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SERVICE DATE – MARCH 14, 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. 2 in Docket No. FD 36836; Notice of Receipt of Prefiling Notification.

SUMMARY: The Surface Transportation Board (Board) has reviewed the submission filed February 14, 2025, by Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS or Applicants). The submission, styled as an application for a minor transaction, seeks Board approval for Applicants to acquire 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 “Proposed Transaction.”

The Board finds that the Proposed Transaction would be a “significant” transaction. Accordingly, Applicants’ submission cannot be treated as an application at this time. The Board will consider the February 14, 2025 submission as a prefiling notification and publish notice of it in the Federal Register. Applicants will be required to perfect their application by supplementing their submission, to the extent discussed in this decision, between April 14 and June 14, 2025. Applicants must also file with the Board, by March 21, 2025, a revised proposed procedural schedule that reflects the Board’s determination that the Proposed Transaction is a significant transaction. The proposed procedural schedule should indicate the year to be used for the impact analysis required in significant transactions and the approximate filing date of Applicants’ anticipated supplement. Lastly, when they file their supplement to perfect their application, Applicants must submit the difference between the filing fee for a minor transaction (which Applicants already have paid) and the fee for a significant transaction.

DATES: Applicants must file a revised proposed procedural schedule with the Board by March 21, 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: Applicants seek the Board's review and authorization pursuant to 49 U.S.C. 11323-25 and 49 CFR part 1180 to control NPBL. (Notice 7.)¹ NSR is a Class I rail carrier that operates approximately 19,300 route miles of track.² (Id. at 40.) NPBL is a terminal switching company, currently owned by NS (57.14%) and CSX Transportation, Inc. (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 the City of Chesapeake, Va., to the City of Norfolk, 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 with the Buckingham Branch Railroad at Norfolk. (Id. at 58.)

The NPBL Trackage Rights facilitate NPBL's access to the Norfolk International Terminal (NIT). (Id. at 58.) NIT is one of two primary container terminals at the Port of Virginia (POV). (Id. at 60.) The NSR track, over which the NPBL Trackage Rights run, connects directly to NIT. (Id. at 58.) According to Applicants, other 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.) The other, smaller container terminal at POV is the Virginia International Gateway (VIG). (Id. at 60.) NSR and CSXT both access VIG through the Commonwealth Railway, a subsidiary of Genesee & Wyoming. (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 in 1897 when NPBL was created (the 1897 Governing Document). (Id. at 8 & n.3, 12, 24.)

¹ Because the Board will treat the February 14, 2025 submission as a pre-filing notification, that submission will be referred to as the "Notice." Additionally, all references to pleadings on the record will cite to the cumulative page numbers therein to the extent they are available.

² NS conducts operations in Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. (Notice 40.)

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, NSR filed a petition asking the Board to set trackage rights compensation for the NPBL Trackage Rights. Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223 (STB served Mar. 29, 2019). As discussed in more detail below, that proceeding was held in abeyance pending the resolution of related federal court litigation. Norfolk S. Ry.—Pet. to Set Trackage Rts. Comp.—Norfolk & Portsmouth Belt Line R.R., FD 36223 (STB served July 25, 2019).

According to Applicants, they have effectively controlled NPBL for 42 years. (See, e.g., Notice 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), and CSXT, (id. at 59)—and Norfolk Southern was a subsidiary of SRC, (id. at 9). The ICC approved NSC’s application in 1982 (the 1982 Transaction), resulting in NSC owning 57.14% of the shares of NPBL. (Id. at 9, 60.)

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. (Notice 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. (Notice 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). (Notice 9); Norfolk S. Ry.—Exemption—Norfolk & W. Ry., FD 33648 (STB served Aug. 31, 1998).

Applicants state that, 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. (Notice 11.) In 2021, NSR filed 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., 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. (Id. at 1, 9-17.) The Board noted that any future decision concerning control would benefit from the findings of the district court, and its expectation that NSR would address the unauthorized control issue immediately following resolution of the district court proceeding, including any appeals. (Id. at 17 & n.25.)

According to Applicants, the district court granted summary judgment in favor of NS and NPBL. (Notice 12.) Applicants state that the court ruled that CSXT’s claims related to conduct before 2013 were time-barred (without addressing the merits of those claims) and that CSXT’s claims related to conduct after 2013 were unsupported. (Id. at 12, 36.) Applicants further state

that the United States Court of Appeals for the Fourth Circuit upheld the district court's judgment. (Id.) On November 26, 2024, CSXT filed a petition for certiorari with the Supreme Court seeking review of the Fourth Circuit's opinion. (Id. at 11.) While noting that not all appeals have been exhausted given the pending petition for certiorari, Applicants state that they nevertheless filed their submission now in light of the low percentage of cases for which such a certiorari petition is granted and the Board's directive in the declaratory order proceeding. (Id.)

