensation proceeding – leaving out the relevant market information or the fact that CSXT was seeking a specialized and subsidized below cost rate for itself. Instead, CSXT left the impression that NS and NPBL were conspiring to discriminate against CSXT, which was absolutely not the case. Without further context, and desiring to be guided by any court decision, the Board held the trackage rights proceeding in abeyance.

⁸² VS Fapp at 4.

⁸³ VS Fapp at 6, Table 2.

The Board now has the relevant District Court and Fourth Circuit decisions. As the Board can see, the District Court for the Eastern District of Virginia rejected CSXT’s antitrust claims, granting summary judgment in favor of NS and NPBL.⁸⁴ The Fourth Circuit agreed, fully affirming the District Court’s decision.⁸⁵ For claims prior to October 2013, the court ruled against CSXT, based on the statute of limitations, because CSXT had neglected to timely raise its claims with the court. And the Court dismissed those claims without deciding the merits of any of the allegations. For claims subsequent to that date, the court ruled against CSXT on the merits.

Accordingly, the court has already determined that, at least since 2013, NS has not used its control of NPBL to engage in any anticompetitive conduct. See Summ. J. Op. at *705, n. 12 (noting that “there is no evidence of ‘fine-tuning’ or continued actions necessary to keep CSX out of the relevant market beyond 2011”). See also Summ. J. Op. at *705 (emphasis in original) (noting “even when CSX's evidence is viewed in the light most favorable to CSX, the evidence is insufficient for a reasonable juror to conclude that the entirety of CSX's lost customer contracts, or a majority of its lost contracts, or a notable minority percentage of its lost contracts, or even a non-speculative de minimis percentage of its lost contracts, is predicated on actionable overt acts occurring after 2012”); Summ. J. Op. at *712-713 (noting that, concerning 2018 conduct, “CSX fails to demonstrate that its service proposal was denied, either expressly or implicitly, further failing to point to evidence capable of demonstrating that any presumed denial or implicit denial by NPBL was based on anything other than lawful business concerns or historic NPBL operating

⁸⁴ See Summ. J. Op., at * 690 (granting summary judgment to NS and NPBL means the court determined “there is no genuine dispute as to any material fact and [NS and NPBL] are entitled to judgment as a matter of law”), quoting Fed. R. Civ. P. 56(a).

⁸⁵ CSX Transp., Inc. v. Norfolk S. Ry. Co., 114 F.4th 280, 292 (4th Cir. 2024).

procedures”). The decisions confirm NS’s primary contention in this Application: NS has not used its effective control of NPBL to act in an anticompetitive manner.⁸⁶ And even though approval of NS’s effective control of NPBL will result in NS having antitrust immunity for any actions related to its control of NPBL, such antitrust immunity would not insulate NS’s conduct from the market-based forces that will keep NS from raising either its own rates or NPBL’s rates to levels above what the market could bear nor would it insulate NS from a breach of contract claim for failing to follow the 1897 Governing Document. Control with antitrust immunity will not result in any changes to how NS has exercised its de facto control of NPBL for the past 42 years, certainly not changes that would result in creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States that is both likely and substantial.

4. SUMMARY OF EFFECT ON COMPETITION

The intermodal traffic at NIT clearly has robust competition among railroads, trucks, barges, and other ports. In fact, any attempt by NS to use its control of NPBL to raise rates or put CSXT at a significant disadvantage would simply provide a further economic incentive for customers to increase their share of drayage to CSXT’s nearby rail yard, increase its use of VIG, where both CSXT and NS provide service via Commonwealth Railway, increase their use of trucking, or switch to other ports – some of which are exclusively served by CSXT. None of these results would be good for either NS or NPBL. Indeed, CSXT itself has direct access to the Port of Baltimore and the Port of Tampa, not directly served by NS, and those facilities compete against NIT for intermodal traffic.⁸⁷

⁸⁶ It is important to note that for claims that were time barred, the Court did not make a finding that NS and NPBL conduct prior to the 2013 was anticompetitive or otherwise violative of the antitrust laws.

⁸⁷ VS McClellan at 8.

For 42 years, NS has not used its control of NPBL to take action to limit shippers' transportation options. NS has not used its control to change the 1897 Governing Document to permit it to adopt a market-based switch rate. It has not refused to provide NPBL with trackage rights over NS, and it has not imposed a market-based trackage rights fee for NPBL's trackage rights (the cost of which would be reflected in a higher switch rate). To the contrary NS is committing to charging the exact same trackage rights rate that the Board would likely impose in the event the Board had ordered trackage rights via condition to a merger or via a competitive access case under 49 U.S.C. § 11102. In addition, NS has established, and will continue to maintain, a switch rate that is uniform and cost-based. These two commitments will ensure that no anticompetitive impacts will result from NS's continued control of NPBL.

Here, CSXT has its operations in the POV, with access by rail to both NIT and VIG (through NPBL and Commonwealth Railway, respectively) and access to drayage with its Portsmouth rail yard, and (2) the POV is only one of several East Coast ports at which NS and CSXT compete against each other and the trucking industry. The Transaction will not adversely impact any shippers. Shippers will retain all of their intermodal traffic options: rail only, truck only, drayage, barges, and other ports. No intermodal customer will see a reduction in any of its existing competitive options nor will CSXT see a reduction in its existing access to NIT.

The Board must approve this Transaction unless it finds *both* that there will be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States *and* that such anticompetitive effects would outweigh the public interest in meeting significant transportation needs. Here, no customer will see any reduction in competition, much less a reduction that is "likely" or

“substantial.” The approval of control will simply maintain the status quo of the past 42 years of NS’s effective control of NPBL.⁸⁸

1180.6(a)(2)(ii): The financial consideration involved in the proposed transaction, any economies, to be affected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

No financial consideration is involved in the Board’s approval of NS’s control of NPBL, and no economic impact is expected to occur as a result of such approval.

1180.6(a)(2)(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

There will be no increase in total fixed charges resulting from the Board’s approval of NS’s control of NPBL.

1180.6(a)(2)(iv): The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

NS’s authorized control of NPBL will not change the status quo. No shipper will lose a competitive option. Shippers will have all the same options they have today. CSXT will have all of the same rights that it has today. As detailed in Section 1180.6(a)(2)(i), above, there will be no anticompetitive impacts as a result of the approval of this Application.

1180.6(a)(2)(v): The effect of the proposed transaction upon applicant carriers’ employees (by class or craft), the geographic point where the impact will occur, the time frame of the impact (for at least 3 years after

⁸⁸ Because the Transaction will not result in any anticompetitive effects, let alone a substantial lessening of competition, and will not result in the creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States, the Board does not need to perform an analysis under to 49 U.S.C. §11323(d)(2) to determine if the anticompetitive effects outweigh the public interest in approving the transaction. See CN/IANR; and Bessemer and Lake Erie Railroad Company—Acquisition and Operation—Certain Rail Lines of CSX Transportation, Inc. In Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, N.Y., FD 36347, slip op. at 14-15, 33-35 (STB served February 25, 2021).

consolidation), and whether any employee protection agreements have been reached.

NS does not plan to make any changes to the number of employees working on NPBL as a result of the Board's approval of its effective control of NPBL. No employees of NS or NPBL will be dismissed or displaced as a result of such approval. Because no adverse impact on employees is expected as a result of this Application, no employee protection agreements have been negotiated.

1180.6(a)(2)(vi): The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

Inclusion is not available as a form of relief in a minor transaction. In any event, there is no basis for including another railroad in the control approval because such approval will not adversely affect the ability of any other carrier to provide essential services.

1180.6(a)(3): Any other supporting or descriptive statements the applicant deems material.

None other than the Verified Statements of McClellan and Fapp.

1180.6(a)(4): An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

This provision is not applicable as there is no new transaction being consummated.

1180.6(a)(5): A list of the State(s) in which any part of the property of each applicant carrier is situated.

NS is a Class I carrier that operates approximately 19,300 route miles in the following states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

NPBL, a non-applicant, is a Class III carrier that operates entirely in the Commonwealth of Virginia.

1180.6(a)(6): **Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.**

Exhibit 1 contains the Maps showing NS's and NPBL's systems and a map showing the highway network used for drayage.

1180.6(a)(7)(i): **Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).**

NS asks the Board to officially authorize its 42 years of control of NPBL. The control of NPBL was a byproduct of NSC's control, effected in 1982, through its stock ownership of N&W (and its subsidiary companies) and SRC (and its consolidated system companies, which included Norfolk Southern).⁸⁹ There is no new transaction.

1180.6(a)(7)(ii): **Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.**

There is no new agreement. When NS sought confirmation of its control of NPBL, in connection with CSXT's litigation, the Board advised NS that the 1982 Control Transaction had

⁸⁹ Norfolk Southern Corporation – Control – Norfolk and Western Railway Company and Southern Railway Company, FD 29430 (Sub-No. 1) (decided March 19, 1982), published at 366 IC.C. 173.

not included NSC's control over NPBL. Accordingly, NS is now seeking approval for the effective control it has exercised over NPBL since 1982.

1180.6(a)(7)(iii): If a consolidation or merger is proposed indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of the capital stock and other securities to be issued.

Not applicable.

1180.6(a)(7)(iv) Court Order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest in an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

1180.6(a)(7)(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers, and, if not, described what property is included in the proposed transaction.

The approval of NS's control of NPBL does not involve all of NS's rail property but does involve all of NPBL's property.

1180.6(a)(7)(vi): Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

NPBL operates over approximately 36 miles of rail line from Portsmouth, VA to Norfolk, VA, as also described in the attached Maps. In addition, NPBL operates trackage rights over approximately 27 miles of NS track, which extends from the City of Chesapeake, VA to the City of Norfolk, VA. The principal points of interchange between NPBL and carriers are:

1. Portsmouth, VA: CSXT interchanges with NPBL
2. Chesapeake, VA: NS interchanges with NPBL
3. Norfolk, VA: Buckingham Branch Railroad interchanges with NPBL

4. Chesapeake, VA: Chesapeake & Albermarle Railroad interchanges with NPBL

1180.6(a)(7)(vii): State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the Board's approval of NS's control of NPBL.

1180.6(a)(8): Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transactions, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report.

The approval of NS's control of the NPBL does not require environmental information under 49 C.F.R. § 1105.6(c)(1) because such approval will not lead to operational changes exceeding the thresholds for environmental review in 49 C.F.R. §1105.7(e)(4) and (5).

Because there will be no change in operations or traffic volumes as a result of the approval of NS's control of the NPBL, such approval will not affect the transportation of energy resources (49 C.F.R. § 1105.7(e)(4)(i)); will not have an effect on recyclable commodities (49 C.F.R. § 1105.7(e)(4)(ii)); will not increase or decrease overall energy efficiency (49 C.F.R. § 1105.7(e)(4)(iii)); and will not divert a total of 1,000 carloads per year or on average of 50 carloads per mile per year from the NPBL (49 C.F.R. 1105.7(e)(4)(iv)).

Similarly, such control approval will not affect air quality because it will not result in an increase: (1) in rail traffic of at least 100 percent or of at least eight trains per day on any segment of the NPBL line; (2) in rail yard activity of at least 100 percent; or (3) in average truck traffic of more than 10 percent of the average daily traffic or 50 vehicles per day on any affected road segment. See 49 C.F.R. § 1105.7(e)(5)(i)(A)-(C).

Although the website of the Environmental Protection Agency does not indicate that NPBL passes through any nonattainment or class 1 areas under the Clean Air Act, the Board's approval of NS's control over the NPBL will not, in any event, affect air quality since it will not result in either: (1) an increase in rail traffic of at least 50 percent or an increase of at least three trains a day on any segment of rail line; (2) an increase in rail yard activity of at least 20 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment. See 49 C.F.R. § 1105.7(e)(5)(i)(A)-(C).

For these reasons, the approval of control in this Application is not subject to environmental reporting requirements. See 49 C.F.R. § 1105.6(c). Similarly, such approval of control does not require a historic report under 49 C.F.R. § 1105.8(b) because the approval "will not substantially change the level of maintenance of the railroad property". See 49 C.F.R. § 1105.8(b)(3).

C. Operational Data

1180.8(c): **For minor transactions: Operating plan – minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operation plan expected to be used after the consummation of the transaction. Where relevant, submit information related to the following: (1) Traffic level density on lines proposed for joint operations. (2) Impacts on commuter or other passenger service operated over a line that is to be downgraded, eliminated, or operated on a consolidated basis. (3) Operating economies, which include, but are not limited to, estimated savings. (4) Any anticipated discontinuances or abandonments.**

NPBL has continuously operated its rail system since 1897, and NS has continuously controlled NPBL since 1982. NS has no plan to change the operating plan with respect to patterns or types of service, as a result of the Board's approval of its control.

(1) *Traffic level density on lines proposed for joint operations.* The approval of NS's control of NPBL is not expected to result in any change in the traffic level density of the NPBL.

(2) *Impacts on commuter or other passenger service operated over a line that is to be downgraded, eliminated, or operated on a consolidated basis.* There are no passenger or commuter operations that operate over NPBL's rail system, nor is it contemplated that the introduction of such operations will occur as a result of the Board's approval of NS's control of NPBL.

(3) *Operating economies, which include, but are not limited to, estimated savings.* No operating economies will occur as a result of the Board's approval of NS's control of NPBL because there will be no changes in current operations as a result of such approval.

(4) *Any anticipated discontinuance or abandonments.* Rail service will not be discontinued or abandoned on any portion of the NPBL, as a result of the Board's approval of NS's control of NPBL.

VI. CONCLUSION

Granting NS official "control" authority will not result in any competitive or operational changes to NPBL. NS does not intend to change the methods, means, or any of the bylaws, agreements, operations, or structure of the Board of Directors, or methodologies currently employed to establish NPBL's rates, which requires NPBL to establish a uniform, cost-based rate. NS merely seeks to obtain legal control authority, as directed by the Board – nothing more and nothing less. The customers who use NIT will retain all of the same competitive options that they have today. NS has no incentive to raise NPBL's rates beyond a cost-based approach and its commits not to change that approach. As such, the Transaction will not likely result in the substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States and pursuant to 49 U.S.C. §11323(a)(2), and, accordingly, the Board "shall" approve the Transaction.

Respectfully submitted,

/s/ William A. Mullins

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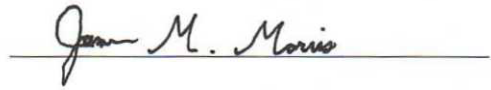
February 14, 2025

PUBLIC VERSION

SIGNATURE OF APPLICANT'S OFFICER

49 C.F.R. 1180.4(c)(2)(i)

I, Jason M. Morris , declare under penalty of perjury that I am Senior Vice President & Chief Legal Officer of Norfolk Southern Corporation (“NSC”) and Vice President of Norfolk Southern Railway Company (“NS”). I am duly authorized to sign, to verify, and to file this Application on behalf of NSC and NS. The statements in this Application are true and correct to the best of my knowledge and belief.

