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SERVICE DATE – JULY 10, 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

Decided: July 7, 2025

AGENCY: Surface Transportation Board.

ACTION: Decision No. 7 in Docket No. FD 36836; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed on June 13, 2025, by Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS or Applicants). Applicants seek the Board's authorization of their acquisition of control of Norfolk & Portsmouth Belt Line Railroad Company (NPBL), a Class III rail carrier operating in Norfolk, Portsmouth, and Chesapeake, Va. This proposal is referred to as the Transaction. The Board finds that the application is complete. The Board, therefore, accepts the application and adopts a procedural schedule for its consideration.

DATES: Any person who wishes to participate in this proceeding as a Party of Record must file, by July 23, 2025, a notice of intent to participate if they have not already done so. Descriptions of anticipated responsive applications, including inconsistent applications, are due by August 12, 2025. Petitions for waiver or clarification with respect to such applications are also due by August 12, 2025. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the application are due by August 27, 2025. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT). All responsive applications, including inconsistent applications, are due by September 8, 2025. Responses to comments, protests, requests for conditions, and other opposition—including responses to DOJ and USDOT filings—are due by October 27, 2025. Responses to responsive applications, including inconsistent applications, are also due by October 27, 2025. Rebuttal in support of the application is also due by October 27, 2025. Rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by November 26, 2025. Final briefs are due by January 6, 2026. If a public hearing or oral argument is held, it will be held between the filing of rebuttals and final briefs, on a date to be determined by the Board. The Board will issue its final decision by April 6, 2026,

and the decision will become effective by May 6, 2026. For further information regarding deadlines, see the Appendix to this decision.

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) 918-5462. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: On February 14, 2025, Applicants filed a submission, styled as an application for a "minor" transaction, seeking the Board's authorization under 49 U.S.C. 11323-25 and 49 CFR part 1180 of their acquisition of control of NPBL. By decision served March 14, 2025, and published in the Federal Register on March 17, 2025 (90 FR 12440), the Board found that the Transaction should be classified as a "significant" transaction. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 2), FD 36836, slip op. at 7-8 (STB served Mar. 14, 2025). Accordingly, the Board determined that it could not accept Applicants' February 14, 2025 submission as an application at that time and treated the submission as a prefiling notification for a significant transaction.[1] Id. at 7; see also 49 CFR 1180.4(b)(1). The Board stated that Applicants could perfect their application by supplementing their February 14, 2025 submission. The Board waived certain filing requirements that pertain to significant transactions and directed Applicants to provide certain information in addition to the impact analysis and supporting documents that are required under 49 CFR 1180.7(a) and (c). Decision No. 2, FD 36836, slip op. at 7-8. The Board also directed Applicants to file with the Board, by March 21, 2025, a revised proposed procedural schedule reflecting the Board's determination that the Transaction is a significant transaction. Id. at 8-9.

On March 21, 2025, Applicants filed a "revised motion for proposed procedural schedule." CSX Transportation, Inc. (CSXT), filed a response to Applicants' motion on March 28, 2025.[2] The Board published notice of, and invited comment on, Applicants' revised proposed procedural schedule by decision served April 11, 2025, and published April 16, 2025. See Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R. (Decision No. 3), FD 36836 (STB served Apr. 11, 2025) (90 FR 16056). Applicants filed comments on the

[1] Applicants' February 14, 2025 submission will be referred to as the Prefiling Notification.

[2] On April 1, 2025, Applicants filed a letter in response to CSXT's March 28, 2025 filing, stating that they intended to file comments after the Board publishes notice of the proposed schedule in the Federal Register. (NS Letter 1-2, Apr. 1, 2025.)

proposed procedural schedule on April 28, 2025. On June 13, 2025, Applicants supplemented their February 14, 2025 submission.[3]

According to Applicants, NS is a Class I rail carrier that operates approximately 19,300 route miles of track. (Prefiling Notification 40.)[4] NPBL is a terminal switching company, currently owned by NS (57.14%) and CSXT (42.86%). (Id. at 12.) NPBL operates approximately 36 miles of rail line from Portsmouth, Va., to Norfolk, Va. (the NPBL Line), and approximately 27 miles of trackage rights over NS track from Norfolk to Chesapeake, Va. (the NPBL Trackage Rights). (Id. at 12-13, 42.) The NPBL Line connects with CSXT at Portsmouth, with NSR and the Chesapeake and Albemarle Railroad at Chesapeake, and the Buckingham Branch Railroad at Norfolk. (Id. at 58.) According to Applicants, NPBL serves 24 industries on its system, in addition to serving NS and CSXT. (Appl. 70.)

