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SERVICE DATE – APRIL 11, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36836

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 3 in Docket No. FD 36836; Notice of Proposed Procedural Schedule and Request for Comments.

SUMMARY: Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, Applicants) are seeking Board approval to acquire control of Norfolk & Portsmouth Belt Line Railroad Company (NPBL). In this decision, the Board is publishing notice of the proposed procedural schedule, inviting public comments on that schedule, and designating 2023 as the year to be used for the impact analysis.

DATES: Written comments on the proposed procedural schedule must be filed by April 28, 2025.

ADDRESSES: Any filing submitted in this proceeding must be filed with the Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Applicants' representative, William Mullins, Mullins Law Group, PLLC, 2001 L Street, N.W., Suite 720, Washington, DC 20036; and (4) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: On February 14, 2025, Applicants submitted a filing in which they sought Board approval for Applicants to acquire control of NPBL, a Class III rail carrier operating in Norfolk, Portsmouth, and Chesapeake, Va. (the Proposed Transaction). By decision served March 14, 2025, the Surface Transportation Board (Board) found that the Proposed Transaction was a "significant transaction" under 49 CFR 1180.2 and, among other things, directed Applicants to file a revised proposed procedural schedule reflecting that

determination. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 2), FD 36836, slip op. at 7-9 (STB served Mar. 14, 2025). Applicants were also directed to indicate in their filing the year to be used for the impact analysis required for significant transactions and the approximate filing date of Applicants’ anticipated supplement. Id. at 9.

On March 21, 2025, Applicants filed a revised motion, proposing a procedural schedule largely based off the schedule originally proposed by the Board in CSX Corp.—Control & Merger—Pan Am Sys., Inc., FD 36472 (STB served Apr. 22, 2021). (Applicants Revised Mot. 2, Mar. 21, 2025.) Applicants also contend that no environmental review is required for the Proposed Transaction and thus no environmental review is accounted for in the proposed schedule. Applicants propose the following timeline:

F ¹	Application filed.
F + 30	Board notice of acceptance of application to be published in the <u>Federal Register</u> . ²
F + 40	Notices of intent to participate in this proceeding due.
F + 60	Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the application or related transactions due. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT).
F + 90	Responsive, including inconsistent, applications due.

¹ “F” designates the filing date of the supplement to perfect the application, and “F + n” means “n” days following that date. Applicants state that they anticipate filing the supplement on or shortly before June 14, 2025. (Applicants Revised Mot. 3 n.7, Mar. 21, 2025.)

² Applicants also propose that discovery begin on this date. The Board, however, has permitted discovery after the initiation of a proceeding under 49 U.S.C. § 11323 but before the filing of an application. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 4 (STB served Aug. 2, 2021); 49 C.F.R. § 1114.21(a) (“Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.”). This approach is appropriate here, given the initiation of the proceeding and the treatment of Applicants’ February 14, 2025 submission as a pre-filing notification.

F + 135	Responses to comments, protests, requests for conditions, and other opposition due, including to DOJ and USDOT filings. Responses to responsive, including inconsistent, applications due. Rebuttal in support of the application and related transactions due. Discovery closes.
F + 165	Rebuttal in support of responsive, including inconsistent, applications due.
TBD	Public hearing (if necessary). ³
F + 180	Final briefs due. (Close of evidentiary record.)
F + 270	Service date of final decision.
F + 300	Effective date of final decision.

The Board invites all interested persons to submit written comments on the proposed procedural schedule. Comments must be filed by April 28, 2025. The proposed schedule is subject to change depending on the comments received or other circumstances.

Additionally, the Board's regulations require notice of the year to be used for the impact analysis required in significant transactions be published in the Federal Register. See 49 CFR 1180.4(b)(2)(ii). Applicants indicate that they intend to use 2023 as the base year.⁴ Accordingly, the Board will designate 2023 as the year to be used for the impact analysis.

On March 28, 2025, CSX Transportation, Inc. (CSXT), filed a response to Applicants' revised motion for a proposed procedural schedule. CSXT proposes certain modifications to the proposed procedural schedule, proposes that discovery should commence as of publication of the notice of Applicants' intent to file, and opposes the establishment, at this time, of a closing date for discovery. (CSXT Response 2-9, Mar. 28, 2025.) Additionally, although CSXT states that it does not object to the base year selected by Applicants, it argues that the Board should reject Applicants' supplement if it includes only base year data, without providing information to compare that data to a situation in which Applicants did not control NPBL. (Id. at 10-11.) CSXT also argues that it is too early for the Board to determine whether environmental review is required in this case. (Id. at 11.) Applicants responded to CSXT's response by letter filed April 1, 2025.

³ The Board will decide whether to conduct a public hearing in a later decision after the record has been more fully developed. See 49 U.S.C. 11324(a) ("The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.").

⁴ Applicants state that they would prefer to use 2024 as the base year if waybill data for 2024 becomes available in time for use in this proceeding. (Applicants Revised Mot. 1 n.1, Mar. 21, 2025.) Any such request would be addressed in a future decision.

As noted above, supra note 2, the Board declines to propose a schedule that would limit the taking of discovery until the Board publishes a notice accepting the application. To the extent that CSXT's response otherwise relates to the proposed procedural schedule, it will be addressed following the comment period, along with any other comments the Board may receive on the proposed schedule. CSXT's comments concerning the sufficiency of Applicants' future presentation of data are beyond the scope of this decision, which serves only to notice and solicit comments on the proposed procedural schedule, as required by 49 CFR 1180.4(b)(4)(i). Accordingly, those arguments will be addressed, to the extent necessary, at a later date. The Board will also address environmental review issues in a subsequent decision.

Decided: April 11, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.