A handwritten signature in dark ink, reading "Jason M. Morris", is written over a horizontal line.

Executed on: 14 February, 2025

CERTIFICATE OF SERVICE

I certify that, on February 14, 2025, in keeping with 49 CFR §1180.4(c)(5), I have caused to be served a copy of the forgoing Minor Application upon the Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which NS and NPBL are situated; upon the Secretary of the Department of Transportation, the Attorney General of the United States, and the Federal Trade Commission.

/s/ William A. Mullins
William A. Mullins

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

EXHIBIT 1 - MAPS

NORFOLK SOUTHERN RAILWAY COMPANY
A Division of Norfolk Southern Corporation

NS
NORFOLK SOUTHERN

VISION: IN THE SOUTHEAST, NORFOLK SOUTHERN RAILWAY AND
BALTIMORE TRANSPORTATION COMPANY IN THE MIDWEST

Scale: 1:500,000
1" = 60 miles

0 25 50 100 150 miles
0 25 50 100 150 kilometers

- Active Short Line Franchise
- Norfolk Southern owned (or lease length rights)
- NS Trackage/Usage Rights
- Conrail Shared Assets Operations - CSAC
- Norfolk Shared Assets Operations - NSAO
- Norfolk Southern Joint Venture
- All Other Railroads or Identifying Marks
- All Stations
- NS Major Classification Yards
- Other NS Yards
- NS Throughgoing Bulk Transfer Terminals - TBT
- NS Intermodal Terminals
- Auto Intermodal Facilities
- Truck Transfer Terminals
- Barge Transfer Terminals
- Airport Terminals
- Other Major Areas
- Intermodal Locations

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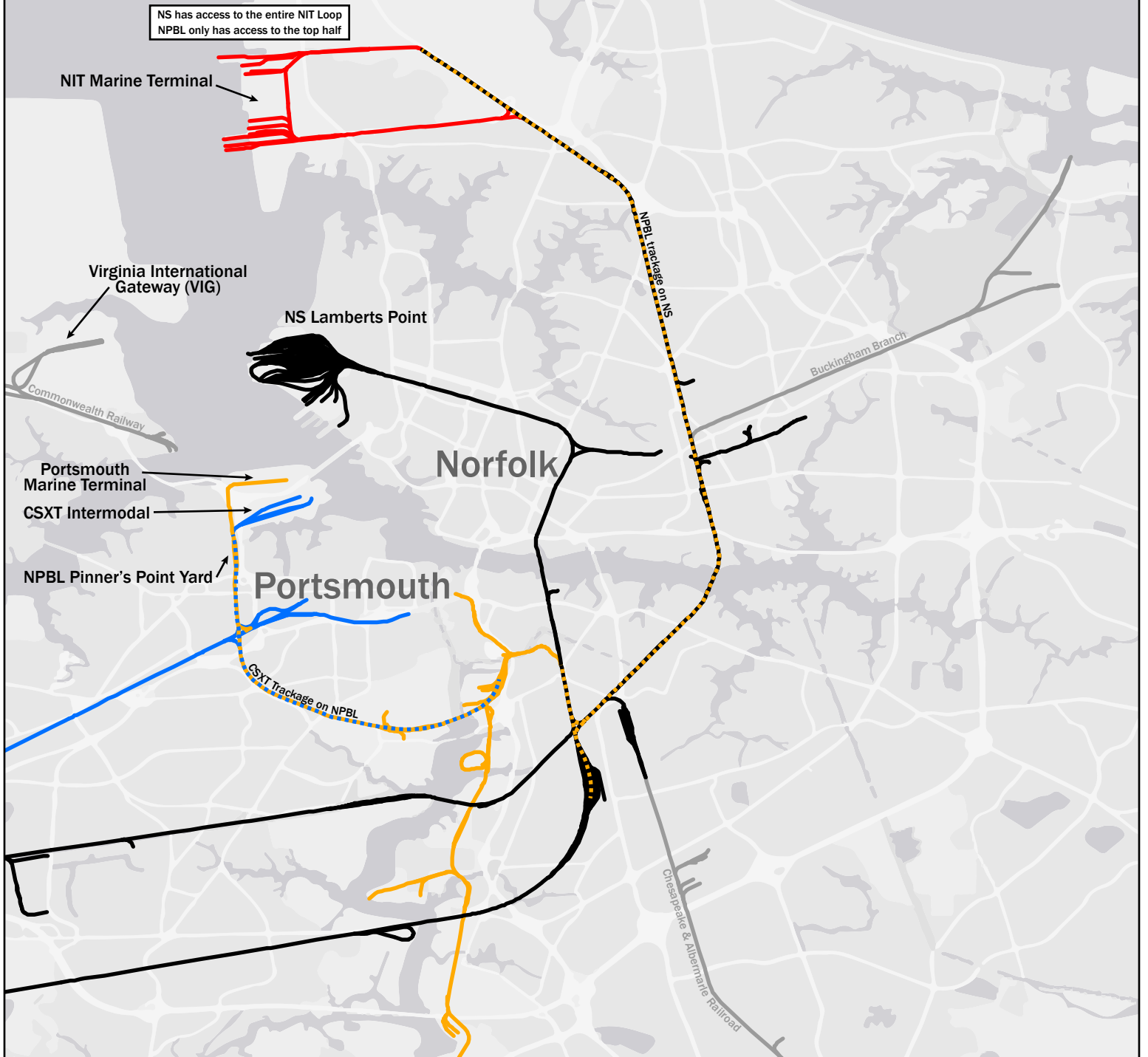


	Exhibit 1
NS, CSXT, and NPBL tracks and trackage in Norfolk Terminal	
— NS tracks — CSXT tracks — NPBL tracks — NIT Marine Terminal — Other tracks	— NPBL Trackage on NS — CSXT Trackage on NPBL
Not all lines shown	February, 2025

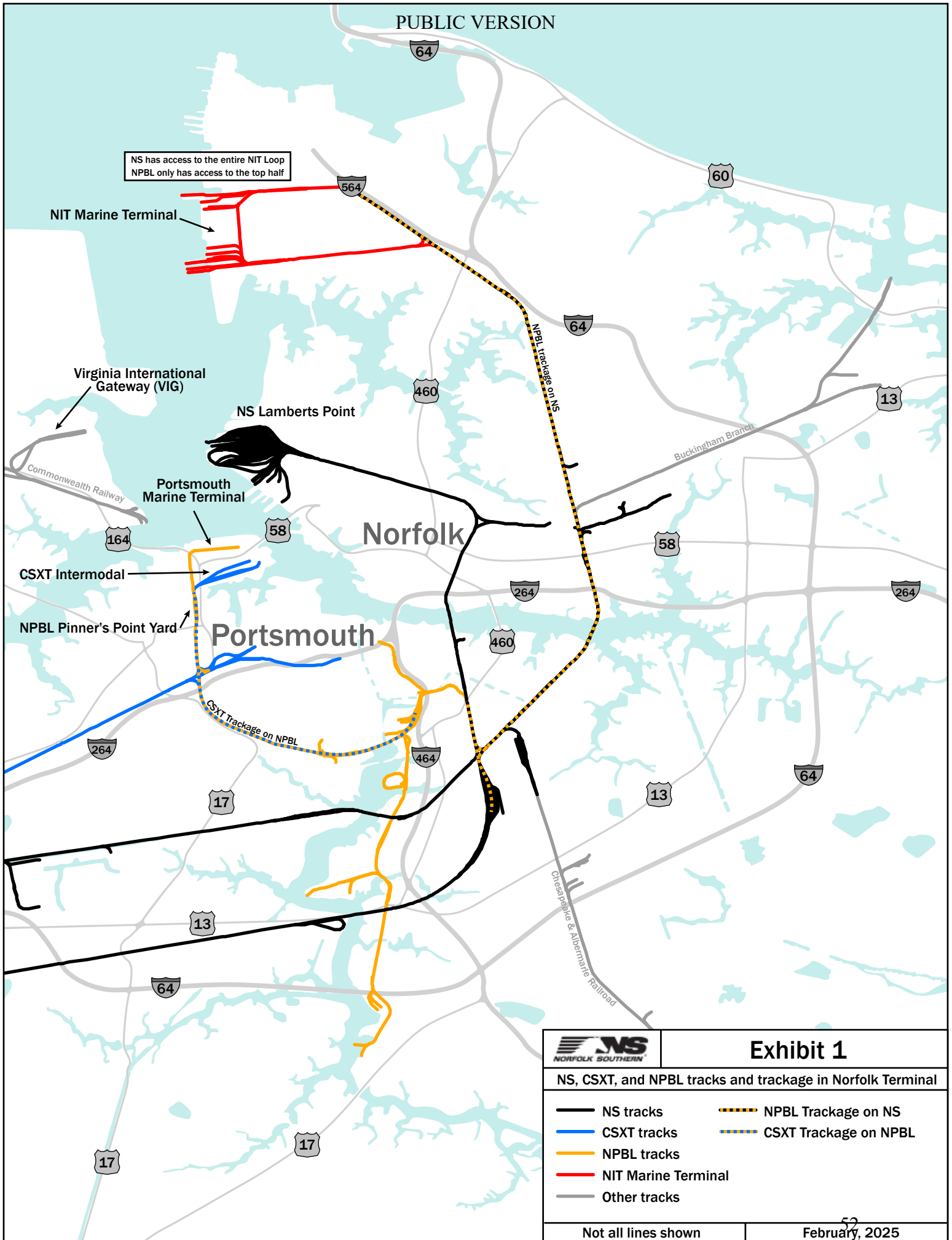


		Exhibit 1	
NS, CSXT, and NPBL tracks and tackage in Norfolk Terminal			
— NS tracks — CSXT tracks — NPBL tracks — NIT Marine Terminal — Other tracks	— NPBL Tackage on NS — CSXT Tackage on NPBL		
Not all lines shown		February, 2025	

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

EXHIBIT A

VERIFIED STATEMENT OF MICHAEL MCLELLAN

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN RAILWAY COMPANY
– ACQUISITION –
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

VERIFIED STATEMENT OF MICHAEL R. MCCLELLAN

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My name is Michael R. McClellan. I am Senior Vice President and Chief Strategy Officer at Norfolk Southern Corporation (“NSC”). I am Vice President at Norfolk Southern Railway Company (“NSR”) (collectively with NSC, “NS”). My business address is 650 West Peachtree Street NW, Atlanta, Georgia 30308.

I have over 35 years of experience in the freight rail industry. I began my career at Conrail in 1986, where I held various commercial and planning positions. In 1996, I went to work for the Transportation Practice of Ernst & Young. In 1998, I returned to the rail industry as Assistant Vice President of Planning in the Intermodal group at NS. In 2000, I was promoted to Vice President-Intermodal, where I ran, among other things, NS’s intermodal, and trucking business for almost 14 years until mid-2013. In 2013, I became Vice President-Industrial Products, and, in 2018, I assumed responsibility for strategic acquisitions and divestitures. I hold a bachelor’s degree in Foreign Affairs and Economics from the University of Virginia and a Master of Business Administration Degree from the University of Cincinnati.

Through my various roles at NS, I have gained personal knowledge of the history, ownership structure, operations, and oversight of the management of the Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) and NS’s ownership of NPBL. As a result of my various senior management roles at NS, I also have been in a unique position to understand the strength of competition available to international shippers through the Port of Virginia (“POV”) and the key role NPBL has played as a bulwark in supporting that competition. As such, I am submitting this Verified Statement in support of the Application filed by NS in Docket No. FD 36836, whereby NS seeks STB authority to control NPBL. Based upon this knowledge, I firmly believe that the official authorization of NS’s 42-year control of NPBL will not result in any changes to

NPBL's operations and certainly will not result in a reduction in competition. If anything, it will cement further the increased competitive position that the Port of Virginia has served for international shippers both here and abroad.

A. Background And History

1. NPBL

The NPBL is a terminal switching railroad operating in the Hampton Road cities of Norfolk, Portsmouth, and Chesapeake, Virginia. NPBL currently is a Virginia corporation. It is a Class III switching and terminal railroad subject to the jurisdiction of the Surface Transportation Board ("STB" or "Board").

The NPBL was formed in 1896. The company is governed by an operating agreement dated July 7, 1897 (the "1897 Operating Agreement"), among seven rail companies: New York, Philadelphia & Norfolk R. R. Co.; Seaboard and Roanoke R.R. Co.; Norfolk and Southern R. R. Co.; Norfolk and Western Railway Co.; Atlantic and Danville Railway Co.; Southern Railway Co.; Norfolk and Carolina R. R. Co.; and Chesapeake and Ohio Railway Co.¹

The 1897 Operating Agreement formed and governed the Southeastern and Atlantic Railroad Company ("SARC"). Under that 1897 Operating Agreement, NPBL was to be constructed by SARC, and it was to be operated "for the mutual benefit of each in the interchange of business,"² an intention that has governed the operations and management of the NPBL to this day.

The NPBL operates over approximately 36 miles of track and 27 miles of trackage rights in and around the Hampton Roads area of Virginia. It operates one major classification yard.

¹ The 1897 Operating Agreement provided in part that The Southeastern and Atlantic Railroad Company was to construct the NPBL.

² Id., recitals.

The NPBL Line connects with CSXT at Portsmouth, VA, NSR and the Chesapeake and Albermale Railroad (“C&A”) at Chesapeake, VA, and the Buckingham Branch Railroad (“Buckingham Branch”) (formerly Bay Coast Railroad) at Norfolk, VA. Buckingham Branch has a connection for interchange with NPBL and CSXT at Coleman Place, and a connection for interchange with NSR at NSR’s Portlock Yard. C&A interchanges with CSXT in Portsmouth, VA, and with NSR in Chesapeake, VA.

In addition to the NPBL trackage that it owns, operates, and maintains, the NPBL has trackage rights over NSR lines. Most of those trackage rights date back to two agreements that NPBL entered into more than a century ago, in 1917, with; (1) Virginian Railway Company (“VRC”), a predecessor company of the current Norfolk Southern Railway Company (“NSR”), and; (2) the old Norfolk Southern Railroad Company (later known as Carolina and Northwestern Railway Company (the “Old Norfolk Southern”)). Pursuant to those two trackage rights agreements, as amended and supplemented (collectively, the “NSR/NPBL Trackage Rights Agreement”), NPBL has trackage rights to use certain NSR tracks in Hampton Roads to facilitate its access to Norfolk International Terminal (“NIT”).³ As a result of this arrangement, traffic moving through NIT has both a highway option to move into and out of the port facility, and two rail options: CSXT via a NPBL switch and NS directly.

For the rail service, only NSR-owned tracks directly connect to NIT and only NPBL has trackage rights over those tracks. As a result, only NSR and NPBL have direct access to NIT. All other carriers who have access to NIT, including CSXT, have that access either through interchange with NSR or through a switch move involving NPBL, with the switch rate being set

³ NIT is located on the property of a former army base. It opened in the late 1960’s and was acquired by the Virginia Port Authority in 1972.

at non-market-based rates.⁴ That is one of the primary reasons that NPBL was, and continues to be, governed by the principles of equal access at a cost-based rate.

