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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
June 9, 2025
Part of
Public Record

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

Dear Ms. Brown:

Norfolk Southern Railway Company submits this Reply to CSX Transportation, Inc.'s Motion to Dismiss or to Continue to Hold in Abeyance in the above-referenced proceeding. If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7823 or by e-mail: wmullins@mullinslawgroup.net. If I am unavailable, you may contact John V. Edwards, who can be reached at (202) 663-7853 or by e-mail at jedwards@mullinslawgroup.net.

Respectfully submitted,

/s/ **William A. Mullins**

William A. Mullins
Attorney for Norfolk Southern Railway Company

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36223

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

**REPLY TO CSX TRANSPORTATION, INC.'S
MOTION TO DISMISS OR TO CONTINUE TO HOLD IN ABEYANCE**

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June 9, 2025

**Attorneys for Norfolk Southern Railway
Company**

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**NORFOLK SOUTHERN RAILWAY COMPANY
– PETITION TO SET TRackage RIGHTS COMPENSATION –
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**REPLY TO CSX TRANSPORTATION, INC.’S
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For over seven years, CSXT¹ has delayed resolving this case. Time and again, efforts to restart this matter have been met with CSXT resistance. For more than a century, CSXT has had access to the NIT through the NPBL. And for all that time, the NPBL has paid NSR for trackage rights to provide that direct access. The fundamental issue is the rate that the NPBL will pay NS for those trackage rights.² As Judge Davis of the Eastern District of Virginia said:

Any future “switch rate” that NPBL charges to CSX to access NIT will necessarily include the NSR-NPBL rate as a cost factor because NPBL will have to pay NSR that rate for each car moved to NIT. Thus, this “expense” will essentially be

¹ In this reply, CSX Transportation, Inc. is referred to as “CSXT”. Norfolk Southern Corporation (“NS”) and Norfolk Southern Railway Company (“NSR”) is referred to as “NS”. Norfolk & Portsmouth Belt Line Railroad Company is referred to as “NPBL”. Norfolk International Terminal, one of the marine terminals at the Port of Virginia (“POV”), is referred to as “NIT”. The Surface Transportation Board is referred to herein as either the “STB” or the “Board”.

² NPBL has been providing CSXT with access to NIT via switching moves over track including NS track used by NPBL via a 1917 trackage rights agreement between NS and NPBL. That trackage rights agreement has expired. NS and NPBL renegotiated and agreed on new terms for that trackage rights agreement, with one important exception: the rate NPBL would pay NS. Consistent with long standing STB precedent, both parties submitted that dispute to the STB. Due to CSXT’s intervention and interference, this case has now been held in abeyance for 7 years.

transferred to NPBL's customers, as are NPBL's other operating costs.³

Judge Davis also correctly noted that “CSX has suggested, without citation to evidence, that the rate dispute between NPBL and NSR is fabricated as a means to further delay CSX's access to NIT; however, it is CSX that intervened in the rate case before the STB and requested a stay of that proceeding pending the result of this litigation.”⁴

CSXT continues to cry victim and relitigate its failed antitrust claims. But the real harm is the seven years of economic uncertainty caused by its refusal to allow this matter to be resolved. It is well past time for the shippers, NS, NPBL, CSXT, and the Port of Virginia to know this rate. The STB should deny CSXT's request to, once again, hold this case in abeyance. And it certainly should not dismiss the proceeding. Instead, the Board should move promptly to resolve the dispute between NPBL and NS and set the trackage rights rate consistent with long-standing STB precedent.

BACKGROUND

Essentially, this proceeding began back in the late 1800's when eight railroads worked together to form a terminal railroad (NPBL) that was designed to provide access to some terminal facilities that then existed in Hampton Roads, Virginia. In 1917, two predecessors to NS entered into a trackage rights agreement to provide NPBL certain trackage rights over their lines, including to serve what will become known as the NIT, which, at the time was exclusively served by NS.

³ CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679, 710, n. 19 (E.D. Va. Jan. 3, 2023).