The NPBL Trackage Rights facilitate NPBL's access to the Norfolk International Terminal (NIT). (Prefiling Notification 58.) NIT is the larger of the two primary container terminals at the Port of Virginia (POV) in or about the Hampton Roads area. (Id. at 51-52, 60; Appl. 61.) The NSR track over which the NPBL Trackage Rights run connects directly to NIT.[5] (Prefiling Notification 58.) According to Applicants, other rail carriers can access NIT by interchanging with NSR or arranging for a switch move involving NPBL. (Id.) CSXT also conducts drayage operations to NIT from a nearby yard. (Id. at 32, 66.) The other, smaller container terminal at POV in or about the Hampton Roads area is the Virginia International Gateway (VIG). (Id. at 60.) NSR and CSXT both access VIG through the Commonwealth Railway (CWRY), a subsidiary of Genesee & Wyoming Inc. (Id.) Via NPBL, NSR and CSXT also have rail access to the Portsmouth Marine Terminal, a former container, break-bulk, and roll-on/roll-off cargo terminal that is currently being repurposed to handle heavy and oversized cargo. (Id.) Additionally, CSXT has direct, on-dock access to the Newport News Marine Terminal, a break-bulk and roll-on/roll-off facility. (Id. at 60-61.)

NPBL's current switch rate to NIT is $210 per loaded car well. (Id. at 11.) Applicants state that NPBL's switch rate is based on a "uniform, cost-based structure" (instead of a profit/market-driven fee basis), in accordance with an agreement entered into when NPBL was created in 1897. (Id. at 8 & n.3, 12, 24.)

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[3] CSXT filed motions to compel production of certain documents and information on April 9 and April 18, 2025. On June 20, 2025, CSXT filed a restated and amended motion to compel, to which Applicants replied on June 25, 2025. The motions to compel will be addressed in a subsequent decision.

[4] Citations to pleadings on the record will cite to the cumulative page numbers to the extent they are available.

[5] The NPBL Trackage Rights connect the main body of NPBL's system to its line extending from West Junction to NIT. (See Appl. 101); see also NPBL Reply 1-2, June 24, 2025, Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223.

Until 2016, NPBL operated the NPBL Trackage Rights pursuant to the terms of a trackage rights agreement entered into in 1917. (Id. at 13.) NS terminated that agreement in 2016, and the parties have extended the terms of the terminated agreement on a month-to-month basis since that time. (Id.) In 2018, in Docket No. FD 36223, NSR filed a petition asking the Board to set trackage rights compensation for the NPBL Trackage Rights. That proceeding was held in abeyance pending the resolution of related federal court litigation.[6] Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223 (STB served July 25, 2019).

Applicants state that they have effectively controlled NPBL for 42 years. (See, e.g., Prefiling Notification 7-8, 17, 24.) In 1980, NSC (then known as NWS Enterprises, Inc.) sought authority from the Board's predecessor agency, the Interstate Commerce Commission (ICC), to acquire control of Norfolk & Western Railway Company (N&W) and Southern Railway Company (SRC). (Id. at 59 & n.5.) At that time, NPBL had four shareholders—SRC, N&W, Norfolk Southern Railway Company (Norfolk Southern),[7] and CSXT. (Id. at 59.) The ICC approved NSC's application in 1982 (the 1982 Transaction), resulting in NSC indirectly owning 57.14% of the shares of NPBL. (Id. at 9, 60; Appl. 13.)

In 1991, the ICC, pursuant to an exemption under 49 CFR 1180.2(d)(3) for transactions within a corporate family, granted SRC authority to directly control N&W. (Prefiling Notification 9); S. Ry.—Control Exemption—Norfolk & W. Ry., FD 31791 (ICC served Jan. 14, 1991). At the same time, SRC changed its name to Norfolk Southern Railway Company. (Prefiling Notification 9); S. Ry.—Control Exemption, FD 31791, slip op. at 1. Then, in 1998, pursuant to another corporate family transaction exemption, the Board authorized the merger of N&W into its parent, NSR (formerly SRC). (Prefiling Notification 9); Norfolk S. Ry.—Exemption—Norfolk & W. Ry., FD 33648 (STB served Aug. 31, 1998).