In 1897, when NPBL was formed, it was owned by several shareholders. The same was true in 1917 when NSR's predecessor companies initially entered into the NSR/NPBL Trackage Rights Agreement. Over time, however, many of these predecessor companies were purchased and merged into other shareholders. My statement will focus on the history of the shareholders since 1980, as that is most relevant to this proceeding.

The application now before the Board harkens back to December of 1980 when NSC⁵ sought Interstate Commerce Commission ("ICC") authority to acquire control of both Norfolk & Western Railway Company ("N&W") and Southern Railway Company ("Southern"), which also included Southern's subsidiary, Norfolk Southern Railway Company ("Norfolk Southern"),⁶ each of which owned shares in NPBL. In fact, at the time that NSC filed its 1980 Application, there were only four remaining shareholders of NPBL: CSXT, N&W, Southern, and Norfolk Southern. Each of the NPBL shareholders participated in the 1980 ICC proceeding involving the proposed control of the N&W and the Southern by NSC. The application disclosed that NPBL would be majority owned, indirectly, by NS following the

⁴ Paragraph Nine of the 1897 Operating Agreement discusses a uniform rate per switch to be assessed to each of NPBL's interchange partners, and the fact that the per switch rate should be fixed on a cost-based, not market-based, rate.

⁵ At the time of the filing of the notice of intent for the 1980 control transaction, NSC was known as NWS Enterprises, Inc. ("NWS"). By the time the application was approved, however, NWS had changed its name to Norfolk Southern Corporation. Approval was conferred pursuant to a decision in Norfolk Southern Corporation – Control – Norfolk and Western Railway Company and Southern Railway Company, FD No. 29430, decided March 19, 1982, served March 25, 1982, 366 I.C.C. 173, 1982 ICC Lexis 52.

⁶ Norfolk Southern, a subsidiary of Southern, changed its name to Carolina and Northwestern Railway Company ("CNRC") following the 1980 ICC control filing.

proposed transaction.⁷ CSXT did not object at that time to NS's control of NPBL via majority share ownership, even though a major portion of the proceeding focused on NS being in direct competition with CSXT, including with regard to movements to and from Hampton Roads. The ICC approved the 1980 Application in a decision decided on March 19, 1982. NS has controlled NPBL since that time, even though the Board has found that NS's control of NPBL was not legally authorized by the ICC or the STB.

2. The Port of Virginia and other East Coast Port Access

NIT is but one of two primary Port of Virginia ("POV") container terminals in and about the Hampton Roads area.⁸ NIT is the larger of these POV container terminals, the other one being the Virginia International Gateway ("VIG"). Virginia International Terminals, Inc. ("VIT") operates both NIT and VIG for POV. CSXT and NSR each have access to VIG only through Commonwealth Railway, a subsidiary of Genessee & Wyoming. Both CSXT and NSR have rail access via the NPBL to the Portsmouth Marine Terminal ("PMT"), a former container, break-bulk, and roll-on/roll-off cargo terminal that is being repurposed to handle heavy and oversized cargo, such as those used in the construction of offshore wind turbines in a project that is estimated to be completed sometime in 2025. POV also includes the Newport News Marine Terminal ("NNMT"), a breakbulk,⁹ and role-on/roll-off¹⁰ facility. CSXT has direct,

⁷ See page 83 of Volume 2 of the Application (Appendix 2, page 10 of 18) (specifically identifying the ownership of NPBL included a 14.29% interest held by Southern (72 shares), a 14.28% interest held by Norfolk Southern (72 shares), and a 28.57% interest held by N&W (144 shares). That page of the Application expressly identified that the resulting combined ownership would amount to a 57.14% ownership interest to be held indirectly by NSC if approval were granted as requested by the Application.

⁸ A map of the Hampton Roads POV terminals is attached as Exhibit 1 to the Application.

⁹ A break-bulk facility handles non-containerized general cargo such as bundled lumber or steel products. Port Performance Freight Statistics, Annual Report 2024, U.S. Department of Transportation Bureau of Transportation Statistics, January 2024, ("BTS 2024 Annual Report") at 6.

¹⁰ A roll on/roll off facility is one that can handle cargo that is loaded and unloaded from a vessel with ramps, either under its own power or by other power.

on-dock rail service to the NNMT; NS does not. POV also controls the Virginia Inland Port intermodal container transfer facility in Front Royal, Virginia, as well as the Port of Richmond in Richmond, Virginia. The POV Hampton Roads port facilities have close connections with several U.S. highways as well. In addition to access at POV, CSXT also has a rail yard located in Portsmouth, VA and has a small switching yard next to the I-264/VA-164 interchange. All of the CSXT yards receive POV intermodal containers either directly or via drayage.

The POV Hampton Roads port facilities also feed traffic into central Virginia via barge to the Richmond Marine Terminal (“RMT”). That terminal has set up an efficient conveyor belt type of operation involving three barges operated round trip six days per week, feeding containers into both the freight rail system (with CSXT having direct access and NSR having access via switch) and trucking service.¹¹

POV is but one of several large intermodal container transfer port facilities¹² along the East Coast of the United States. Each of the international container¹³ transfer port facilities along the East Coast are in direct competition with each other. These facilities form an entryway to the U.S. freight rail and highway systems for the most efficient and effective (weighing elements of cost and time) movement of containers from overseas to consumer markets along the US East Coast, the Midwest, and beyond. In fact, by throughput volume, fourteen of the top twenty-five

¹¹ See Richmond Marine Terminal overview, <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-RMT-1-Pager.pdf>, accessed on January 22, 2025.

¹² Intermodal container transfer port facilities are generally measured by the number of “twenty-foot equivalent units” or “TEU’s” that move through the facility.

¹³ An international container is typically 20 or 40 feet long and 8 feet wide. Domestic containers are different. Usually, a domestic container will be 48 or 53 feet long and 8.5 feet wide. Specialized rail cars are used to handle international containers. These intermodal well rail cars often have a shallow depression in which two 20-foot intermodal containers can be fit. When the route the intermodal well rail car is “cleared” for double stack operations (that is, when any overhead impediments such as bridges or tunnel roofs are high enough to permit double stack operations), a third 40-foot container often can be added to the well, significantly increasing the overall volume of goods handled by that rail car.

intermodal container ports in the United States are found along the East Coast.¹⁴ The converse is equally true. These facilities are vital access points for the international maritime routes serving Europe, Africa, South America, and points accessible through the Panama Canal and the Suez Canal.

POV ranks fifth among the top 25 container ports by TEU throughput volume, behind the Port of New York and New Jersey (“PNY/NJ”) (which also is the third largest in the nation) and the Port of Savannah (which ranks fourth in the nation).¹⁵ POV ranks ahead of Charleston, Jacksonville, Miami, and Baltimore.¹⁶ On the East Coast, POV ranks a distant third to PNY/NJ¹⁷ a port to which both the CSXT and NS rail systems have a direct connection as a result of the Conrail transaction.¹⁸ Both NSR and CSXT operate out of the port facilities in Charleston and Jacksonville. CSXT operates Baltimore’s on-dock rail facilities. Neither NS nor CSXT directly serves the Miami port facility. At that location, Florida East Coast Railway works with PortMiami to move containers in and out of the Miami facility, moving that traffic as far inland

¹⁴ BTS 2024 Annual Report, at 12 and 13.

¹⁵ Port Performance Freight Statistics, Annual Report 2025, U.S. Department of Transportation Bureau of Transportation Statistics, January 2025, (“BTS 2025 Annual Report”), Table 4, at 13. The top five intermodal container ports in the United States by TEUs are located in PNY/NJ, Los Angeles, Long Beach, Savannah, and Virginia. *Id.* Even though it is third in rank on the East Coast of the US, it is a distant third to the PNY/NJ, served by CSX as well. For example, in the month of October 2024, the PNY/NJ handled the import of 381,343 loaded and empty TEUs and handled the export of 322,928 loaded and empty TEUs. The POV, on the other hand, handled 130,002 and 122,456, respectively, and Savannah handled 243,809 and 250,453, respectively. U.S. Department of Transportation, Bureau of Transportation Statistics, TEUS for Select Ports, [Workbook: TEU Monthly Container Port](#), accessed on December 19, 2024. This is consistent with historical trends. See, U.S. Department of Transportation, Research and Innovative Technology Administration, America’s Container Ports: Linking Markets at Home and Abroad, January 2011, at 6.

¹⁶ BTS 2024 Annual Report, Table 2-4, at 12.

¹⁷ The Port of NY/NJ is located in the North Jersey Shared Assets Area. Prior to the Conrail transaction, Conrail solely serviced the port.

¹⁸ CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, FD No. 33388 (Sub-No. 91), General Oversight Decision No. 17, (STB served Oct. 20, 2004, slip op. at 32 (“The acquisition of Conrail by CSX and NS, PANYNJ reports, provided for the intramodal competition at the Port and in the region that had been lacking for so long. And, PANYNJ advises, the head-to-head competition between CSX and NS made possible by the Conrail Transaction has resulted in significant innovation and growth in the Port’s rail traffic.”)).

as Charleston, SC for interchange with other rail carriers. CSXT has direct access to the intermodal port facilities at Baltimore and Tampa, which are not served directly by NS.

Similarly, POV ranks 9th in the nation among the top U.S. ports by total tonnage (2022), behind the PNY/NJ (which is also the fourth largest in the nation). It ranks ahead of Savannah (which ranks thirteenth in the nation), and Baltimore (which ranks sixteenth in the nation).¹⁹ From a dry bulk throughput perspective, POV ranks fourth in the nation, ahead of all other East Coast ports.²⁰ POV ranked sixth in the nation in the number of vessels calling on the port, ranking behind, on the East Coast of the United States, only PNY/NJ, Port Everglades (FL) and Savannah.²¹

The competition among U.S. East Coast ports is noteworthy. I will discuss later in this verified statement the Port of Virginia’s Gateway Investment Program, a \$1.4 billion investment effort to ensure the Hampton Roads facilities are among the most competitive port facilities on the East Coast. The Port of Savannah has its own mega-project, the Garden City Terminal, which is a \$1.9 billion investment in infrastructure improvements specifically being made to capture a greater market share of the international port market.²² The Georgia Ports Authority also recently opened a new Savannah terminal – the Mason Mega Rail Terminal. Touted as a project to bring “Rail on a whole new scale,” the Georgia Ports Authority claims that its “Mason Mega Rail Terminal is the largest on-terminal intermodal facility in the Western Hemisphere.”²³

¹⁹ BTS 2025 Annual Report, Table 2, at 7.

²⁰ BTS 2025 Annual Report, Table 3, at 10.

²¹ BTS 2025 Annual Report, Figure 18, at 24.

²² See, <https://gaports.com/rail/megarail/>, accessed on January 22, 2025.

²³ “Savannah gets India cargo to market up to eight days faster,” Press Release, Georgia Ports Authority, published January 16, 2025.

The Mason Mega Rail Terminal is served by both NSR and CSXT. The POV competes against Savannah, and other East Coast ports, for international container traffic.

B. The Transaction Will Not Adversely Impact Any POV Shippers

No shipper who uses POV (and specifically, NIT, which is served by NS and NPBL) will have its current transportation options reduced, eliminated, or adversely impacted due to the Board legally authorizing NS's de facto control of NPBL. The transaction does not reduce any transportation options at POV. Any NIT shipper who currently uses NPBL, CSXT, or drayage instead of NS will continue to have that option. CSXT will continue to have the same access it has today.

CSXT has access to NIT and the other POV intermodal container transfer, general merchandise, and roll-on/roll-off port facilities through a NPBL switch at non-market-based rates. CSXT also has access to NIT and other POV facilities for domestic and international freight via drayage.²⁴ None of these options will be reduced or adversely impacted by the transaction. In fact, based upon my understanding, CSXT largely serves NIT through drayage rather than through direct switch via NPBL. Its nearest rail yard is only about 7 miles from NIT. NS control of NPBL will not impact CSXT's access to NIT via drayage or via an NPBL switch. As such, there will be no impact to competition available to shippers through the Port of Virginia as a result of this transaction, other than a continuation of the fierce competition and potential

²⁴ Drayage, in this context, refers to the short-distance truck move between the on-dock facilities and the railcar loading facilities, in this case located at the CSXT intermodal terminal in Portsmouth. Intermodal drayage is typically employed at ports throughout the country to both provide rail access where direct on-dock access does not exist, and to supplement rail access where that direct on-dock access does exist. In the case of the POV terminals, CSXT has direct on-dock access either through NPBL switch (at NIT) or through Commonwealth Railway switch (at VIG), as well as via drayage at both of these intermodal container terminals. In fact, CSXT has historically relied on drayage, supplemented by the use of the NPBL, quite possibly in an efficiency effort involving its Hampton Roads intermodal yard. Both competitive access options will continue to be available for CSXT to serve international customers.

competitive position that the Port of Virginia holds vis-à-vis other East Coast ports. NS's formalized control will not result in any lessening of competition.

1. NS and CSXT Have Each Taken Action to Increase Competitive Market Conditions and Investment at the Port of Virginia and Other East Coast Ports And The Transaction Will Not Adversely Impact those Market Conditions

Over the past two decades or so, the POV, NS, and CSX have all made significant investments to ensure that the POV remains a competitive option for international shipping containers. These investments have created a competitive environment at POV and were made during the time period that NS was de facto controlling NPBL. These investments would not have been made if NS were controlling NPBL in an anticompetitive manner or if NS were using its control of NPBL to disadvantage CSXT or other POV ports. Quite the opposite. NS and CSXT were making investments to create a competitive environment to not only compete against each other but to better compete against drayage and trucks. This transaction will further the competitive market conditions that have allowed those investments, not hamper them.

It is important to understand what investments have been made and the existing market conditions. To begin with, in September 2007, APM Terminals, a sister company of Maersk-Sealand shipping line (at the time touted as the largest shipping line in the world), invested over \$500 million in Virginia to construct a new 300-acre international container terminal in Portsmouth, Virginia.²⁵ At the time, this investment was said to be “the largest investment in a company-owned container terminal in the U.S.”²⁶

That same year, NS began construction of the “Heartland Corridor” project. The Heartland Corridor was an initiative to create a double-stack East Coast – Midwest intermodal

²⁵ See, e.g., Comprehensive Annual Financial Report for the Virginia Port Authority for the Fiscal Year Ended June 30, 2008, at 3.

²⁶ *Id.*

service between the Port of Virginia, on the one hand, and Columbus, Ohio, and numerous other Midwest markets, on the other hand. Completed in 2010, the Heartland Corridor project took 115 miles out of the NS double-stacked route between Norfolk and Chicago. Double-stacking this route significantly increased NSR's ability to move traffic from the POV to inland markets after the Heartland Corridor opened for service in September 2010.²⁷ All major marine terminals have the ability to stack intermodal rail cars in a double-stack configuration and will do so if the receiving rail carrier has a route that accommodates that configuration.