⁴ Id., at 711.

The railroad industry, including operation, regulation⁵ and technology, in 1917 was entirely different from today. The infrastructure at the port, the railroad companies using the port, the use of intermodal drayage operations, and the customers served by the port have all evolved. The commodities to be transported by rail and by truck have evolved as well. Double-stack rail transport had not yet been introduced at that time. Over the 99-year term of the 1917 agreement, the industry had transformed, and accordingly, the terms of the agreement had run their course. The parties agreed it was time to update the agreement to conform to the world as it exists in the 21st Century. To fail to do so would have been unreasonable and contrary to prudent business practices.

NS and NPBL negotiated an agreement that would replace the now-terminated 1917 agreement. The two parties agreed to permit continued operations contemplated by the now-terminated agreement on a month-to-month basis until a new agreement could be put into place. The parties reached a working consensus on most, but not all, of the terms and conditions for the new agreement.⁶ Faced with a fundamental disagreement with regard to a single contractual term – compensation – NSR sought the guidance of the STB on the final outstanding issue.

On October 3, 2018, CSXT petitioned the Board to intervene in the proceeding and immediately followed up by filing suit against NSR in the U.S. District Court for the Eastern District of Virginia, asserting several federal antitrust and state law violations. Even though CSXT continually claims that NPBL acts as NS's surrogate, it was NPBL that supported CSXT's

⁵ For context, consider these few examples: the 1917 agreements were signed before the formation of the Federal Railroad Administration (1966), creation of the Railroad Retirement Board (1935), and creation of the Environmental Protection Agency (1970).

⁶ “Reply of Norfolk and Portsmouth Belt Line Rail Road Company to Petition to Set Trackage Rights Compensation,” submitted October 3, 2018 at 3, and note 3.

intervention request.⁷ NSR, on the other hand, responded in opposition to CSXT's request to intervene in the trackage rights compensation proceeding arguing that it "would unduly complicate the procedural and substantive administration of this proceeding [and] allow CSXT to unduly broaden the issues in front of the Board" in a manner that would further delay resolution of the issues properly before the Board.⁸ The Board rejected NS's protestations, allowed CSXT to intervene, and eventually held this proceeding in abeyance. Here, seven years later, the NSR prediction of CSXT's actions have proven to be omniscient.

In a series of decisions served in 2019, the STB made a number of determinations that will govern this proceeding going forward. The time for further litigation on these determinations, as is described below, has passed.

On March 29, 2019, the Board served a decision instituting the trackage rights compensation proceeding, specifically finding that "[c]ontrary to CSXT's suggestion, it is not necessary for the Board to approve or exempt a new trackage rights agreement to establish its jurisdiction to set trackage rights compensation." The Board described its anticipated proceeding, stating that "the Board will establish compensation under the framework set forth in SSW Compensation."⁹ Most significant, for current purposes, is the fact that the Board seemed

⁷ NPBL, while disagreeing with much of what CSXT asserted in its pleadings (including CSXT's initial allegation that the Board is not permitted by law to determine the trackage rights compensation until the STB has approved or exempted a new trackage rights agreement), nonetheless supported CSXT's right to intervene. On October 23, 2018, NPBL submitted a letter of support for the CSXT request for leave to intervene. CSXT conveniently omits this in its recitation of the several instances in which NPBL allegedly has been "acting as NSR's surrogate." CSXT Motion at 16.

⁸ Reply of Norfolk Southern Railway Company to Petition for Leave to Intervene of CSX Transportation, Inc. ("NSR Intervention Reply"), submitted on October 23, 2018, at 1.