In 2018, CSXT filed an antitrust complaint in federal district court against NS and NPBL, alleging that NS had prevented CSXT from serving NIT since 2009, when NPBL increased its switch rate to the current rate of $210 per loaded car well. (Prefiling Notification 11.) In 2021, NSR filed with the Board a petition for declaratory order requesting that the Board institute a proceeding to address certain issues referred to the Board by the district court, including whether the ICC granted NSC approval to control NPBL when it approved the 1982 Transaction. See Norfolk S.—Pet. for Declaratory Ord. (Declaratory Ord. Proceeding), FD 36522, slip op. at 1 (STB served June 17, 2022), aff'd sub nom. Norfolk S. Ry. v. STB, 72 F.4th 297 (D.C. Cir. 2023), cert. denied, 144 S. Ct. 1343 (2024). In 2022, the Board held that the agency did not authorize NSC's control of NPBL in the 1982 Transaction or the notices of exemption in 1991 and 1998, and stated that it "expect[ed] the parties to take appropriate steps to address the unauthorized control issue immediately following resolution of the district court proceeding,

[6] On April 30, 2025, NSR filed a motion to end the abeyance period. On May 20, 2025, CSXT filed a motion to dismiss or to continue to hold the proceeding in abeyance, to which NSR replied on June 9, 2025. NPBL replied on June 24, 2025. These motions are currently pending before the Board.

[7] In 1980, Norfolk Southern was a Class II subsidiary of SRC. (Appl. 13.) It changed its name to Carolina and Northwestern Railway Company following the 1980 transaction. (Id.)

including any appeals." Declaratory Ord. Proceeding, FD 36522, slip op. at 1, 9-17 & n.25. In 2023, the district court granted summary judgment in NS's favor on CSXT's federal antitrust claims for damages, finding that those claims were untimely. See CSX Transp., Inc. v. Norfolk S. Ry., 648 F. Supp. 3d 679 (E.D. Va. 2023). The U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision. CSX Transp., Inc. v. Norfolk S. Ry., 114 F.4th 280 (4th Cir. 2024). On November 26, 2024, CSXT filed a petition for certiorari with the U.S. Supreme Court seeking review of the Fourth Circuit's opinion, (Prefiling Notification 11), which the Supreme Court denied, CSX Transp., Inc. v. Norfolk S. Ry., 2025 U.S. Lexis 1619 (S. Ct. 2025).

Applicants state that they are now seeking to obtain control authority as directed by the Board in the Declaratory Order Proceeding.[8] (Prefiling Notification 7-8.) As discussed in more detail below, on June 20, 2025, CSXT filed a petition to reject Applicants' application as incomplete, and Applicants responded on June 25, 2025.

Financial Arrangements. According to Applicants, there would be no new securities or other financial arrangements in connection with the Transaction. (Id. at 22.)

Passenger Service Impacts. Applicants state that there are currently no passenger or commuter rail operations on NPBL's rail system, and there is no plan to introduce any such operations as a result of the Transaction. (Id. at 45.)

Discontinuances/Abandonments. Applicants assert that no rail service would be discontinued or abandoned on any portion of NPBL's system as a result of the Transaction. (Id.)

Public Interest Considerations.[9] According to Applicants, in the 42 years that they have owned a majority interest in NPBL, they have not used their effective control to decrease the transportation options available to shippers, and they have no plans to change that policy moving forward. (Prefiling Notification 24.) Applicants state that intermodal shippers have and will continue to have numerous transportation options for moving their traffic, including (1) through NIT, served directly by NS; (2) through NIT, served directly by NPBL and indirectly by CSXT, (3) through NIT, served by CSXT via drayage to CSXT's nearby dock yard at Pinner's Point, (4) through VIG, served directly by CWRY and indirectly by CSXT and NSR, and (5) through

[8] Applicants state that they are "not seeking any form of retroactive approval." (Appl. 9.)

[9] Under the regulations, the detailed discussion of public interest justifications is to give "particular regard to the relevant statutory criteria." 49 CFR 1180.6(a)(2). In a significant transaction, the Board makes a determination as to whether, as a result of a transaction, there would likely be a substantial lessening of competition, creation of a monopoly, or a restraint of trade in freight surface transportation in any region of the United States, and whether any anticompetitive effects would be outweighed by the public interest in meeting significant transportation needs. See 49 U.S.C. 11324(d)(1)-(2).