Applicants assert that the Proposed Transaction would result in no adverse effects on intramodal and intermodal competition. (Notice 23.) According to Applicants, they have not used their control of NPBL to decrease the transportation options of shippers and they have no plans to change that policy moving forward. (Id. at 24.) NS commits 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." (Id. at 27.) Applicants further state that NS, CSXT, private and public terminal companies, and governmental entities have all significantly invested in the international intermodal container market. (Id. at 30.) According to Applicants, 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" if the Proposed Transaction were approved. (Id. at 31.)

On February 27, 2025, CSXT filed a petition to reject Applicants' February 14, 2025 submission, arguing that it would be inappropriate to treat the Proposed Transaction as a minor transaction given "serious competitive effects involving NS's unauthorized control of NPBL." (CSXT Pet. CSXT-1-18, see also id. at CSXT-1-20 to -24.) CSXT argues that Applicants failed to provide any substantial data or evidence on the relevant markets and competitive effects as necessary to determine whether the Proposed Transaction is minor or significant. (Id. at CSXT-1-19.) According to CSXT, NS is asking the Board to "rubber stamp" unlawful control that NS has held since 1982. (Id. at CSXT-1-7.) CSXT argues, however, that the Board "must consider the competitive effects of NS's proposal by looking at two different scenarios: (1) NPBL operating as an independent, neutral railroad (without NS control), and (2) NPBL operating as an alter-ego of NS (with NS control)." (Id. at CSXT-1-7.) CSXT also refutes Applicants' characterization of the related federal court litigation, noting that, although the district court dismissed the complaint on statute of limitations grounds and lack of ability to grant injunctive relief, the court nonetheless determined that "CSXT had developed a sufficient evidentiary record on the existence of anticompetitive conduct and anticompetitive effects to warrant a trial." (Id. at CSXT-1-21; see also id. at CSXT-1-23 to -26.) CSXT argues that "NS does not even allege the existence of any public interest benefits related to its proposal." (Id. at CSXT-1-18.) CSXT asks that the Board classify the Proposed Transaction as significant, reject Applicants' submission as untimely and incomplete, and direct Applicants not to file a significant application seeking control authority regarding NPBL until after resolution of the district court proceeding, including any appeals. (Id. at CSXT-1-31.)

On March 5, 2025, the Virginia Port Authority (VPA) filed comments concerning the classification of the Proposed Transaction. VPA, together with Virginia International Terminals,

Inc., does business as POV. (VPA Comment 1.) VPA states that, as a result of Applicants' control of NPBL, NSR handles nearly all rail traffic that moves direct to rail at NIT. (Id. at 3, 4 fig.2.) According to VPA, this arrangement compromises operational efficiency at the port because cargo at NIT that is bound for CSXT rail service must be drayed (and vice versa for export traffic). (Id. at 4.) VPA also notes that rail cargo at VIG, which both NSR and CSXT access via the Commonwealth Railway, "is served efficiently with less operational cost and is nearly evenly split between CSX[T] and NSR." (Id. at 5 & fig.3.) VPA asserts that "Virginia, and the customers it serves, would benefit from a comprehensive analysis of NPBL control by NSR rather than the simplistic claim that the Board should just formalize that longstanding control and effects thereof." (Id. at 5.)

On March 7, 2025, Applicants filed a reply in opposition to CSXT's petition to reject. According to Applicants, CSXT is attempting to delay the proceeding by manipulating the Board's processes. (Applicants Reply 11-12.) Applicants argue that their submission is timely and ripe, that there are no legal impediments to the filing of an application at this time, and that prompt resolution is in the public interest. (Id. at 8, 10-11.) Applicants further argue that CSXT's claim that the Proposed Transaction is significant is unwarranted and unsupported. (Id. at 13-14, 25-34.) Applicants continue to assert that the Proposed Transaction will clearly have no anticompetitive effects. (See, e.g., id. at 18-20, 21-25.)³

On March 10, 2025, NPBL replied to CSXT's petition to reject. NPBL states that it takes no position at this time on the merits of CSXT's petition or Applicants' February 14, 2025 submission but claims that CSXT mischaracterized the proceeding in Docket No. FD 36223, which concerns setting the compensation terms for the NPBL Trackage Rights. (NPBL Reply 1, 3.)