⁹ STB Decision served March 29, 2018 at 5.

to realize what CSXT was up to, and specifically limited CSXT's future involvement in this proceeding.¹⁰

The issue before the Board in this proceeding, while complicated, is narrow: the compensation for trackage rights held by NPBL for use of NSR's Lines. CSXT may put forth evidence and arguments regarding its preferred calculation methodology that is relevant to establishing compensation under one of the SSW Compensation methodologies. While evidence relating solely to the issues in the pending federal court case will not be permitted, nothing in this decision limiting discovery to the framework set forth in SSW Compensation shall be construed to prohibit CSXT from arguing or submitting evidence that a particular SSW Compensation calculation methodology could have an anticompetitive effect. In sum, given the circumstances here, the Board will permit CSXT to intervene as a party, as discussed above, to ensure a complete record.

On April 18, 2019, CSXT filed a petition asking the Board to either clarify or reconsider its March 29, 2019, decision¹¹ or, in the alternative, to hold the trackage rights compensation proceeding in abeyance.¹² Importantly, CSXT did not take issue or request reconsideration of the Board's decision that the Board had the right to make a determination on what the trackage rights compensation should be.¹³

¹⁰ STB Decision served March 29, 2018 at 7.

¹¹ Among other things, CSXT asked the Board to clarify that whatever compensation amount that the Board did impose should be determined with reference to certain selected public interest considerations, citing Norfolk S. Ry. Co. – Acquisition and Operation – Certain Rail Lines of The Delaware and Hudson Ry. Co., Inc., FD 35873, slip op. at 14 (STB served May 15, 2015). But that decision clarifies that any harm to be addressed by the Board in approving its decision (in this case, the fixing of the trackage rights compensation amount) “must be distinguished from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing ... i.e., pre-existing disadvantages that will neither be caused nor exacerbated by the transaction.” *Id.* at 22 (internal quotation marks omitted).

¹² CSX Transp., Inc.'s Petition for Clarification or, if Necessary, Reconsideration, and Request to Hold Proceeding in Abeyance, filed April 18, 2019 in FD 36223 at 18 (“CSXT 2019 Abeyance Request”).

¹³ CSXT had argued that the STB *should not* make the determination, but did not argue that the Board did not have the authority to make that determination. CSXT 2019 Abeyance Request at 2.

The STB chose to implement the alternative relief sought by CSXT – specifically to hold the trackage rights compensation proceeding in abeyance until the federal courts had the opportunity adjudicate the alleged antitrust claims.¹⁴ CSXT accepted the Board’s decision and did not ask for reconsideration.

On August 14, 2019, however, NSR filed a request for reconsideration of that July 25, 2019, decision to hold the proceeding in abeyance until the federal district court had had a chance to litigate the CSXT claims. The Board rejected NSR’s request for reconsideration, stating that “the Board continues to find that resolution of the federal court proceeding may reduce the number of disputed issues between the parties, thereby promoting efficiency.”¹⁵ The Board reiterated its decision to keep the proceeding “held in abeyance until the federal court proceeding referred to above, including any subsequent appeals, is resolved.” Again, CSXT did not request reconsideration of the grant of the alternative remedy of abeyance.

On January 3, 2023, the federal district court entered a ruling in the CSXT-initiated federal litigation.¹⁶ CSXT appealed the district court decision, and, on August 29, 2024, the Fourth Circuit Court of Appeals affirmed the district court’s decision.¹⁷ CSXT then petitioned the U.S. Supreme Court to grant certiorari review of the Fourth Circuit’s decision. The Supreme

¹⁴ Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line Rr. Co., FD 36223 (STB served July 25, 2019).

¹⁵ Decision served December 19, 2019, slip op. at 3.

¹⁶ See Exhibit A, U.S. District Court, E.D.VA., Civil No. 2:18cv530, Order dated January 3, 2023, attached as Exhibit A to the NS Motion to End Abeyance Period.

¹⁷ See U.S. Appellate Court, Fourth Circuit, No. 23-1537, Order dated August 29, 2024, attached as Exhibit B to the NS Motion to End Abeyance Period. Again, CSXT, in its Motion to Dismiss or to Continue to Hold in Abeyance, failed to produce that decision for consideration by the Board.