VIG, served by CSXT and NSR via drayage.[10] (Appl. 34.) Applicants further state that shippers can move traffic directly by trucks and note that trucking holds the largest market share. (Id. at 34 & n.58, 47.) Applicants commit to "(1) ensuring that [their] 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 [Board's] trackage rights rate methodology imposed by the Board to preserve competition; and (3) establishing and maintaining a uniform cost-based switching rate." (Prefiling Notification 27.)

Applicants assert that the Transaction would generate public benefits moving forward. (Appl. 30.) According to Applicants, by continuing to impose a uniform switch rate, they would ensure that all NPBL customers contribute to NPBL's operating costs and that no customers are subsidizing other customers' portions of those costs.[11] (Id.) Applicants further assert that continuing to impose a cost-based rate, based on NPBL's variable and fixed costs, along with a modest return on its investment, would ensure the long-term viability of its operations and enable NPBL to continue to provide safe and reliable rail service to all its customers. (Id. at 30-31.)

Additionally, Applicants argue that there are public benefits to NPBL being part of the NS corporate family, including lower operating costs, better access to capital for infrastructure investments, cost savings from purchasing and from lower insurance premiums, and better liability protections. (Id. at 31.) Applicants also note the significant investments made in the international intermodal container market during the time that NS has owned the majority interest in NPBL and state that these 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." (Prefiling Notification 30-31, 65.)

Schedule for Consummation. Applicants assert that there is no new transaction to be consummated as NSC has had effective control of NPBL since the 1982 Transaction. (Id. at 22.)

Environmental Impacts. Applicants contend that the Transaction would not result in any operational changes (such as increases in rail traffic, train operations, or yard activity) that would exceed the Board's thresholds for environmental review in 49 CFR 1105.7(e)(4) and (5). (Prefiling Notification 43.) Applicants therefore assert that the Transaction does not require the preparation of environmental documentation under 49 CFR 1105.6(c)(1). (Id.)

Historic Impacts. Applicants assert that, under 49 CFR 1105.8(b)(3), the Transaction does not require a historic report because there would not be a substantial change to the level of maintenance of the railroad property. (Id. at 44.)

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[10] Applicants state that neither NSR nor CSXT currently use drayage for VIG container traffic. (Appl. 40-41.)

[11] According to Applicants, if NPBL lowered CSXT's switch rate, as CSXT has requested, the rate would be less than NPBL's variable costs, and other NPBL shippers would need to pay more to cover the difference. (Appl. 92-93.)

Labor Impacts. Applicants state that they do not plan to make any changes to the number of employees working on NPBL as a result of the Board approving the application. (Id. at 40.) According to Applicants, no employees of NS or NPBL will be dismissed or displaced as a result of Board approval. (Id.) Applicants state that, because no adverse impact on employees is expected, no employee protection agreements have been negotiated. (Id.)

PRIMARY APPLICATION ACCEPTED. Under 49 U.S.C. 11325(a) and 49 CFR 1180.4(c)(7)(i), the Board must accept a complete merger or control application, no later than 30 days after the application is filed, by publishing notice of the application in the Federal Register. An application is complete when it "contains all information for all applicant carriers required by these procedures, except as modified by advance waiver." 49 CFR 1180.4(c)(7); see also 49 CFR 1180.6-.8. If the Board determines that an application is incomplete, the Board must reject it by the end of the 30-day period. 49 U.S.C. 11325(a); 49 CFR 1180.4(c)(7)(ii). Here, the Board finds that Applicants have provided information sufficient to satisfy the filing requirements for a significant transaction application. Accordingly, the Board accepts the application for consideration. See 49 U.S.C. 11321-11326; 49 CFR 1180.

On June 20, 2025, CSXT filed a petition to reject the application, asserting that it is incomplete. (CSXT Pet. to Reject CSXT-10-3, June 20, 2025.) According to CSXT, Applicants' market analysis under 49 CFR 1180.7 is inadequate. (Id. at CSXT-10-5 to -7, -13 to -15.) CSXT argues that Applicants failed to provide an "analysis, supported by data, showing how an independent and neutral NPBL would act" and "how markets and competition would differ" without Applicants' control of NPBL. (Id. at CSXT-10-6, -13.) Additionally, according to CSXT, Applicants failed to (1) address the effect of inclusion (or lack of inclusion), (id. at CSXT-10-7 to -9); (2) submit a marketing plan, (id. at CSXT-10-9 to -10); (3) describe the relevant markets, (id. at CSXT-10-10 to -11); (4) demonstrate that Applicants' control would not result in a two-to-one reduction in competition, (id. at CSXT-10-12 to -13); and (5) support their claims regarding market comparables, (id. at CSXT-10-15 to -16).