CSXT has invested as well. Over this time period, CSXT has initiated its own investment program which added to the competitive mix available to shippers through the East Coast of the United States. One element of the response consisted of CSXT developing its own double-stack East Coast – Midwest intermodal service initiative, the National Gateway Freight Rail Clearance Project, which would eventually include a linkage not only to the Port of Baltimore, where CSXT operates the Intermodal Container Transfer Facility's on-dock railyard,²⁸ but also to the Port of Virginia, through NPBL or Commonwealth Railway switch and through drayage between NIT to CSXT's nearby yard.²⁹ It was just last year that the Governor of Maryland touted the launch of double-stacked rail operations through the completion of the Howard Street Tunnel Project, a \$500 million project that, when fully-implemented, will permit seamless CSXT double-stack operations not only into the Midwest United States, but all along the US East Coast from Maine to Florida.³⁰

²⁷ "Norfolk Southern opens Heartland Corridor", Railway Gazette International, September 9, 2010, [Railway Gazette: Norfolk Southern opens Heartland Corridor](#), retrieved December 18, 2024.

²⁸ Maryland Department of Transportation, Port Administration, "<https://mpa.maryland.gov/Pages/intermodal.aspx>", accessed on January 22, 2025.

²⁹ "National Gateway Freight Rail Clearance Project", U.S. Department of Transportation, Federal Highway Administration, undated, at 2, [Natl-Gateway-Brief.pdf](#) retrieved December 18, 2024.

Using NS's own motives as a guide, I believe CSXT made these investments to better compete against NS, increasing CSXT's market presence, providing intermodal shippers with competitive options, and attempting to capture market share from trucks and NS. Legal recognition of NS's long standing de facto control of NPBL will not adversely impact or reduce shipper's option to use CSXT or adversely impact CSXT's investments or use of NPBL and drayage. In fact, even though NS has been in effective control of NPBL, CSXT has been, and remains, the predominate user of NPBL services, moving between 57.2% and 71.4% of the NPBL revenue carloads handled by NPBL over the past number of years.³¹ NS legal control of NPBL will change nothing, and indeed, as NPBL's majority shareholder, it would be contrary to NS's economic interest to take steps to reduce NPBL's revenues by taking adverse actions that would impact CSXT's use of NPBL.

The POV itself has also made significant investments to enhance its competitive stance as a gateway to the United States and NS legal control of NPBL will simply continue the same policies that have encouraged and allowed those investments since NS took de facto control of NPBL. Through its investment program, the POV was intent on continuing to build its status as a premier port, through what eventually would be labeled the "Gateway Investment Program," which continues to this day. That investment program, combined with investments from both NS and CSXT, has been more than a resounding success. From January 2020 to August 2023, the

³⁰ "Baltimore gets double-stack rail", WorldCargo news, <https://www.worldcargonews.com/news/2024/10/baltimore-gets-double-stack-rail/?gdpr=accept>, accessed on January 22, 2025.

³¹ See, Norfolk and Portsmouth Belt Line Railroad Company Annual Report Year 2022, at 11 (Revenue Cars by Line Haul Carrier) (figures for 2013 through 2022).

POV experienced a 26.4% increase from in the number of TEUs³² handled.³³ It has significantly decreased the dwell time for vessels coming to call at its facilities, which has an indirect impact on the total costs incurred by shipping lines moving through POV.³⁴ It is important to note that these investments took place during a time when NS de facto controlled NPBL. NS's legal control of NPBL will not change any of the incentives or market conditions that permitted and encouraged those investments.

Today, the Port of Virginia's Gateway Investment Program is a compilation of several different programs to spend \$1.4 billion to elevate the Port of Virginia ahead of other competing U.S. East Coast ports.³⁵ Completion of the widening of the channel to the Port was announced on March 1, 2024.³⁶ This will allow a significant increase in inbound and outbound ultra-large container vessels ("ULCV"), dramatically increasing the throughput of the port. That work is paired with an ongoing dredging effort to maximize the depth of the channel to 55 feet. The harbor in Norfolk is the only channel on the East coast of the United States with Congressional authorization for a depth of 55 feet.³⁷ The dredging program is likely to be completed sometime

³² One of the three common performance measures of port throughput is the number of twenty-foot equivalent units ("TEUs") moved through a Port.

³³ BTS 2024 Annual Report at 18.

³⁴ Id. at 36. The measurement for vessel dwell time includes the time a vessel spends in a port actively loading or unloading cargo.

³⁵ See, e.g., Comprehensive Annual Financial Report for the Virginia Port Authority for the Fiscal Year Ended June 30, 2020, at 6 (referring to the approval of the "\$350 million investment in the port's *Wider, Deeper, Safer* effort" which would "deepen the port's channels to 55 feet deep and widen the channels to allow two-way traffic for ultra-large container vessels," an effort that was completed in 2024 as part of the Gateway Investment Program.

³⁶ The Port of Virginia Press Release, "Virginia Opens Wider Channel; Now Supports Two-Way Ultra-Large Container Vessel Movement", March 1, 2024, [Virginia Opens Wider Channel; Now Supports Two-Way Ultra-Large Container Vessel Movement | The Port of Virginia](#), access on December 18, 2024.

³⁷ [Gateway Investment Program | The Port of Virginia](#), accessed on December 18, 2024. The shallowest point of a channel leading to a port dictates the size of ships that can serve a terminal. BTS 2024 Annual Report at 7. The average for US coastal ports in 2023 was only 42 feet. BTS 2024 Annual Report at 27.

in 2025, and, as a result of the expansion, “the Port of Virginia will have the deepest, widest channels on the US East Coast.”³⁸

Another significant element of the Port development is upgrading and expanding intermodal container handling at NIT with new cranes and a reconfigured container stack yard, which will enhance the throughput of on-dock and drayage to CSXT’s intermodal container traffic.³⁹ The Port’s developments to expand and enhance drayage – both directly between the Port and origin/destination or between the dock and CSXT’s yard - provides a strong competitive alternative to NS’s direct rail service from NIT and the transaction will not reduce this competition. If anything, due to this competition, NS has every incentive to keep its own costs low and to increase the efficiency of NPBL so as to provide an alternative to drayage to CSXT’s yard or other destinations. Indeed, competition at NIT between rail and over-the-road trucking is fierce, and hinges on the costs and timing of service, so that competition is often route-specific. It is generally understood that the break-even point is along the lines of a route stretching at least 500 miles. In particular for shipments moving less than 500 miles, rail must compete vigorously with over-the-road trucking operations. Accordingly, enhancing the throughput of on-dock and drayage to rail container traffic will have a direct effect on the service for shorter distance truck/rail competition at ports along the East Coast of the United States. As applied to the Port of Virginia, that is important. In fact, looking back over the past 15 years, an average of 10% of NSR’s container movements through the POV were destined for locations within 500 miles.

³⁸ The Port of Virginia Press Release, “Virginia Opens Wider Channel; Now Supports Two-Way Ultra-Large Container Vessel Movement”, March 1, 2024, [Virginia Opens Wider Channel; Now Supports Two-Way Ultra-Large Container Vessel Movement | The Port of Virginia](#), access on December 18, 2024.

³⁹ [Gateway Investment Program | The Port of Virginia](#), access on December 18, 2024. As of 2021, the POV ranked behind the Port of NY/NJ in the number of on-dock container-handline cranes, with only 28 compared to 61 at the Port of NY/NJ. BTS 2024 Annual Report, at 29. The Port of Baltimore, on the other hand, primarily served by CSX, reportedly had 23 cranes in 2021.

There is no question that the competition between ports and the railroads and the over-the-road trucking companies that serve those ports along the East Coast of the United States accrues to the benefit of shippers, as well as ocean carriers. An ocean carrier may have the opportunity to offer a variety of transit packages, including (1) ocean carrier – on-dock – rail carrier, (2) ocean carrier – drayage – rail carrier, and (3) ocean carrier – over-the-road truck. The more options that an ocean carrier can provide to a shipper, and the more ports it can offer the service through, the better it is for the shipper. It is precisely this port competition that drives NS’s desire to make NIT as competitive as possible, otherwise, NS and NIT will lose market share to other ports. Legal recognition of NS’s de facto control of NPBL will not change any of the existing market conditions that have allowed these competitive options to develop, nor will it reduce any of NS’s incentives to continue to ensure that NIT and NPBL remain competitive options to drayage.

If NS’s de facto control of NPBL was, over these past forty years, being used in a manner to reduce shipper’s options, POV would not have made its investments in the manner it has nor would it have continued to continue its investments. In fact, in August 2024, NIT celebrated the completion of an \$83 million expansion project at the central railyard.⁴⁰ As a result of this expansion, NIT will be able to process up to 2 million intermodal containers moving on rail, increasing its on-dock rail capacity by over 30%.⁴¹ Virginia Port Authority (“VPA”) has recognized that cargo volumes throughout the East Coast are steadily rising, with the port itself reporting an increase of 13% in rail container processing in the last fiscal year, amounting to

⁴⁰ Virginia Maritime Bulletin, Volume 88, No. 8, August 2024, “Virginia Port Authority Completes \$83 Million Railyard Expansion at NIT”, [MB2024_August_Final.pdf](#), accessed on December 17, 2024. (“VMB -88”)

⁴¹ VMB-88.

784,597 containers.⁴² As a result of this expansion, funded in part by a \$20 million Maritime Administration Port Infrastructure Development Program,⁴³ and in part by a \$20 million grant from Virginia’s Department of Rail and Public Transportation,⁴⁴ VPA anticipates spending more than a billion dollars over the coming years to handle larger ships at the POV through infrastructure enhancement and widening and deepening the shipping channel as part of the Gateway Investment Program.⁴⁵ If NS were using its control of NPBL to reduce competitive options at POV, these investments would not have occurred. It is clear that NS’s de facto control of NPBL has not been used to reduce competition, but rather to enhance the competitiveness of POV. Approval of this transaction will not change those incentives. NS has every incentive to continue managing and operating NPBL in the same manner it has done over the past 40 years and NS has no plans, and no incentives, to change its approach.

The expansion and enhancements to the Port of Virginia are aimed not only at expanding the amount of intermodal container traffic handled through the Port, and the efficient and effective service provided to the Port via rail and over-the-road trucking providers, but also to increase the number of so-called “first-in” intermodal cargo ship visits to the port. This was done to enhance the competitiveness of the POV vis-à-vis the other East Coast posts. This was

⁴² VMB-88. This is reflective of an overall shift in containerized exports between 2014 and 2023 (an increase of 20.3 percent from East Coast ports, compared to an increase of 21.9 percent from Gulf Coast ports and a decrease of 18.6 percent from West Coast Ports. BTS 2025 Annual Report at 35. This also is seen with regard to imports, where growth in containerized imports on the East Coast (41.8 percent) and the Gulf Coast (43.8 percent) significantly outpaced that of the West Coast, which remained essentially flat. BTS 2025 Annual Report at 36.

⁴³ U.S. Department of Transportation Press Release, “U.S. Transportation Secretary Elaine L. Chao Announces Over \$220 Million in Grants for America’s Ports”, October 15, 2020, [U.S. Transportation Secretary Elaine L. Chao Announces Over \\$220 Million in Grants for America’s Ports | US Department of Transportation](#), accessed on December 17, 2024.

⁴⁴ The Port of Virginia Press Release, “Central Rail Yard Goes to Work; Project Creates Capacity to Process 2 Million Rail TEUs Annually”, August 6, 2024, [Central Rail Yard Goes to Work; Project Creates Capacity to Process 2 Million Rail TEUs Annually | The Port of Virginia](#), accessed on December 17, 2024.

⁴⁵ *Id.*

necessary because the overall origin-destination transit time for international cargo heading to destinations within the United States has, as a major component, the domestic port-to-destination transit time, whether that is performed by over-the-road trucking service or by rail. The more competitive ports along the East Coast of the United States will have some of the best and most efficient⁴⁶ domestic transit. Being a “first-in” intermodal port means that shippers moving the cargo off-loaded at that port can further cut down on overall origin-destination transit time over cargo that is off-loaded at other ports down the line.

The overall transit times between international origin – domestic destination and from the ports to major domestic markets are key factors in which ports, international shipping companies and customers choose. And those transit times are a major influence in what ports marine cargo carriers choose as a first port of call. For example, I recall in particular the Port of Virginia heralding the 2023 arrival of a vessel, the “ONE Munchen, which left Southeast Asia and headed straight to Virginia.”⁴⁷ Efficiency improvements at the POV have similarly enhanced its position in the international shipping market.⁴⁸

Other port calls for these vessels on the East Coast of the U.S. include Savannah, Charleston, Florida, and New York/New Jersey, so the transit time advantage for the first-in ports and the railroads and over-the-road trucks that serve those ports, both directly and via drayage, is important. Any port that can provide maritime shipping companies and their customers the

⁴⁶ So, for example, a domestic double-stack intermodal rail route often will fare better than a domestic intermodal rail route that is cleared only for single-stack operations.

⁴⁷ The Port of Virginia Press Release, “Port Welcomes Newest First-In Vessel Call; Suez Service Connects with Southeast Asian Markets”, published May 23, 2023, [Port Welcomes Newest First-In Vessel Call; Suez Service Connects with Southeast Asian Markets - Port of Virginia](#), accessed December 24, 2024.

⁴⁸ “The time vessels spend in port is a major factor contributing to port performance. * * * Ocean carriers and terminal operators focus on minimizing berth times due to the associated costs while in port. Longer berthing times lengthen schedules and increase costs, which are ultimately reflected in shipping rates.” BTS 2025 Annual Report, at 25. Average Container time at Berth is lower (better) along the Atlantic ports (including the Port of Virginia) than Pacific ports, Gulf ports and ports outside the continental United States. BTS 2025 Annual Report, Figure 19 at 26.

widest array of transportation options from the port to inland U.S. locations can draw a greater number of these companies, all to the benefit of those railroad and over-the-road trucking companies serving the port.⁴⁹ As such, NS's legal control of NPBL only authorizes actions that support what has driven NS all along – NS and NPBL need to ensure that rail service and rail rates at the POV remain competitive or risk losing market share to other East Coast ports. There is nothing in this transaction that will change that incentive.

These investments – from the Port of Virginia, from CSXT, from NS, and from the public sector⁵⁰ – are not investments in a marketplace that has limited competitive opportunity to offer to shippers. Quite the opposite. These are investments in a marketplace that has proven over time to be a key point of competition, and one that has every likelihood of continuing to being so. In the past 25 years of effective NS control, these three entities, supported by a significant amount of other public funding made available to them, have endorsed the existing competitive environment at the Port of Virginia, including the effective NS control of the NPBL, and the request currently before for the Board to formalize that effective control, if granted, will have no impact on that environment. They have directly led to the continued success of the NPBL as well, with traffic flows over its line demonstrating a steady increase over time.⁵¹

⁴⁹ The Virginia Commonwealth Transportation Board just announced a \$750,000 DRPT Rail Industry Access Program grant to Sims Metals to construct track access between the NPBL and Sim's Chesapeake, Virginia-based Facility. "Sims Secures Virginia DRPT 'Truck Diversion' Grant," Railway Age, January 16, 2025, accessed January 17, 2025.