Court denied certiorari on April 21, 2025.¹⁸ In the Board’s July 25, 2019, decision, the Board stated that it was granting CSXT’s motion to hold the proceeding in abeyance “until the federal district court proceeding ... including any subsequent appeals, is resolved.”¹⁹ The Board’s condition has been met, the abeyance’s specified purpose has been fulfilled,²⁰ and the proceeding should now resume.

ARGUMENT

As discussed above, this proceeding began in 2019. In various decisions since that time, the STB made it clear that CSXT’s role was to be limited to conducting discovery and presenting evidence on the SSW Calculation methodology. The STB paused the proceeding in 2019 pending resolution of related federal court litigation. Once the court case concluded, NS, as the Board said it could, requested the STB to resume the proceeding. CSXT has once again opposed NS’s request, seeking dismissal or continued abeyance.

CSXT’s request should be rejected. The sole reason for holding the case in abeyance has been fulfilled. CSXT fails to address that essential point. Instead, in seeking dismissal or abeyance, CSXT is in effect petitioning for reopening and reconsideration of the Board’s March 25, 2019, but it has presented no new evidence or argument that the Board’s prior decision was

¹⁸ See Exhibit C, U.S. Supreme Court, No. 24-591, Order dated April 21, 2025.

¹⁹ See Norfolk S. Ry.—Pet. to Set Trackage Rights Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223, slip op. at 3 (STB served July 25, 2019).

²⁰ CSXT falsely states that “[t]he reasons that the STB originally put this proceeding into abeyance” was “the need to address and resolve NSR’s unlawful manipulation of NPBL before considering a change in trackage rights fees....” CSXT Motion at 4. CSXT’s statement improperly implies that the Board had found that NS had engaged in “unlawful manipulation of NPBL,” and that the abeyance the Board imposed was to further CSXT’s pursuit of remedies for that Board-determined antitrust violation. That is a clear misstatement of the facts. Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R. Co., FD 36223 (STB served December 19, 2019).

in material error nor has CSXT shown changed circumstances to justify a different result. The Board's decisions have made it clear that CSXT's role here is limited to conducting discovery and presenting evidence on SSW Compensation. The Board should not allow CSXT to turn this straight-forward proceeding into yet another argument about alleged antitrust violations from a decade or more ago. Allegations that have been tried and found wanting. Finally, the public interest lies in moving forward and doing so is fully consistent with Board precedent where the Board has set the terms and conditions of expired trackage rights agreements. That is all that NS and NPBL are requesting. It is time to move forward.

A. CSXT Newest Arguments Constitute An Impermissible Motion For Reconsideration Of The Board's March 29, 2019, July 25, 2019 and December 19, 2019 Decisions.

As noted above, the Board's March 29, 2019, decision instituted a proceeding for the "complicated" but "narrow" purpose of determining trackage rights compensation for NPBL's use of certain NSR lines.²¹ That decision explicitly set forth a limited role for CSXT: to present evidence and arguments regarding its *preferred calculation methodology* relevant to establishing compensation under one of the SSW Compensation methodologies.²² It also limited discovery to matters within the framework set forth in SSW Compensation.²³ And it permitted CSXT to argue and to submit evidence *that a particular SSW Compensation calculation methodology* could have an anticompetitive effect.²⁴ At that time, CSXT asked for clarification or reconsideration of that decision, or,, in the alternative to such clarification and reconsideration, for the Board to hold the proceeding in abeyance.

²¹ March 29, 2019 Decision at 5, 7.

²² Id. at 7 (emphasis added).

²³ Id.

²⁴ Id. (emphasis added).

On July 25, 2019, the Board rendered a decision in response to the CSXT pleading. The Board chose between CSXT's two alternative forms of affirmative relief and chose to hold the proceeding "in abeyance until the federal district court proceeding ..., including any subsequent appeals, is resolved," evidencing a clear intention to continue this proceeding promptly upon final adjudication of the federal court proceedings.²⁵

CSXT affirmatively chose to forego requesting reconsideration of the July 25, 2019, Board decision at that time. NS, however, did seek reconsideration of that July 25, 2019, decision. The Board denied NSR's request for reconsideration, and in doing so reaffirmed the decision of the Board to reinstate the proceeding on the active docket once the federal court proceedings, including any appeals thereof, were completed. NS has now asked the Board to comply with its decision and reinstate the proceeding. CSXT once again opposes NS's request.