Applicants replied to CSXT's petition to reject on June 25, 2025. Applicants assert that they have filed the information required for a significant transaction under the Board's regulations, as modified by the Board in Decision No. 2. (NS Reply to Pet. to Reject 6, 7-9, June 25, 2025.) With respect to their market analysis, Applicants argue that CSXT's petition challenges "how" Applicants addressed the requirements of 49 CFR 1180.7(a) but not "whether" they were addressed. (Id. at 12.) Applicants further argue that the Board's regulations provide applicants with significant leeway to develop the best evidence and choose the type and format of that evidence. (Id. at 12-13.) Applicants assert that they have addressed inclusion (to the extent it was even required),[12] (id. at 10-12); that their application reflects that there will be no consolidated marketing plan as NS is not seeking "authority to merge or otherwise consolidate with NPBL in a manner that would do away with the non-discriminatory, independent nature of NPBL's Board of Directors, its operating personnel, or its marketing personnel," (id. at 17); that they address the relevant markets by listing the different competitive options, including their

[12] Because Applicants addressed this criterion, the Board need not address Applicants' suggestion that such information may not have been required with this type of transaction.

characteristics and costs, (id. at 19); and that they provide sufficient competitive analysis to establish that there would be no two-to-one points as a result of the Transaction, (id. at 20).

The Board finds that the application, together with the Prefiling Notification, contains the information required for a significant transaction under the Board's regulations, as modified by the Board in Decision No. 2. CSXT's arguments largely challenge the merits of Applicants' positions—e.g., the way Applicants frame their market analysis, Applicants' position on whether inclusion would be appropriate in this case, and the reliability of Applicants' proposed market comparables. But the issue before the Board at this stage is whether the application "contains all information for all applicant carriers required by these procedures, except as modified by advance waiver," see 49 CFR 1180.4(c)(7), which the Board finds it does. The issues raised by CSXT's motion to reject are more appropriately addressed at the merits stage of the proceeding after the record has been developed.

In support of its position that the application is incomplete, CSXT points to CSX Corp.—Control & Merger—Pan Am Systems, Inc. (CSXT/Pan Am), Docket No. FD 36472. (See, e.g., CSXT Pet. to Reject CSXT-10-8 to -10, June 20, 2025.) However, given the particular history of this Transaction, with the unauthorized acquisition having occurred over 40 years ago, the type and format of evidence presented may differ from that which the Board would expect in a more routine proposed transaction proceeding. See 49 CFR 1180.7(c) ("For *significant* transactions, specific regulations on impact analyses are not provided so that the parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction.")

The Board has reviewed the application and determined that it contains sufficient information to be considered complete. Accordingly, CSXT's petition to reject the application is denied. As indicated by the procedural schedule discussed below, CSXT and other parties will have the opportunity to comment on the merits of the application at a later stage. The Board will conduct a careful review after the record is fully developed before making a determination as to whether the Transaction would likely substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest in meeting significant transportation needs. See 49 U.S.C. 11324(d)(1)-(2). The Board reserves the right to require the filing of additional information, if necessary for a full record.

PROCEDURAL SCHEDULE. As noted above, on March 21, 2025, Applicants filed a revised proposed procedural schedule reflecting the Board's determination that the Transaction is a significant transaction. CSXT filed a response to Applicants' motion on March 28, 2025, proposing a number of changes to Applicants' revised proposed procedural schedule. Applicants filed comments, including responses to many of CSXT's proposed changes, on April 28, 2025. The Board will address each proposed modification in turn.