⁵⁰ The Virginia Department of Rail and Public Transportation ("DRPT"), in addition to investing in routes to and from the Port of Virginia, regularly invests directly into NPBL. Norfolk and Portsmouth Belt Line Railroad Company Annual Report Year 2020, at 3 (noting the receipt of a DRPT Rail Preservation Grant). Norfolk and Portsmouth Belt Line Railroad Company Annual Report Year 2022, at 4 (noting the receipt of a DRPT Rail Preservation Grant). See also, Norfolk and Portsmouth Belt Line Railroad Company Annual Report Year 2021, at 3 (noting the receipt of a DRPT Rail Preservation Grant). Norfolk and Portsmouth Belt Line Railroad Company Annual Report Year 2022, at 4 (noting the receipt of a DRPT Rail Preservation Grant).

⁵¹ See, Norfolk and Portsmouth Belt Line Railroad Company Annual Report Year 2022, at 11 (Revenue Cars by Line Haul Carrier) (figures for 2013 through 2022).

2. CSXT Recently has Reversed Course On NS's Effective Control of the NPBL.

CSXT participated in the 1980 control proceeding that led to NS obtaining 57.4% ownership interest in NPBL, and, despite being the single largest shareholder of NPBL and knowing all the remaining shareholders participated in that control proceeding,⁵² CSXT did not object at that time.

A number of years following the implementation of that effective control, CSXT agreed to modify the original 1897 Operating Agreement in a very fundamental manner, explicitly reapportioning the number of board seats associated with the ownership of NS and CSXT, specifically in line with the effective control of NPBL that resulted from the 1982 control proceeding decision. That 1989 Supplemental Agreement gave N&W and Southern the collective right to appoint three (3) members, and CSXT the right to appoint two (2) members, of the NPBL Board of Directors. CSXT supported this change.

On September 1, 1998, and pursuant to a notice of exemption published in STB Finance Docket No. 33648, served August 31, 1998, N&W was formally merged with and into the current NSRC. This 1998 transaction brought the separate (but, pursuant to the 1989 Supplemental Agreement with CSX, commonly managed) indirect NS interests in NPBL under the direct, combined control of NS. CSX raised no concerns.⁵³

⁵² In addition, the application for the 1980 Control Proceeding also specifically identified the ownership of NPBL. See page 83 of the Volume 2 of the Application (Appendix 2, page 10 of 18) (identifying a 14.29% interest held by Southern (72 shares), a 14.28% interest held by Norfolk Southern (72 shares), and a 28.57% interest held by N&W (144 shares). Explicitly stated in the Application on that page was the fact that the resulting combined ownership would be 288 shares and explicitly stated in the Application on that page was the fact that the resulting combined ownership would amount to a 57.14% ownership interest to be held directly or indirectly by NSC if approval was granted as requested by the Application.

⁵³ CSX is not the only party to have explicitly recognized this effective control. In a 2011 State of Maine case involving the acquisition of a section of NPBL track by the Virginia Port Authority, the Virginia Port Authority stated that “Norfolk Southern Corporation (“NSC”) presently owns about fifty-seven percent of the [Norfolk and Portsmouth] Belt Line [Railroad Company] and CSX Corporation (“CSX”) owns about forty-three percent.” Virginia Port Authority – Acquisition Exemption – Norfolk and Portsmouth Belt Line Railroad Company, Finance

More recently, however, CSXT not only has sought to increase its competitive position in the international port marketplace through investment and enhancement of its own intermodal service, but also by engaging in a significant amount of litigation and instigating other roadblocks with regard to NPBL. In 2018, for example, CSXT filed a Federal complaint against NSR and NPBL, alleging several antitrust claims and the violations of several state statutes. Claims that the Court found to be unwarranted, unfounded, or time barred. Some of CSXT's claims arose from the \$210 uniform and cost-based switch rate set in 2009 that CSXT objected to, notwithstanding that the rate was cost-based and consistent with the 1897 Operating Agreement.

CSXT has also objected to the establishment of a cost-based trackage rights fee for the fee that NPBL pays for its trackage rights over NS. When NS and NPBL began negotiating a trackage rights agreement to replace the 1917 agreement that had been terminated in 2016 in accordance with its terms, the two parties agreed upon all essential terms and conditions but the compensation levels. Therefore, NS approached the Board for its determination of an appropriate trackage rights compensation level for the NPBL service (which forms a portion of the cost for NPBL to provide a switch for CSX's traffic into NIT), but CSXT jumped in to fight that process, asking the Board to hold that proceeding on hold until its federal court case could be resolved.

These efforts, of course, are efforts to hamper NS's competitive position and reduce NPBL's and NS's revenues, all for the benefit of CSXT. CSXT, in effect, believes that NS and

Docket No. FD 35532, "Motion to Dismiss Verified Notice of Exemption," filed June 21, 2011 ("VPA State of Maine Petition"), at 2. In the decision that the STB served in that proceeding, the STB also notes that "NPBL ... is owned by Norfolk Southern Corporation (NSR) and CSX Corporation...." Virginia Port Authority – Acquisition Exemption – Norfolk and Portsmouth Belt Line Railroad Company, Finance Docket No. FD 35532, served August 1, 2011, slip op. at 1.

NPBL should effectively subsidize its access to NIT at below cost rates. NS has rightfully objected. And the court has agreed that NS's objections were not anticompetitive and were within NS's rights to make.

3. The NPBL Switching Rate Is Cost Based As Set Out In The Operating Agreement And Will Remain So

NPBL's governing agreement requires that NPBL fix a "uniform rate" for the NPBL's "movement of freight cars ... regardless of distance."⁵⁴ Today, that uniform rate applies for the handling of traffic of connecting carriers (such as CSXT) for movement to and from the POV facilities. That uniform rate is to be "adjusted from time to time" but that adjustment does not affect the fact that it is to be uniform (as to whose traffic is to be moved) and cost based. That cost-based charge levied by NPBL applies to switch movements for the cars of all carriers over its line, including CSXT, has not been changed since 2010.

NPBL's switching fee is specifically set to cover NPBL's operating and capital costs, and not to provide a significant return on investment for its owners. Indeed, as it is now, I believe that the overall NPBL switching rate is significantly lower than the switching rates at all other East Coast Ports. As Mr. Fapp in his verified statement points out, it is vastly lower than what the Port of NY/NJ charges, whether measured by railcar well, by container, or by a mile per container, at least to NS and likely to CSXT as well. Mr. Fapp also states that the existing switch fee does not cover existing costs. But CSXT still wants the rate to be lower, and at the expense of NS and NPBL revenues.

If this Application is approved, and it should be, NS intends to use its authorized control of NPBL to ensure that NPBL will continue to operate in a neutral fashion, charging a cost based

⁵⁴ The 1897 Operating Agreement provides: "Ninth. – That a uniform rate shall be fixed for the movement of freight cars over the said [NPBL]'s railroad, regardless of distance...."

rate to each of its connecting carriers in accordance with the existing NPBL bylaws, and operating in a manner that treats all of its owners fairly and equally.⁵⁵ NS does not seek, and has not sought, to use its control of NPBL to change the fundamental principles governing NPBL. This means NS will continue to set the NPBL switching rate in accordance with the 1897 Operating Agreement. Setting the rate to a level (1) less than that required to cover NPBL's costs or (2) at a market-based level would both violate the terms of the 1897 Operating Agreement. NS commits to continue setting the NPBL switch rate in accordance with the principles and processes set forth in the 1897 Operating Agreement and as implemented in 2010.

4. NS Has No Plans To Change The Operations of NPBLT

If the Board approves this Application, NS commits to operating NPBL in the same manner as it has done for 42 years. This includes not seeking to charge more than what the Board sets for NPBL's trackage rights over NS's track.⁵⁶ Likewise, while NS seeks to modernize the trackage rights agreement governing NPBL's access over NS's tracks, NS is committed to maintaining rail access through that modernized agreement consistent with the principles of the original.⁵⁷

⁵⁵ Under normal railroad pricing practices, NPBL would be entitled to charge as high of a rate as possible, as long as it was not unreasonable under the Board's governing statutes. As discussed elsewhere in this control transaction, even if NS, under authorized control, used its control to impose a market-based rate, or even to eliminate CSXT's switching access, which it cannot do, this would still not result in a substantial lessening of competition for intermodal customers due to the availability of trucking, drayage, barges, and competition among different ports. Indeed, it is exactly these types of competitive pressures that have, and will, prevent NS from raising its rates or those of NPBL.

⁵⁶ One of the fundamental costs that CSXT always has incurred to serve customers at NIT is the cost it incurs to have NPBL switch its loaded cars, just as NS and CSXT incur a switch charge for access to VIG. The NPBL switch charge includes, in part, the trackage rights fee that NPBL pays NS for the use of the NS lines to access NIT. NS has no desire to alter the framework by which the compensation for these trackage rights are set. Accordingly, NS continues to be willing to establish a trackage rights fee that the Board sets in a manner that compensates NS but also ensures that CSXT can retain competitive access to NIT via an NPBL cost-based rate.

⁵⁷ NPBL has had rail access to NIT since 1917 pursuant to the NSR/NPBL Trackage Rights Agreement, as amended from time to time. Since NS took control of NPBL, it has not sought to deny NPBL access or even to charge NPBL a market-based fee. NS has consistently sought to maintain the status quo with regard to maintaining existing and

CONCLUSION

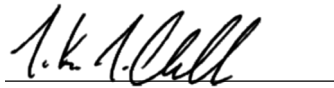
NS took effective control of the NPBL back in the 1980s. Since that time, NS has worked with CSXT to effectuate that control in a manner consistent with operating NPBL in a neutral manner for the mutual benefit of its owning carriers, governed by the principles of equal access at a cost-based rate. This has been done with CSXT in the room and at the table, as evidenced by important NPBL agreements (for example, the 1989 Supplemental Agreement⁵⁸, the 1996 modification in the bylaws, and the uniform and cost-based rates that have been in place the entire time). And, as discussed above, such a process was done and implemented in a manner that ensures the POV can remain competitive and increase its market share vis-à-vis the other East Coast Ports. This process and incentives to work with CSXT and POV will not change with authorized legal control of NPBL. Granting legal recognition of approval of NS's 42 years of control of NPBL will simply maintain the status quo. No shipper will lose a competitive option, and CSXT will have all of the same rights that it has had historically and today.

new shipper transportation options (which includes CSXT rail access, via switching, to NIT) and will continue to do so in the future.

⁵⁸ In the Supplemental Agreement dated March 1, 1989, NS (N&W and Southern) and CSXT agreed to modify the original 1897 Operating Agreement in a very fundamental manner, reapportioning the number of board seats associated with the ownership of each. N&W and Southern were afforded the *collective* right to appoint three (3) members of the Board of Directors of NPBL, and CSXT was permitted to appoint the other two (2) members of the Board of Directors of NPBL.

VERIFICATION

I, Michael R. McClellan, declare under penalty of perjury that I am authorized to make this verification on behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company, and that the information included in the foregoing statement is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "M. R. McClellan", is written over a horizontal line.

Michael R. McClellan
Senior Vice President & Chief Strategy Officer
Norfolk Southern Corporation

Dated: 2/13/25

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

EXHIBIT B

VERIFIED STATEMENT OF DANIEL FAPP

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36836

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**Norfolk Southern Railway Company
– Acquisition –
Norfolk & Portsmouth Belt Line
Railroad Company**

Opening Verified Statement

of

Daniel L. Fapp
Senior Vice President

L. E. Peabody & Associates, Inc.
ECONOMIC CONSULTANTS

On Behalf Of

Norfolk Southern Railway Company

Due Date: February 14, 2025

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Title</u>
(1)	(2)
1	Daniel L. Fapp Qualifications
2	Summary of NPBL Financial Reports
3	Comparison of Port Railroad Switching Fees in Context

I. INTRODUCTION

My name is Daniel L. Fapp. I am a consultant and Senior Vice President of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting, and fuel supply problems. I have been employed by L. E. Peabody & Associates, Inc. since 1997. During this time, I have worked on numerous projects dealing with railroad revenue, operational, economic, and financial issues. Prior to joining L. E. Peabody & Associates, Inc., I was employed by BHP Copper Inc. in the role of Transportation Manager - Finance and Administration, where I also served as an officer of the three (3) BHP Copper Inc. subsidiary common carrier railroads. A copy of my credentials is included as Exhibit__DLF-1 to this Opening Verified Statement (“OVS”).

I was requested by Counsel for the Norfolk Southern Railway Company¹ (“NS”) to evaluate the reasonableness of the Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) switching fee. I was also asked whether drayage is an effective alternative to all-rail service over NPBL to the Norfolk International Terminal (“NIT”) operated by Virginia International Terminals, Inc. (“VIT”). Lastly, Counsel asked me to address the competitive landscape for international container movements, including intermodal and intramodal competition for container movements to and from ocean ports and competition between ports for container movements.

The results of my analyses are summarized in the remainder of my OVS under the following topical headings:

- II. The NPBL Switching Fee is Reasonable
- III. Drayage Service is an Effective Substitute for Rail Service at NIT
- IV. Intermodal, Intramodal and Port-to-Port Competition
- V. Conclusion

¹ NS is a wholly owned subsidiary of Norfolk Southern Corporation, a non-carrier holding company.

II. THE NPBL SWITCHING FEE IS REASONABLE

Economic principles require that a company's revenues and sources of income recover its costs to continue as an operating entity over the long run. While a company's costs can be separated and analyzed in many different ways depending on the issue at hand, when evaluating prices or rates, economists will generally compare a company's rates and prices to its variable operating costs. Variable operating costs are those costs that change based on the level of production, while fixed operating costs are those that will remain unchanged based on a company's increase or decrease in production levels. It is understood that a company whose rates or prices do not collectively cover its variable costs of operation should discontinue its operations. Therefore, a company's rates or prices must collectively cover its variable operating costs and contribute to the company's fixed costs and profits.

NPBL currently charges its customers \$210 per railcar for switching movements between industries served by the NPBL and the interchange tracks with connecting railroads, *i.e.*, CSX Transportation ("CSXT") and NS for movements beyond the local yard or switching limits of those connecting lines.² This switching charge covers the movement of domestic and international traffic moving to and from other locations in the United States. This switching fee is calibrated to recover NPBL's variable operating expenses and to contribute to fixed costs, capital improvements and profits.³ Historically, NPBL spent millions of dollars annually for capital improvements with approval of the NPBL Board of Directors.⁴

² See, NPBL Tariff NPB8100-J Effective February 1, 2015, Item 70, and included in my workpapers as "NPBL Tariff 8100-J.pdf."