CSXT now argues that the trackage rights compensation proceeding should be dismissed or to continue to be held in abeyance. The CSXT argument is summed up as follows:²⁶

The STB should not allow NSR and NPBL to use its regulatory procedures to perpetuate competitive harm. The transportation policy set out in the governing statute directs the STB to seek ways of promoting competition, not allowing its procedures to be used to prevent competition. Since NSR and NPBL are using the mere pendency of the Petition to prevent CSXT from accessing shippers at NIT, the STB should dismiss the petition. Under established law, the existing trackage rights arrangement, including fees, would remain in place, giving the parties the financial basis for evaluating CSXT's proposal and removing the pretextual basis for continuing to deny CSXT access to NIT.

The argument for dismissal or continued abeyance constitutes, in effect, an impermissible request for reconsideration of the Board's March 29, 2019, decision. Not only is CSXT's request

²⁵ July 25, 2019 Decision at 2-3.

²⁶ CSXT Motion at 29.

untimely,²⁷ CSXT has failed to argue or even set forth why the Board’s March 29, 2019, decision should be reconsidered or reopened. Nor should it be. The trackage rights fee is the key input for setting NPBL’s switching rate for the future. Indeed, even the federal district court has previously recognized the trackage rights fee as “a critical input for analyzing CSX’s service proposal.”²⁸

The CSXT complaint to the federal district court was already a part of the record pending before the Board when the Board made its initial decision to institute a proceeding, and thereafter to hold the proceeding in abeyance. The decisions by the federal courts on the CSXT complaint do not constitute new evidence or changed circumstances and certainly are not sufficient to materially affect the earlier decisions. The Board’s reasoning for holding the proceeding in abeyance was because it believed “that resolution of the federal court proceeding may reduce the number of disputed issues between the parties, thereby promoting efficiency”.²⁹ The Federal Court proceeding is now complete. The purpose of the abeyance has been fulfilled. It is time to move forward.

B. CSXT’s Request Is Procedurally Precluded By The Board’s Regulations.

A discretionary appeal of a decision by the Board is permitted under 49 C.F.R. 1115.3, but only if the prior action would be affected materially because of new evidence or changed circumstances or the prior action involves material error. Further, a petition for reconsideration “must be filed within 20 days of the service of the action or within any further period (not to

²⁷ Reconsideration requests are due 20 days after issuance of a decision. After expiration of that period, the request is properly a request for reopening. 49 CFR §1115.3; 1115.4; and Section F, *infra*.

²⁸ CSX Transp., Inc. v. Norfolk S. Ry. Co., 648 F. Supp. 3d 679, 720 (E.D. Va. Jan. 3, 2023)

²⁹ Decision served December 19, 2019, slip op. at 3.

exceed 20 days) as the Board may authorize.” 49 CFR 1115(e). Because the motion to dismiss and the petition to continue to hold in abeyance seeks an untimely reconsideration of relief granted in earlier Board decisions precisely on point, and because the request for relief sought is based upon a fundamentally flawed reading of the court decisions, it must be rejected. Likewise, even if considered a petition to reopen and reconsider the Board’s decisions, CSXT has not met its burden to show new evidence, changed circumstances or material error.

C. The CSXT Antitrust Allegations Are Just That – Allegations – And CSXT Should Not Be Permitted To Relitigate These Allegations In This, Or Other, Proceedings.