First, in their revised procedural schedule, Applicants propose that comments, protests, requests for conditions, and any other evidence and argument in opposition to the application be due 60 days after their application is filed. (NS Revised Mot. 3, Mar. 21, 2025.) CSXT proposes that this deadline should be 90 days after the application is filed. (CSXT Response 2-4, Mar. 28, 2025.) CSXT argues that 90 days is more appropriate here because of the "serious, extensive, and longstanding competitive issues that will need to be addressed in this proceeding, and the

existence of a substantial record that will need to be reviewed." (Id. at 4.) CSXT further argues that syncing the deadline for written comments with the deadline for responsive applications would create efficiencies for the parties and is consistent with the Board's practice in past cases, such as Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad (DM&E), FD 35081, slip op. at 18 (STB served Dec. 27, 2007). (Id. at 5.) In response, NS argues that the applicants in DM&E proposed setting the deadline at 90 days, thereby waiving their right to a 60-day comment period. (NS Comments 9, Apr. 28, 2025.) The Board will set the deadline for comments, protests, requests for conditions, and any other evidence and argument in opposition to the application at 75 days following the submission of the application. This deadline provides some additional time for parties to review the record without unduly shortening the time for Applicants to prepare their rebuttal filing.[13]

Second, Applicants propose that discovery should close 135 days after the application is filed. (NS Revised Mot. 3, Mar. 21, 2025.)[14] CSXT opposes this proposal, arguing that closing discovery before rebuttals on responsive applications are filed is an "attempt to avoid any discovery on assertions made by NS in response to responsive, including inconsistent, applications." (CSXT Response 7, 9, Mar. 28, 2025.) According to CSXT, a party is entitled to discovery as long as the record is open. (Id. at 9.) Applicants argue that CSXT's proposal is an attempt to delay the proceeding and that, in control proceedings, the timing of discovery is dictated by the controlling statutes and regulations, such as those which set a deadline for the close of the evidentiary proceeding. (NS Comments 5-7, Apr. 28, 2025.)

Agency precedent is clear that "[p]arties have the right to submit the final evidence and close the record on the merits of their application." Union Pac.—Control—Chi. & N. W. Transp., FD 32133 et al., slip op. at 8 (ICC served July 11, 1994). This includes both primary applicants and responsive applicants. See id. at 8. The Board therefore finds that all discovery in this proceeding should be complete by the deadline for the submission of rebuttals in support of responsive applications. There are, however, "limits on the type of evidence which is appropriate for rebuttal and thus there are also limits on the latitude for discovery." See id. Accordingly, any late-stage discovery, e.g., in preparation for rebuttal filings, should be limited

[13] Applicants suggest that 49 U.S.C. 11325(c)(1) prohibits the filing of comments any later than 60 days from the filing of a significant application, unless consented to by the applicant. (NS Comments 11, Apr. 28, 2025.) That section, however, creates a statutory right for the commenting party to file comments within 60 days, without any restriction on the Board's discretion to provide additional time within the statutory deadline for concluding evidentiary proceedings. Compare 49 U.S.C. 11325(c)(1) ("[w]ritten comments . . . may be filed with the Board within 30 days") with 49 U.S.C. 11325(a) ("[t]he Board shall publish notice . . . by the end of the 30th day after the application is filed").

[14] Applicants also proposed that discovery begin on the date the Board publishes notice of its acceptance of the application in the Federal Register, (NS Revised Mot. 3, Mar. 21, 2025), and CSXT objected to this proposal. By order dated April 11, 2025, the Board determined that it would be appropriate for discovery to begin immediately. See Decision No. 3, FD 36836, slip op. at 2 n.2, recons. denied, Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 5-7 (STB served June 13, 2025).

to those issues that are appropriate for rebuttal. See 49 CFR 1112.6 ("Rebuttal statements shall be confined to issues raised in reply statements to which they are directed.").

Third, under Applicants' proposed schedule, rebuttals in support of responsive applications would be due 30 days after comments on those applications are due. (NS Revised Mot. 3, Mar. 21, 2025.) CSXT proposes that this deadline be 45 days after comments to responsive applications are filed. (CSXT Response 6, Mar. 28, 2025.) CSXT argues that, under its proposal, both Applicants and responsive applicants would have 45 days to prepare rebuttals regarding their respective applications. (Id.) The Board will set the deadline for rebuttals in support of responsive applications at 30 days after comments to responsive applications are filed. This is consistent with the procedural schedules adopted in both DM&E and CSXT/Pan Am. See DM&E, FD 35081, slip op. at 18; CSXT/Pan Am, FD 36472 et al., slip op. at 30 (STB served July 30, 2021).