³ See, e.g., Norfolk & Portsmouth Belt Line Board Meeting, December 8, 2021, Meeting Notes, Action Item 2 and Action Item 3.

⁴ Annually, the NPBL Board of Directors approves an operating budget, a capital expenditure budget, and a cash dividend to shareholders of record for the following year. The annual capital expenditures of NPBL are often in the millions of dollars and reflect such items as track maintenance, tie replacement, purchase of a hi-rail vehicle, rehabilitate crossings/switches, yard extensions, the purchase of scanners, etc.

I have been asked to analyze this existing NPBL rate and to determine whether this rate is reasonable when compared to other switching rates at other East Coast Ports. I determined that the existing NPBL switching rate does not cover NPBL's current costs. I also determined that the existing NPBL switching rate is substantially below other rates at other ports.

To determine whether NPBL's \$210 per railcar switching fee is reasonable,⁵ I started by reviewing NPBL's financial documents. I also reviewed NPBL's Annual Reports to its shareholders that include the railroad's total operating expenses, including depreciation, but do not differentiate between its variable and fixed operating costs. I first developed NPBL's total operating expenses and then estimated NPBL's variable operating expenses for the years 2010 through 2023 by applying the Surface Transportation Board's ("STB") Eastern Region Uniform Rail Costing System ("URCS") operating expense variability percentages for each year to the NPBL's total operating costs for the comparable year.⁶

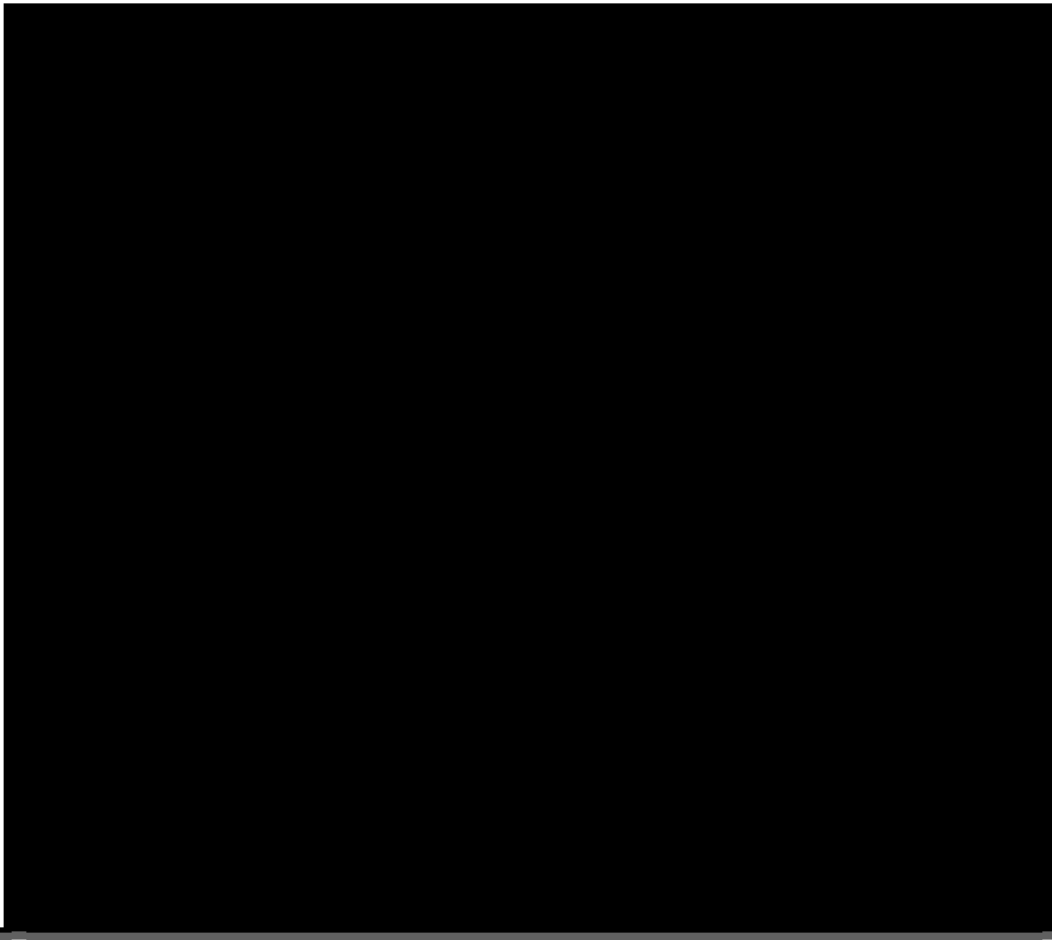
Table 1 below summarizes the annual calculation of NPBL average total and variable operating expenses on a per carload basis for the 2010 through 2023 time period.⁷

⁵ In this instance, I am assessing the reasonableness of NPBL's rate in a general business sense that NPBL's rates recover its variable costs and contribute to its fixed costs and profits. I am not suggesting that NPBL's rates are reasonable or unreasonable from a STB Maximum Reasonable Rate perspective.

⁶ The STB's URCS Table D8 Part 4 shows the calculation of the operating expense and depreciation variability percentages. I developed a composite operating and depreciation expense variability percentage based on the data contained in each year's STB Eastern Region URCS formula. See, e-workpaper "Exhibit _DLF-2.xlsx," tab "East Region Variability." Because the STB has not yet published its 2023 URCS formulas, I relied on our Firm's estimate of the STB's Eastern Region 2023 URCS model.

⁷ I considered the operating cost per car developed by the method I describe herein to the operating expense per car as reported by NPBL to its Board of Directors in its Annual Report for 2022. Norfolk and Portsmouth Belt Line Railroad Company, Annual Report 2022, at 14. Although I cannot verify the method that NPBL used to determine its figures, I note that the numbers generated by NPBL's management and the numbers I generated are comparable.

Table 1
NPBL Operating Expense per Car – 2010 through 2023



As shown in Table 1 above, with one exception, NPBL's average variable operating expense ranged between [REDACTED] per carload while NPBL's total operating expense ranged between [REDACTED] per carload over the period from 2010 through 2023.⁸ Over this same time period, the line-haul switching fee charged by NPBL was fixed at \$210 per car. Table 1 demonstrates that NPBL's switching fee is calibrated to cover the variable operating

⁸ The one exception is shown on Table 1, Line 6. In 2015, NPBL incurred a significant expense related to a personal injury accrual. See, *Norfolk and Portsmouth Belt Line Railroad Company's Memorandum in Support of Motion For Summary Judgment* (Public Version), filed April 12, 2021, at page 34. The weighted average total and variable operating expense per car in Table 1, Line 15, excluding 2015, is [REDACTED] respectively; the simple average total and variable expense, excluding 2015, is [REDACTED], respectively.

expenses NPBL incurs in the normal course of business and contributes to NPBL's fixed operating expenses, capital expenses and profits.

**A. NPBL SWITCH RATE - \$210
DEVELOPMENT PROCEDURES**

In 2009, NPBL formed a rate committee to evaluate the NPBL tariff charges with the rate committee being composed of representatives from CSXT, NS, and NPBL.⁹ The rate committee recommended several changes, including the uniform \$210 per-car line haul switching fee that remains in effect today.¹⁰

Pursuant to the terms of the tariff governing the switching fee, the \$210 per-car line haul switching fee includes “the placement of an empty car to be loaded, and return of the same car loaded, or the placement of a loaded car and the return of the same car empty.”¹¹ The tariff also describes an exception for articulated railcars (two (2) or more car units or wells permanently or temporarily joined together) where the switching fee is applicable to each well that makes up the railcar.¹² Stated differently, any railcar or well (moving in either direction) that is loaded with a container is charged the switch fee of \$210 by NPBL and any railcar or well that is empty is not charged the switch fee.

**B. COMPARISON WITH OTHER PORT
SWITCHING FEES**

I also performed an analysis of other switching operations and rates based on the length of haul between the interchange point and the marine terminal the switch carrier serves on all Gulf Coast and East Coast ports that ship international containers and utilize short line switching

⁹ See, *Plaintiff CSX Transportation, Inc.'s Motion For Injunctive Relief and Proposed Findings of Fact and Conclusions of Law* (Public Version), filed January 12, 2023, at pages 7-8.

¹⁰ The rate took effect under Tariff NPB 8100-I (effective January 1, 2010), Item 125. In 2014, it was retained in Tariff NPB 8100-J, Item 70 (effective February 1, 2015).

¹¹ See, Tariff NPB 8100-J, Rule 2.

¹² See, Tariff NPB 8100-J, Rule 8.

services. When these switching fees are placed on the same per-container-mile basis, the NPBL switch fee is lower than all of the other port terminal fees that I analyzed.

Table 2 below shows the results of my analysis.

Table 2 <u>East Coast and Gulf Coast Port Switching Fees Comparison – 2024</u>				
Port Railroad (1)	Fee Per		Miles (4)	Fee Per Container Per Mile (5)
	Railcar Well (2)	Container 1/ (3)		
1. Terminal Railway (Port of Mobile)	\$722.53	\$289.01	3.4	\$85.00
2. Wilmington Terminal	\$579.00	\$231.60	2.3	\$100.70
3. Savannah Port Terminal Railroad	NA	\$90.00	0.9	\$100.00
4. Jacksonville Port Terminal Railroad	NA	\$88.00	2.2	\$40.00
5. Alabama State Port Authority 2/	NA	\$78.82	NA	NA
6. New Orleans Public Belt Railroad (Port of New Orleans)	\$548.00	\$219.20	10.5	\$20.88
7. Birmingham Terminal Railroad	\$325.00	\$130.00	4.1	\$31.71
8. Galveston Railroad (Port of Galveston)	\$315.00	\$126.00	3.0	\$42.00
9. Brownsville & Rio Grande International Railroad (Port of Brownsville)	\$405.00	\$162.00	9.3	\$17.42
10. Port Jersey Rail (Port of NY/NJ)	\$1,023.00	\$409.20	10.4	\$39.35
11. Palmetto Railways - Charleston Sub	NA	\$75.00	1.0	\$75.00
12. Palmetto Railways - North Charleston Subdivision	NA	\$75.00	1.4	\$53.57
13. Norfolk & Portsmouth Belt Line 3/				
a. 2.0 Containers per railcar well	\$210.00	\$105.00	17.0	\$6.18
b. 2.5 Containers per railcar well	\$210.00	\$84.00	17.0	\$4.94
c. 3.0 Containers per railcar well	\$210.00	\$70.00	17.0	\$4.12

Source: Exhibit __DLF-3.
NA = Not Available.

1/ Based on an average of 2.5 containers per railcar well. Exhibit __DLF-3 also shows the per-container rate for 2.0, 2.5, and 3.0 containers per railcar well.

2/ The Alabama State Port Authority fee is a lift fee charged by the Port not a switching fee.

3/ The NPBL fee per container is calculated by dividing the fee per car by 2.0 containers per railcar well (Line 13.a), 2.5 containers per railcar well (Line 13.b) and 3.0 containers per railcar well (Line 13.c).

As shown in Table 2 above, the NPBL switching fee per mile is lower than the rates of all of these other East and Gulf Coast terminal railroads when evaluated on a common basis. The switching fees for the switch operations other than NPBL range from \$17.42 per container mile to

\$100.70 per container mile. All of these switch fees are greater than the NPBL switch fee of \$4.12, \$4.94, and \$6.18 per container mile.

III. DRAYAGE SERVICE IS AN EFFECTIVE SUBSTITUTE FOR RAIL SERVICE AT NIT

Rail and drayage services compete for intermodal shipments in many locations throughout the U. S. on a daily basis, including at the Virginia Port Authority terminals. The barriers to enter and/or exit the trucking market are by far the lowest of any freight mode,¹³ as are the fixed costs of the operations.¹⁴ Therefore, it is less difficult to enter or exit the trucking industry or to change the menu of services offered. The Virginia Port Authority, a state agency, lists on its website over 100 trucking and brokerage companies that serve the port terminals in various capacities, with 80 of those companies offering drayage services.¹⁵ In addition, within the trucking industry, short haul routes that allow the driver to return home each night are coveted.¹⁶

The Virginia Beach Department of Economic Development reported that in 2023, 59% of Virginia Port Authority cargo moved by truck, compared to 36% moving by rail and 5% moving by barge.¹⁷ This points to the economic and operational advantage that makes drayage a competitive option with rail for CSXT containers at NIT. The Virginia Port Authority also

¹³ See, “*Transportation 2017*,” The Dwight D. Eisenhower School for National Security and Resource Strategy National Defense University, page 2, “*Selection Of Materials Submitted To The National Commission For The Review Of Antitrust Laws And Procedures: Part II*,” Antitrust Law Journal, Vol. 48, No. 3, 1980, pp. 1301-1327, and Harmatuck, D.J., “*Motor Carrier Cost Function Comparisons*,” Transportation Journal, Vol. 31, No. 4 (SUMMER 1992), pp. 31-46.

¹⁴ See, “*The US Truckload Industry Seeks A Road To The Future*,” McKinsey & Company, October 2017, page 3.

¹⁵ See, <https://www.portofvirginia.com/wp-content/uploads/2024/12/POV-Motor-Carrier-Listing-2024v10.pdf>.

¹⁶ See, “*More US Truck Drivers Shifting to Short-Haul Jobs*,” Journal of Commerce, September 28, 2010. See also, “*What do Drivers Want? CCJ’s survey of drivers reveals insights on pay, stressors and more*,” Commercial Carrier Journal at <https://www.ccjdigital.com/business/article/14939090/what-do-drivers-want-ccjs-survey-of-drivers-reveals-insights-on-pay-stressors-and-more>. See also, MacMillan, Catherine, “*What You Need to Know about Short Haul Trucking Jobs*,” October 25, 2019. Available online at: <https://www.smart-trucking.com/short-haul-trucking/>.

¹⁷ See, <https://www.yesvirginiabeach.com/business-environment/the-port-of-virginia>.

provides its PRO-PASS¹⁸ system, which has dramatically increased the performance of drayage companies since its implementation.¹⁹

Similarly, in late 2019, Marguerite Bates-Frier, president of the Tidewater Motor Truck Association (“TMTA”), said “the TMTA has worked closely with the port to gain efficiencies for both sides, and trucks and beneficial cargo owners are now reaping the benefits.”²⁰

¹⁸ PRO-PASS is a proprietary Virginia Port Authority brand. It is a Radio-Frequency Identification (“RFID”) tag reader system that allows truckers to conduct most administrative tasks online prior to arriving at the terminal, saving considerable time. In addition to performing administrative tasks, trucking companies and shippers also can check on container availability, observe vessel schedules, identify any holds that may exist on their containers, or schedule truck arrival appointments. Conducting these tasks prior to arriving at the terminal allows for more efficient and balanced truck arrival patterns throughout the day, reduced queue lengths and time spent waiting to enter the terminal resulting in reduced idling time and more efficient processing of trucks and containers on-terminal.