The CSXT Motion is unabashedly based upon CSXT rearguing all of the issues presented to the federal district court. That is made plain by the fact that CSXT does not even bother to attach the court’s decision, but instead only the CSXT complaint in the federal court proceeding. The CSXT federal court complaint contained numerous *allegations* of anticompetitive actions, and *allegations* of antitrust motives, all presented by CSXT to the Board as if they were fact, rather than what they are – *allegations*. Essentially, everything that NSR does or says, according to CSXT, has a tint of antitrust conspiracy about it. If one reads the CSXT Motion carefully, it is clear that, according to CSXT, NSR can do nothing about an obsolete, century-old trackage rights agreement with NPBL without causing CSXT harm. NSR cannot make an agreement with NPBL on trackage rights compensation, because CSXT would no doubt argue that the agreement would be based upon some conspiracy or illegal influence.³⁰ According to the CSXT Motion, NSR cannot ask the one federal agency with jurisdiction over the matter to set the trackage rights compensation in an open proceeding, pursuant to established methodologies and involving the

³⁰ CSXT Motion at 3 (“Rather than increase the trackage rights fee by exercising its unlawful control of NPBL, which it could easily do, NSR initiated this proceeding in the apparent hope that it can induce its federal regulator to advance its anticompetitive scheme while insulating NSR from responsibility”).

two relevant parties (plus CSXT), because that would be to dupe the STB into being a participant in NS's alleged antitrust scheme.³¹ And NS cannot leave the trackage rights compensation where it is because, as alleged elsewhere, that compensation level supports a switch rate that is allegedly exclusionary.³²

NS cannot, and will not, in this document, seek to raise and rebut each and every allegation made by CSXT both in its motion and in the attached CSXT district court complaint. Those allegations were already adjudicated before the federal district courts. CSXT has shown an ability and propensity to spin these allegations, and to manufacture ulterior motives for each and every option that NS has had over the years. CSXT's continued efforts to do so should not be rewarded.

D. The Public Interest Is Furthered By This Proceeding, And CSXT's Efforts To Impede That Must Stop.

Nothing alleged by CSXT can change the simple fact that there is a hundred-year-old agreement that is obsolete and needs to be replaced. CSXT and NPBL, among others (including railroads and industries that are served along the trackage rights line) are the beneficiaries of the trackage rights that underly that ancient and expired agreement. The Board has before it two parties (NS and NPBL) who have thus far demonstrated their independent approaches to the determination of that compensation.³³ It would be counter to the public interest and precedent

³¹ Id.

³² CSXT Motion at 14-15, 21-22 (directly connecting the cost of the trackage rights with the cost of NPBL providing the switching service that CSXT today apparently effectively excludes CSXT from accessing NIT, even though it does not).

³³ See, e.g., the NPBL Letter, October 23, 2018 supporting CSXT's intervention in the trackage rights proceeding, over the objection of NS. Interestingly, CSXT efforts to manufacture a conspiracy are belied by its own arguments. CSXT claims that "[i]t is clear that NSR intends to use this fee-setting procedure to obtain a dramatic increase in the amount that NPBL would have to pay to use NSR's tracks to reach NIT," citing an argument made by NPBL in the proceeding.

for the STB to dismiss the petition to set trackage rights compensation, or even to hold it in abeyance for a further undefined number of years. Indeed, CSXT has not cited to one case where the Board has dismissed a request to set the trackage rights compensation when an agreement has expired, the trackage rights remain and not discontinued, and where the parties cannot agree on a new rate. In contrast, there are several cases where the Board has set trackage rights fees for expired trackage rights ³⁴~~OBJ~~

According to CSXT, if the STB simply dismissed the petition, then “[u]nder established law, the existing trackage rights arrangement, including fees, would remain in place.”³⁵ Leaving the expired, obsolete agreement in place is not in the public interest for all the reasons described above. It is important that the carriers operate under an agreement that recognizes the current state of the law, especially with respect to liability, operations, and insurance, as well as reflects updated technology. Further, leaving the existing agreement in place would cause NS to subsidize NPBL and CSXT at below-market rates pursuant to a methodology that was set in

Motion at 25 (citing NPBL’s October 3, 2018 filing, at 5, note 5. But that argument, made by NPBL, is precisely the type of argument that an independent actor would make, not an actor seeking to manipulate the proceeding for a desired outcome. Specifically, NPBL argues to the Board that “Despite NPBL’s requests, NS has declined to provide any basis for its requested compensation amount...” Either NPBL is a controlled puppet of NS or it is not. The evidence that CSXT cites here, together with NPBL’s advocacy in permitting CSXT’s intervention in direct opposition to NS’s position, shows that NPBL is not acting as a puppet of NS, and further shows that CSXT is attempting to selectively spin facts with ulterior motives that are not present, all in an effort to prevent the proper adjudication of appropriate issues.