Fourth, Applicants include a placeholder in their proposed procedural schedule for a public hearing, to be held, if deemed necessary, at a date to be determined. (NS Revised Mot. 3, Mar. 21, 2025.) Applicants state, however, that they do not believe a public hearing will be required. (Id. at 3 n.8.) CSXT argues that a hearing will be necessary and proposes striking "(if necessary)" from the schedule. (CSXT Response 3, 7, Mar. 28, 2025.) The Board will decide whether to conduct a public hearing 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.").

Lastly, Applicants propose that final briefs be due 15 days after the submission of rebuttals in support of responsive applications. (NS Revised Mot. 3, Mar. 21, 2025.) CSXT proposes a 30-day period, arguing that 30 days would "assist the Board by giving the parties a better opportunity to summarize what will likely be a complex record" and is consistent with the statutory deadline for control proceedings. (CSXT Response 6, Mar. 28, 2025.) In both DM&E and CSXT/Pan Am, the deadline for final briefs was approximately 45 days following the submission of rebuttals in support of responsive applications. See DM&E, FD 35081, slip op. at 18; CSXT/Pan Am, FD 36472 et al., slip op. at 29-30. Given that the public hearing, should the Board decide to conduct one, would be held between the filing of rebuttals and final briefs, the Board finds that it is appropriate to follow the precedent set in DM&E and CSXT/Pan Am.

The adopted procedural schedule is in the Appendix to this decision.[15]

NOTICES OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, by July 23, 2025, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and

[15] The dates shown in the "DATES" section above and the Appendix to this decision have been calculated based on a Federal Register publication date of July 10, 2025. Should publication of this decision occur on a different day, the Board will issue a revised procedural schedule.

Applicants' representative. Parties who have already submitted a notice of intent to participate are not required to resubmit an additional notice.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a "Non-Party." Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices, but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

SERVICE OF PARTIES OF RECORD. Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

ENVIRONMENTAL MATTERS. The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4370m-11, requires that the Board take environmental considerations into account in its decision-making. Under the Board's environmental rules, actions with environmental effects that are ordinarily insignificant may be excluded from NEPA review without a case-by-case environmental review. Such activities are covered as a "categorical exclusion," which is a category of actions that "a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of [42 U.S.C.] 4332(2)(C)."[16] 42 U.S.C. 4336e(1). In its environmental rules, the Board has promulgated several categorical exclusions. As pertinent here, acquisition of control is a category of action that normally requires no environmental review if certain thresholds would not be exceeded.[17] See 49 CFR 1105.6(b)(4), (c)(1)(i).

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[16] 42 U.S.C. 4332(2)(C) refers to the section of NEPA that mandates federal agencies prepare a detailed environmental statement for major federal actions significantly affecting the quality of the human environment.

[17] The thresholds that are typically applicable to a transaction such as this are the air quality thresholds at 49 CFR 1105.7(e)(5). These thresholds differ depending on whether a rail line segment is in an area designated as in "attainment" or "nonattainment" with the National Ambient Air Quality Standards established under the Clean Air Act (42 U.S.C. 7401-7671q). For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in (1) an increase of at least eight trains per day on any segment of rail line affected by the proposal, (2) an increase in rail traffic of at least 100%

The Transaction. OEA has reviewed Applicants' application and based on the current record has determined that none of the Board's thresholds would be exceeded as a result of the Transaction because there would be no increase of eight trains per day or 100% increase in rail traffic or gross-ton miles. 49 CFR 1105.7(e)(5)(i). NS currently has three scheduled train arrivals and three scheduled train departures at NIT per day. (Appl. 68.) NS's Sewells Point Line, which serves NIT, supports an average of 10 to 15 trains per day. (Id.) As noted above, NPBL operates as a switching and terminal carrier and serves 24 industries on its system, in addition to serving NS and CSXT. (Id. at 70.) According to Applicants, they have effectively controlled NPBL for 42 years and have no plan to change the operating plan with respect to patterns or types of service as a result of the Board's approval of their acquisition of control. (Prefiling Notification 44, 77.) Applicants further explain that the requested Board approval would not result in an increase or decrease of rail traffic on either NS or NPBL lines, or material changes in rail yard activity. (Id. at 43-44, 109-10.) Therefore, Applicants state that no environmental review is necessary because Board approval would not result in an increase in train or truck activity sufficient to trip the thresholds at 49 CFR 1105.7(e)(4) and (5). (Id. at 43.)