¹⁹ Beginning in April 2018, PRO-PASS RFID tags were mandatory at NIT. By September 2018, the Virginia Port Authority reported that “port officials and truckers indicate more predictable turns than in prior years. That is saving as much as 20 minutes in some situations and eliminating the guessing game of shippers for when their cargo will be delivered. Nearly all trips during appointment hours have been completed within one hour, with some only taking 40 minutes.” See, Ashe, Ari, “*Virginia Truck Appointment System Delivers Truck Turns Under an Hour*,” JOC.com, September 11, 2018.

²⁰ See, Ashe, Ari, “*Virginia Expanding Port Appointment System*” JOC.com, December 3, 2019.

IV. INTERMODAL, INTRAMODAL AND PORT-TO-PORT COMPETITION

The intermodal industry is characterized by intense competition across the entirety of a container's movement.²¹ Ocean carriers compete with each other for the movement of containers from Europe and Asia to the United States, and vice-versa. Ports compete with each other to move containers to and from the ocean carriers, on the one hand, and railroads, trucks, and inland waterway carriers on the other. Similarly, railroads, trucks and inland water carriers compete to move the containers between these ports and their origins and final destinations.

The intensity of this competition requires that the industry participants, including NS and its primary rail competitor, CSXT, exploit their relative competitive advantages where they can maintain their competitive positions when the situation dictates this course of action. What this means is that while CSXT and NS compete for traffic moving through the Port of Virginia ("POV"), they must also compete against each other and other market participants at other import and export locations as well.

Stated in simple terms, from a rail perspective, intermodal shippers have multiple options in determining where to deliver and pick-up cargo. For example, at POV intermodal shippers have multiple terminals to deliver/pickup that are related to different rail options. At NIT, intermodal shippers can use NS direct, NPBL switching to CSXT, or drayage to CSXT's nearby rail yard for CSXT direct rail service. As I understand these operations, NS's authorized control of NPBL will change none of these options.

²¹ See, "Analyzing competition in intermodal freight transport networks: The market implication of business consolidation strategies," Research in Transportation Business & Management, Volume 23, June 2017, pages 12-20 at page 12.

A. PORT-TO-PORT COMPETITION

The movement of container traffic into and out of the U. S., and between states in the country, occurs in highly competitive marketplaces. A 2013 final report performed by Cambridge Systematics, Inc. for the Southern California Association of Governments (“SCAG”), the regional planning authority for the logistics-centric Los Angeles, California metropolitan region, noted the fierce competition between ports in the U. S. for import and export maritime trade.²² This competition stems in large part from the economics of scale in the ocean maritime industry that sees ocean carriers concentrated on a smaller number of large ports that are able to serve inland locations using rail and road networks. This leads to overlaps in inland locations that could be served by rail and road networks cheaper than by transporting containers through smaller near-by ports that could not handle larger ships.²³ An earlier report prepared for the United States Coast Guard by the United States Department of Transportation Volpe National Transportation Center came to the same conclusion as the SCAG Report indicating that competition amongst ports had increased to a point where even small changes in service levels and prices lead to quick response to changes in demand for their services.²⁴

This intense competition between North American ports for international intermodal containers produces high elasticities of demand for the movement of import and export containers. This means that even small increases in costs of unloading/loading and transporting containers to or from a port location can lead to loss of volumes moving through a port. A report produced for

²² See, “*On the Move Southern California Delivers The Goods: Comprehensive Regional Goods Movement Plan and Implementation Strategy*” Southern California Association of Governments, February 2013 (“SCAG Report”) at page 4-29.

²³ See, “*The Economics of Intermodal Freight Transport*,” J. Monios, Transport Research Institute, Edinburgh Napier University, January 2018 at page 16.

²⁴ See, “*Estimating Economic Impacts of Regulatory Changes to U.S. Port Operations – Final Report*,” U.S. Department of Transportation, Research and Innovative Technology Administration Volpe National Transportation Systems Center, March 2007 at page 7.

SCAG indicated that even a one percent increase in port and transportation related costs could lead to a 15 percent long-term decline in volumes through a port.²⁵

Another report produced by the University of Rhode Island Transportation Center indicated that an \$80 increase in costs per forty-foot equivalent containers²⁶ incurred at the Port of New York/New Jersey could lead to a 42 percent reduction in container throughput at the Port.²⁷ Assuming an average cost of \$2,500 per container²⁸ would imply a price elasticity of 13, or in other words, a one percent increase in costs would lead to a 13 percent decline in volume.

It is my experience and knowledge that the selection of a port by a shipper or an ocean carrier can be greatly impacted by other factors, including international trade patterns and the geographic location of the port relative to origin and end markets. The POV competes against other United States East Coast and Gulf Ports for ocean container traffic, with its two (2) primary competitors being the Port of New York/New Jersey (“PONY/NJ”) and the Port of Savannah. Container ships tend to dock at multiple East Coast ports during a single voyage to the East Coast. Where the ship will dock first will depend in most cases on the ship’s point of origin. A ship originating in Northern Europe and destined to the United States East Coast will likely call at ports in a southerly direction, calling on the PONY/NJ first before calling on the POV next and then

²⁵ See, “*Final Report – Port and Modal Elasticity Study, Phase II for Southern California Association of Governments*” Leachman & Associates LLC, September 7, 2010, at page 9, and “*Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports*” Federal Maritime Commission, July 2012, at page 55.

²⁶ Intermodal metrics are customarily expressed in normalized terms including twenty-foot equivalent units or forty-foot equivalent units. The twenty-foot equivalent unit (“TEU”) is a general unit of cargo capacity, often used for container ships and container ports. A forty-foot equivalent unit (“FEU”) is another general unit of cargo capacity and is twice the size of a TEU.

²⁷ See, Meifeng Luo & Thanasis A. Grigalunas, “*A Spatial-Economic Multimodal Transportation Simulation Model for US Coastal Container Ports*,” University of Rhode Island Transportation Center, July 2003 at pages 171-173.

²⁸ The North Europe to North America East Coast freight price as of December 28, 2024, is \$2,525 as reported by Freightos FBX22 index. The FBX22 global ocean freight container pricing index measures 40’ container prices across key port pairs from North Europe to the North American East Coast. This index is created and maintained in collaboration with the Baltic Exchange. Key ports in the index include Antwerp (ANR) and Hamburg (HAM) in North Europe and New York City (NYC) and Savannah (SAV) on the North American East Coast.

the Port of Savannah. Similarly, a ship originating in Asia and moving to the United States East Coast through the Panama Canal will call on ports in a northerly direction, calling on the Port of Savannah and the POV before calling on the PONY/NJ. This places the POV in a disadvantageous position for some container movements as compared to its competing ports. The flexibility of these ocean carriers puts competitive pressure on NS and NPBL to ensure that NIT and POV remain competitive vis-a-vis other ports and drayage. As such, NS and NPBL have an economic incentive to ensure that NPBL's switching rates remain competitive.

B. INTERMODAL AND INTRAMODAL COMPETITION

Ocean container traffic is broadly categorized as either local cargo or discretionary cargo. Local cargo is traffic that moves to locations near the port of entry and is usually considered captive to that port.²⁹ Discretionary cargo moves to locations further afield from its port of entry and can move through different ports.³⁰ For example, a container moving from Northern Europe to a distribution center in or near the New York metropolitan area through the PONY/NJ would be considered local cargo to the PONY/NJ while a container moving from Northern Europe to Chicago through the PONY/NJ would be considered discretionary cargo.

Local cargo moves by truck in almost all cases given the short distances involved in local movements.³¹ Given the cost advantages for trucks on local cargo, railroads typically compete for discretionary cargo moving into and out of port terminals. This competition can take the form of both intramodal competition and intermodal competition.

²⁹ See, <https://nationalindustrialnews.tumblr.com/post/30397083837/what-is-discretionary-cargo>.

³⁰ *Id.*

³¹ Like most rules, there are exceptions. For example, some containers entering the Port of Virginia move by barge to Richmond, VA, which would normally be considered local cargo.

1. Intramodal Competition

In the case of intramodal competition, i.e., competition from other railroads, all three (3) major East Coast container ports, the POV, the PONY/NJ and the Port of Savannah, are served by CSXT and NS. This does not mean that NS and CSXT equally share the amount of containers transported from these ports but what it does mean is that even the slightest change in price differentials between the competing ports can lead shippers switching from one port to another and to favor one railroad or another. In the case of the PONY/NJ, for example, CSXT transports a significantly larger number of containers than NS. The PONY/NJ reported that in 2022, the last full year reported, the Port lifted 706,774 containers,³² of which [REDACTED] were transported by NS based on data provided by the railroad. This was nearly [REDACTED] percent of the approximately [REDACTED] containers transported by CSXT in 2022 to and from the PONY/NJ.

The distribution of traffic between railroads working out of the same port is influenced by many factors, including but not limited to inland transportation costs and ocean carrier shipping decisions. For example, while both CSXT and NS can access the PONY/NJ terminals through their jointly owned Conrail Shared Asset Operations and the PONY/NJ's ExpressRail facilities, CSXT transports a larger share of the discretionary cargo out of the PONY/NJ because of ocean carriers' decisions to concentrate shipments on CSXT out of that particular port. The point being that intramodal shippers have a substantial number of choices. Any actions that NS would take to change the way NPBL operates, or prices would have adverse impacts on NS, which is why NS has no economic incentive to utilize its authorized control of NPBL to make changes that would encourage shippers to switch to drayage, other ports, or drayage from NIT to CSXT's rail yard.

³² See, "Port of New York & New Jersey 2022 Year at a Glance" included in my workpapers as "PONYNJ At A Glance 2022.pdf."

2. Intermodal Competition

Railroads also face intermodal competition at all three ports from trucking companies. It is generally understood in the transportation industry that a potential rail movement of 500 miles or less faces intense intermodal competition from trucking companies. Railroad economies of scale and scope historically afforded them efficiencies on longer-haul movements as compared to truck transportation. Before the advent of double-stack container service in the 1980's, railroads could only effectively compete with truckload movements of intermodal containers of over 700 miles in length.³³ With the widespread changes to railroad infrastructure to allow for double-stack service across their networks, as well as the implementation of higher capacity articulated railcars, railroads began to consistently compete with trucking companies on hauls of 450 to 550 miles.³⁴ Regardless of rail's ability to now more effectively compete on shorter haul moves, the fact remains that trucks dominate in such moves, as trucking does at NIT, holding 59% of the POV intermodal market share as discussed in Section III above.

³³ See, "*Short-Haul Rail Intermodal: Can It Compete with Trucks?*" Journal of the Transportation Research Board, 1873(1), pages 45 to 52 at page 45.

³⁴ *Id.* See also, <https://www.aar.org/article/trains-trucks-intermodal-partnership/>, <https://www.intekfreight-logistics.com/the-complete-guide-intermodal-transportation>, and <https://www.inboundlogistics.com/articles/how-to-leverage-rail-intermodal/>. The competitiveness threshold between truck and rail can depend upon multiple factors, such as the value of the cargo transported and the urgency of the delivery. The Association of American Railroads ("AAR") notes that railroads can compete with truck on movements as short as 350 miles in some circumstances. However, the general mileage threshold continues to be in the 500-mile range.

V. CONCLUSION

In sum, for the reasons stated above and in the Exhibits to this OVS, I conclude that the NPBL switching fee of \$210 per railcar for line haul switching is more than reasonable and is, in fact, the lowest rate (on a per container per mile- basis) of any rate at the ports that compete with NIT. NS's control of NPBL would not disfavor CSXT or reduce shipper's competitive options.

The international container market served by NIT is extremely competitive for ports, railroads, and trucking companies. NIT must compete with other Eastern ports for container traffic moving to the U. S., while ground transportation carriers moving containers into and out of the NIT must compete with each other for the domestic inland portion of the movements. This leads to a highly competitive marketplace that provides NS's competitors, including CSXT, numerous options to compete against NS for NIT traffic. It also provides significant competitive pressure on NS; limiting NS's ability to adjust rates to control the NIT market, or to manipulate NPBL's rates or operations in a different manner than NS has done over the past 42 years of de facto NS control. Market conditions simply provide that NS cannot use its authorized control of NPBL in a manner to reduce shipper's competitive options.

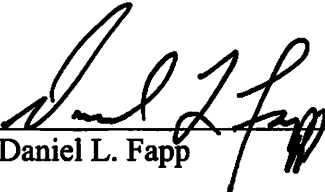
It is these competitive pressures, as well NS's obligations under the NPBL bylaws and Operating Agreement, which have prevented NS from using its control of NPBL in a manner that is anticompetitive. Due to the competition provided at NIT by trucks, CSXT drayage to CSXT's own rail yard, the ability of CSXT to directly serve the Virginia International Gateway ("VIG"), and the intense port-to-port competition on the East Coast, NS and NPBL have little economic incentive to raise the switching rate beyond that required to cover NPBL's costs. But even if NS were to raise the switching rate to a market-based rate or eliminate switching to CSXT altogether, this would not result in intermodal customers seeing a reduction in competition or eliminate such

customers' ability to access CSXT. These customers will still have the ability to use CSXT's drayage service to CSXT's yard; to off-load at VIG; or to shift to other ports served by CSXT.

* * *

VERIFICATION

I, Daniel L. Fapp, verify under penalty of perjury that I have read this Verified Statement on behalf of the Norfolk Southern Railway Company, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Daniel L. Fapp

Executed on 2/10/25

LIST OF EXHIBITS

Exhibit No.	Exhibit Title
(1)	(2)
1	Daniel L. Fapp Qualifications
2	Summary of NPBL Financial Reports
3	Comparison of Port Railroad Switching Fees in Context

DANIEL L. FAPP
STATEMENT OF QUALIFICATIONS

My name is Daniel L. Fapp. I am a Senior Vice President of the economic consulting Firm of L. E. Peabody & Associates, Inc. The Firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, VA 22314; 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737; and 7 Horicon Avenue, Glens Falls, New York 12801.

I received a Bachelor of Science degree in Business Administration with an option in Marketing (cum laude) from the California State University, Northridge in 1987, and a Master of Business Administration degree from the University of Arizona's Eller College of Management in 1993, specializing in finance and operations management. I am also a member of Beta Gamma Sigma, the national honor society for collegiate schools of business.

I have been employed by L. E. Peabody & Associates, Inc. since December 1997. Prior to joining L. E. Peabody & Associates, Inc., I was employed by BHP Copper Inc. in the role of Transportation Manager - Finance and Administration, and where I also served as an officer and treasurer of the three BHP Copper Inc. subsidiary common carrier railroads, The San Manuel Arizona Railroad, the Magma Arizona Railroad (also known as the BHP Arizona Railroad) and the BHP Nevada Railroad. I have also held operations management positions with Arizona Lithographers in Tucson, AZ and MCA-Universal Studios in Universal City, CA.