³⁴ See, e.g., Atchison, Topeka & Santa Fe Ry. Co. – Operating Rights – Southern Pacific Transp. Co., FD 22218 (STB served May 15, 2023). See also, North Carolina R. Co. – Petition To Set Trackage Compensation and Other Terms and Conditions – Norfolk S. Ry. Co., Norfolk & Western Ry. Co., and Atlantic and East Carolina Ry. Co., FD 33135 (STB served May 29, 1997), and New England Central R., Inc. – Trackage Rights Order – Pan Am Southern LLC, FD 35842 (STB served October 31, 2017).

³⁵ CSXT Motion at 29.

1917 and to NS's detriment.³⁶ NS is attempting to progress this matter in the most legitimate and transparent way possible. It is time to stop the never-ending attempts by CSXT to delay and sabotage this proceeding.

NS is permitted by law to receive proper compensation for the use of trackage rights over its lines. That is a given that not even CSXT could object to. Further, the trackage rights compensation that NPBL pays to NS as a result of this proceeding is a cost that NPBL must incur to provide switching services to CSXT and others. NPBL is entitled to know its costs in order to set and receive proper compensation for the provision of switching services to CSXT (and others).

The question before the Board is not whether these trackage rights exist, because they do. Instead, the question before the Board is what is the correct trackage rights fee amount that would compensate NSR for the use of its tracks by NPBL on behalf of NPBL's continued local and overhead service for CSXT, other connecting railroad carriers, and the customers. The Board has a well-defined process to work through the information to be developed and submitted

³⁶ CSXT argues that NPBL is using the trackage rights proceeding as a pretext to consideration of certain commercial proposals CSXT has advanced for new CSXT access to NIT. CSXT Motion at 25. CSXT further asserts that NPBL is refusing to consider those pursuant to the direction of NS, and with an explicit antitrust motive. *Id.* To the extent that this behavior allegedly happened in the past (which it did not), the allegation has already been litigated before the federal courts. The question of Board consent to NS continuance in control of NPBL, and the conditions set forth for that continuance in control, in the future, is sought to be progressed in the NS/NPBL control docket and the application that is soon to be filed with the Board. This proceeding, as clearly enunciated by the Board, is for the very narrow determination of the trackage rights compensation to be paid by NPBL to NS for the use of NS's tracks in furtherance of NPBL's service to customers on the line and access for CSXT and others. STB Decision served March 29, 2018 at 7. It is a separate matter that does not rely on that continuance in control. Undertaken properly, in an open and informed manner, with the involvement of CSXT to the extent permitted by decisions already rendered by the Board, this proceeding should enable the Board to determine what the proper compensation level should be, regardless of the issues that are no doubt to be separately argued in the NS/NPBL control docket.

to it, and to use that information to calculate and deliver that answer. NS and NPBL should be allowed to follow that process.

CONCLUSION

For the reasons expressed above, NSR respectfully requests that the Board deny the CSXT request to dismiss the proceeding or, in the alternative to continue to hold the proceeding in abeyance, so that the proceeding may resume from where it has been left since 2019.

Respectfully submitted,

/s/ William A. Mullins

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June 9, 2025

Attorneys for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I certify that, on this June 9, 2025, I have caused to be served a copy of the foregoing Response to CSXT's Motion to Dismiss or to Continue to Hold in Abeyance on all parties of record in this proceeding.

/s/ William A. Mullins

William A. Mullins
Attorney for Norfolk Southern Railway Company