Historic Review. The Board's regulations also provide that historic review normally is not required for acquisitions where there would be no significant change in operations and properties 50 years old and older would not be affected. See 49 CFR 1105.8. Applicants contend that no historic review is required because the Transaction "will not substantially change the level of maintenance of the railroad property," under 49 CFR 1105.8(b)(3). (Prefiling Notification 44.)

Conclusions. Based on the information provided to date, and after consultation with OEA, the Board determines that an environmental and historic review for the Transaction is not warranted because it does not appear that the thresholds triggering an environmental review would be met and there is nothing in the available environmental information to indicate the potential for significant environmental or historic impacts should the Board approve the Transaction. CSXT asserts that it is too early for the Board to make any decisions related to environmental matters because it is "unclear how NS's unlawful control over NPBL affects the [Board's] environmental review." (CSXT Response 11, Mar. 28, 2025.) However, given the need for the Board to draw a "manageable line" when conducting its environmental reviews, it

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(measured in annual gross ton miles), (3) an increase in carload activity at rail yards of at least 100%, or (4) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment. See 49 CFR 1105.7(e)(5)(i). For rail lines in nonattainment areas, environmental documentation typically is required when the proposed action would result in (1) an increase of at least three trains per day on any segment of rail line, (2) an increase in rail traffic of at least 50% (measured in annual gross ton miles), (3) an increase in carload activity at rail yards of at least 20%, or (4) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any given road segment. See 49 CFR 1105.7(e)(5)(ii). The Board's Office of Environmental Analysis (OEA) has confirmed that NPBL does not pass through any nonattainment areas. Moreover, should the Board approve the Transaction, Applicants do not anticipate any diversion of rail carloads to motor carriage that would implicate the energy thresholds at 49 CFR 1105.7(e)(4) and the truck traffic thresholds at 49 CFR 1105.7(e)(5).

would not be practical, or even possible, for it to attempt to investigate the potential environmental and historic impacts that may have resulted over the years from NS effectively taking control of NPBL in 1982. See Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. ––, 145 Sup. Ct. 1497, 1513 (2025) (confirming agencies' "broad latitude" about "where to draw the line—including . . . how far to go in considering indirect environmental effects from the project at hand"). It is highly questionable whether such a review, with its obvious difficulties and limitations, would yield information useful to the decision-making process. In this case, the "manageable line" for environmental and historic review purposes is best drawn by considering any potential impacts that may be caused by Board approval. As noted, there is no indication that Board approval of NS's acquisition of control of NPBL would result in significant environmental or historic impacts.

For these reasons, the Board concludes, based on the current record, that the Transaction qualifies for a categorical exclusion from environmental review under 49 CFR 1105.6(c)(1)(i) and that no historic reporting under 49 CFR 1105.8 is required.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices on those persons designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at www.stb.gov.

ACCESS TO FILINGS. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at www.stb.gov.[18] In addition, the application may be obtained from Applicants' representatives at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in Docket No. FD 36836 is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision and the procedural requirements described in this decision.

[18] Applicants submitted a public version and highly confidential version of their application. The public version is available on the Board's website. The highly confidential version may be obtained subject to the provisions of the protective order issued by the Board on February 19, 2025.

3. CSXT's petition to reject the application is denied.

4. This decision is effective on the date of service.

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

APPENDIX
PROCEDURAL SCHEDULE

June 13, 2025	Application filed.
July 10, 2025	Board notice of acceptance of application published in the Federal Register.
July 23, 2025	Notices of intent to participate in this proceeding due.
August 12, 2025	Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due.
August 27, 2025	Comments, protests, requests for conditions, and any other evidence and argument in opposition to the application due. This includes any comments from DOJ and USDOT.
September 8, 2025	Responsive, including inconsistent, applications due.
October 27, 2025	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 due.
November 26, 2025	Rebuttal in support of responsive, including inconsistent, applications due.
TBD[19]	Public hearing (if necessary).
January 6, 2026	Final briefs due. (Close of the record.)
April 6, 2026	Date by which a final decision will be served.
May 6, 2026[20]	Effective date of final decision.

[19] As noted above, the Board will decide whether to conduct a public hearing, which would be held between the filing of rebuttals and final briefs, in a later decision after the record has been more fully developed. See 49 U.S.C. 11324(a).

[20] The final decision will become effective 30 days after it is served.