While at BHP Copper Inc., I was responsible for all financial and administrative functions of the company's transportation group. I also directed the BHP Copper Inc. subsidiary railroads' cost and revenue accounting staff and managed the San Manuel Arizona Railroad's and BHP Arizona Railroad's dispatchers and the railroad dispatching functions. I served on the company's Commercial and Transportation Management Team and the company's Railroad Acquisition

DANIEL L. FAPP
STATEMENT OF QUALIFICATIONS

Team where I was responsible for evaluating the acquisition of new railroads, including developing financial and economic assessment models.

I have directed and managed sourcing and core carrier engagements as both a consultant and as an industry practitioner. These engagements have involved the selection of primary and secondary rail, truckload, less-than-truck load, air express and parcel carriers. I have participated in and managed consortium sourcing projects in the small package express and fleet management fields. I have served on the management team overseeing the implementation of a core carrier program and have been involved in and directed negotiations with regional and national truckload carriers.

In my tenure at L. E. Peabody & Associates, Inc., I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, volume commitments, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

As part of my work for L. E. Peabody & Associates, Inc., I have performed and directed numerous projects and analyses undertaken on behalf of utility companies, short line railroads, bulk shippers, and industry and trade associations. Examples of studies which I have participated in organizing and directing include, traffic, operational and cost analyses in connection with the rail movement of coal, metallic ores, pulp and paper products, and other commodities. I have also analyzed multiple car movements, unit train operations, divisions of through rail rates and switching operations throughout the United States. The nature of these studies enabled me to

DANIEL L. FAPP
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become familiar with the operating procedures utilized by railroads in the normal course of business.

Since 1997, I have participated in the development of cost of service analyses for the movement of bulk and non-bulk commodities over all the major U.S. railroads. I have conducted on-site studies of switching, detention and line-haul activities relating to the handling of coal and chemicals. I have also participated in and managed projects assisting short-line railroads. In these engagements, I assisted short-line railroads in their negotiations with connecting Class I carriers, performed railroad property and business evaluations, and worked on rail line abandonment projects.

I have developed numerous variable cost calculations utilizing the various formulas used by the Surface Transportation Board (“STB”) for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System (“URCS”). I have submitted testimony on the behalf of complaining shippers before the STB which developed stand-alone costs, traffic forecasts, revenue and contract forecasts, and fuel surcharge forecasts.

I have been frequently called upon to perform financial analyses and assessments of railroad and other transportation companies. I have determined the Going Concern Value of privately held freight and passenger railroads, including developing company specific costs of debt and equity for use in discounting future company cash flows. My consulting assignments regularly involve working with and determining various facets of financial issues, including cost of capital determinations. In these assignments, I have calculated capital structures, market values, cost of debt, cost of preferred equity and common equity. I am also well acquainted with and have used

DANIEL L. FAPP
STATEMENT OF QUALIFICATIONS

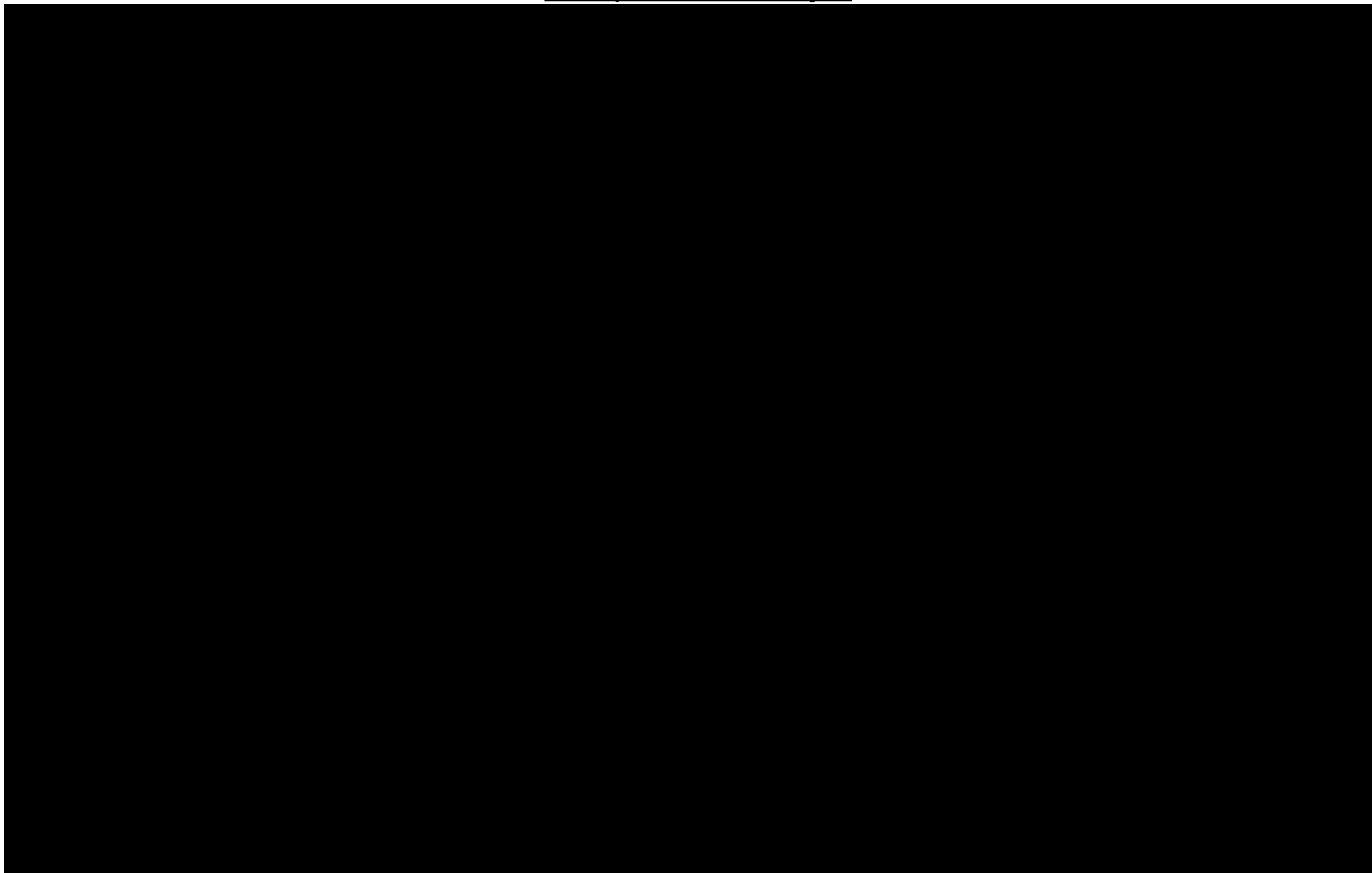
financial industry accepted models for determining a firm's cost of equity, including Discounted Cash Flow Model ("DCF") models, Capital Asset Pricing Model ("CAPM"), Cost Build-Up models and Arbitrage Pricing Models.

I have also lectured in graduate level finance, economics and supply chain classes and am a member of the Professional Advisory Council for the Eller School of Management Finance Department at the University of Arizona.

I have developed different economic analyses regarding transportation matters for numerous electric utility companies, manufacturing companies and government agencies located in all parts of the United States, and for major associations, including the American Chemistry Council, the Chlorine Institute, the Fertilizer Institute, Mail Order Association of America, National Coal Association, National Grain and Feed Association, National Industrial Transportation League, North America Freight Car Association and Western Coal Traffic League. In addition, I have assisted numerous government agencies major industries companies in solving various transportation-related problems.

In my tenure with L. E. Peabody & Associates, Inc., I have presented evidence in numerous proceedings before the STB and have presented evidence and testified and presented expert reports before state and Federal courts and in private arbitrations. In conjunction with other L. E. Peabody & Associates, Inc. officers, I have worked on and directed expert reports in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, operating procedures and other economic components of specific contracts.

Summary of NPBL Financial Reports



Comparison of Port Railroad Switching Fees in Context

<u>Port Railroad</u>	Fee Per					Fee Per Mile Per Container			Rate
	Railcar	Container			Miles 1/				Authority
		2.0	2.5	3.0		2.0	2.5	3.0	
	<u>Well</u>	<u>Units/Well</u>	<u>Units/Well</u>	<u>Units/Well</u>		<u>Units/Well</u>	<u>Units/Well</u>	<u>Units/Well</u>	<u>Type</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1. Savannah Port Terminal Railroad	NA	\$90.00	\$90.00	\$90.00	0.9	\$100.00	\$100.00	\$100.00	Tariff 2/
2. Jacksonville Port Terminal Railroad	NA	\$88.00	\$88.00	\$88.00	2.2	\$40.00	\$40.00	\$40.00	Tariff 3/
3. Palmetto Railways - Charleston Subdivision	NA	\$75.00	\$75.00	\$75.00	1.0	\$75.00	\$75.00	\$75.00	Tariff 4/
4. Palmetto Railways - North Charleston Subdivision	NA	\$75.00	\$75.00	\$75.00	1.4	\$53.57	\$53.57	\$53.57	Tariff 4/
5. Alabama State Port Authority	NA	\$78.82	\$78.82	\$78.82	N/A	N/A	N/A	N/A	Tariff 5/
6. Norfolk and Portsmouth Belt Line	\$210.00	\$105.00	\$84.00	\$70.00	17.0	\$6.18	\$4.94	\$4.12	Tariff 6/
7. Wilmington Terminal Railroad	\$579.00	\$289.50	\$231.60	\$193.00	2.3	\$125.87	\$100.70	\$83.91	Tariff 7/
8. Terminal Railway (Port of Mobile)	\$722.53	\$361.27	\$289.01	\$240.84	3.4	\$106.25	\$85.00	\$70.84	Tariff 8/
9. New Orleans Public Belt Railroad (Port of New Orleans)	\$548.00	\$274.00	\$219.20	\$182.67	10.5	\$26.10	\$20.88	\$17.40	Tariff 9/
10. Galveston Railroad (Port of Galveston)	\$315.00	\$157.50	\$126.00	\$105.00	3.0	\$52.50	\$42.00	\$35.00	Tariff 10/
12 Brownville & Rio Grande International Railroad (Port of Bownville)	\$405.00	\$202.50	\$162.00	\$135.00	9.3	\$21.77	\$17.42	\$14.52	Tariff 11/
13. Port Jersey Rail (Port of NY/NJ)	\$1,023.00	\$511.50	\$409.20	\$341.00	10.4	\$49.18	\$39.35	\$32.79	Tariff 12/
14. Birmingham Terminal Railway	\$325.00	\$162.50	\$130.00	\$108.33	4.1	\$39.63	\$31.71	\$26.42	Tariff 13/

1/ Developed using Google Earth Pro & DOT GIS data (<https://data-usdot.opendata.arcgis.com/datasets/north-american-rail-lines/data>).

2/ SAPT 7006-18 "Optional Services Catalog: Customer Switching and Accessorial Services," Effective January 1, 2025, page 3.

3/ Watco Transportation Services, "LLC Freight Tariff WTS 9012", Effective June 1, 2022 Item 700, and "Reciprocal Switching Tariff WTS 9012, Jacksonville Port Terminal Railroad," page 1.

4/ Palmetto Railways, "Freight Tariff PR 8001-M," Effective January 1, 2024, Item 110.

5/ Alabama State Port Authority General Cargo/Intermodal Tariff 1-E, effective October 1, 2024, page 76. *This is a lift fee, not a railroad switching fee. There are no miles associated with the lift operation.*

6/ Norfolk and Portsmouth Belt Line Railroad Company Tariff, "Tariff NPB 8100-J," February 1, 2015, Rule 2 and Item 70.

7/ WTRY 7006-15 "Optional Services Catalog: Customer Switching and Accessorial Services," Effective January 1, 2025, page 2.

8/ Terminal Railway, "TASD Rail Terminal Tariff No. 8017 Supplement 77," Effective October 1, 2019, Item 350, pages 9-10. (see also Items 240 and 340).

9/ New Orleans Public Belt Railroad, "Freight Tariff 9000-D" Effective January 1, 2025, Item 160, Part A, Uptown/Wharf Switching District (page 10).

10/ Galveston Railroad, "GVSR 7006-17," Effective January 1, 2024, page 3.

11/ Brownville & Rio Grande International Railway, "BRG Rate Tariff 8001 V1R1 Mar 24, Revision #5," Effective March 1, 2024, Item 8205 + 8210, page 7.

12/ NYNJ Rail, Port New Jersey Rail Division, "Freight Tariff NYNJ 8000-F," Effective April 1, 2023, Item 225, page 10.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36836

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

EXHIBIT C – OPERATING PLAN – EXHIBIT 15

EXHIBIT 15

OPERATING PLAN MINOR

Pursuant to the Board's regulations at 49 C.F.R. § 1180.8(c), operating plans for minor transactions should "[d]iscuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction." NS will not use, and will not cause NPBL to use, a different operating plan as a result of the Board approval requested in this Application.

Overview

NPBL has continuously operated its rail system since 1897, and NS has continuously controlled NPBL since 1982. NS has no plans to change, and will not cause NPBL to change, as a result of the Board approval requested in this Application, its existing operating plan with respect to the operations that are currently conducted on or near the NPBL lines. Likewise, NS has no plans and will not change any of its operations with respect to the operations that it currently conducts on, or in interchange with, NPBL. The requested Board approval will not result in an increase or decrease of rail traffic on either NS or NPBL lines.

Additionally, pursuant to 49 C.F.R. § 1180.8(c)(1) (4), NS provides the following information:

- As a result of the Board approval requested in the Application there will be no additional lines, and no fewer lines operated by either NPLB or NS than have been used in joint operations with other carriers. The requested Board approval, if granted, will not result in any change in traffic level density on either the NS or NPBL lines.
- There are no passenger or commuter operations on or near the NPBL lines. The Transaction does not contemplate the introduction of passenger or commuter operations on or near the NPBL or NS lines. Therefore, there will be no impact on commuter or other passenger service arising from the grant of Board approval as requested in this Application.
- Board approval as requested in this Application will not result in any material (or any) operating economies for either NS or NPBL because there will be no changes in current operations of either carrier as a result of such approval.
- Board approval as requested in this Application will not result in rail service being discontinued or abandoned on any portion of NS or NPBL lines.

Train Service

Following Board approval of the Application, NS will use its control of NPBL to ensure that it will continue to operate NPBL lines in the same manner as it has operated those lines prior to the Transaction. NPBL will provide the same train service, maintain the same interchanges with other carriers, and follow the same operating plan as today and NS plans to do the same.

Line Maintenance

NS expects that NPBL maintenance decisions (including those involving capitalized maintenance) will remain consistent going forward following Board approval. Any year-over-year variances would continue to be due to the cyclical nature of planned work and other matters that have governed the performance of maintenance on the NPBL lines in the past.

Yards

No material changes in rail yard activity are anticipated as a result of the requested Board approval.

Labor Impact

NS does not anticipate any changes to the number of NSR or NPBL employees resulting from Board approval as requested in this Application. No NSR nor NPBL employee will be dismissed or displaced in connection with Board approval. There is no anticipated increase in employment arising from Board approval as requested by this Application.