CLASSIFICATION OF THE PROPOSED TRANSACTION. When a transaction does not involve the merger or control of two or more Class I railroads, its classification will depend upon whether the transaction would have "regional or national transportation significance." 49 U.S.C. 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as minor—and thus not having regional or national transportation significance—if a determination can be made that either (1) the transaction clearly will not have any anticompetitive effects, or (2) any anticompetitive effects will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as significant if neither of these determinations can clearly be made.

A transaction classified as significant must meet different procedural and informational requirements than one classified as minor. For example, applicants are required to submit more detailed information regarding competitive effects, operating plans, and other issues for a significant transaction than for a minor transaction. 49 CFR 1180.6(c), 1180.7(a) & (c), 1180.8(b). Responsive applications are not permitted for a minor transaction but are allowed for

³ On March 10, 2025, CSXT filed a reply to Applicants' reply to CSXT's petition to reject.

a significant transaction. 49 CFR 1180.4(d). The time limit for Board review is also shorter for a minor transaction, and prefiling notification is not required. 49 U.S.C. 11325(d); 49 CFR 1180.4(e). Finally, the filing fee for a significant transaction is higher than the fee for a minor transaction. 49 CFR 1002.2(f).

Applicants contend that the Proposed Transaction is minor because it clearly would not have any anticompetitive effects.⁴ (Notice 7.) According to Applicants, “[t]he 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.” (*Id.* at 14.) Applicants state that granting Applicants control authority will not change the manner in which NPBL operates today and that no shipper will lose a competitive option. (*Id.* at 8, 14.) According to Applicants, shippers will retain all of their intermodal traffic options, including rail, truck, drayage, barges, and other ports. (*Id.* at 38.) Applicants also state that no intermodal customer will see a reduction in existing competitive options, nor will CSXT see a reduction in its existing access to NIT. (*Id.*)

Applicants claim that the intermodal traffic at NIT faces robust competition among railroads, trucks, barges, and other ports. (*Id.* at 37.) Applicants state that any attempt by NS to use its control of NPBL to raise rates or disadvantage CSXT would be contrary to NS’s and NPBL’s interest as it would likely cause shippers to increase their share of drayage to CSXT’s nearby rail yard, increase use of VIG (where both CSXT and NSR provide service via Commonwealth Railway), or shift traffic to trucks or other ports—some of which are exclusively served by CSXT. (*Id.* at 28, 37.) According to Applicants, in order to ensure that shippers continue to have competitive access to NPBL, NS commits that 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 that 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.⁵ (*Id.* at 15.)

The purpose of the test articulated in 49 CFR 1180.2 is to allow the Board to lessen the regulatory burden when “a determination can *clearly* be made, at the time the application is filed, that the transaction passes muster under” the statute. See R.R. Consolidation Procs.: Definition of, & Requirements Applicable to, “Significant Transactions,” 9 I.C.C.2d 1198, 1200 (1993). Designating a transaction under the regulations at 49 CFR 1180.2 permits the Board to select the most appropriate procedures to apply to a proposed transaction. See Canadian Pac. Ry.—

⁴ Applicants state that, because the Proposed Transaction will not result in any anticompetitive effects, the Board need not analyze whether the anticompetitive effects would outweigh the public interest in meeting significant transportation needs. (See Notice 17 n.29.)

⁵ “The SSW Compensation methodology 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 the owning carrier’s capital dedicated to the track.” BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry., FD 32760 (Sub-No. 46), slip op. at 3 (STB served Nov. 28, 2023).

Control—Dakota, Minn. & E. R.R., FD 35081, slip op. at 6 (STB served Nov. 2, 2007). It is not the purpose of 49 CFR 1180.2(b) to force the Board to make an advance determination on the extent of the likely competitive effects or to weigh those effects against the public interest in meeting significant transportation needs in cases where more information would be helpful. Id. Any broader reading of the regulation could effectively require a preliminary determination on the ultimate issue in the case even where the Board regards such a determination as premature. Id.

Here, the Board cannot make a determination based on the current record that the transaction *clearly* would not have any anticompetitive effects. For example, Applicants argue that 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.” (Notice 67.) However, CSXT alleges that NS’s actions during its unauthorized control have led to CSXT not using NPBL to reach NIT other than in 2015, when CSXT provided “de minimis service” to NIT via rail “during a period of extraordinary circumstances and demand caused by the February 2015 West Coast port labor strike.” (CSXT Pet. CSXT-1-541.) Given these questions and other arguments raised by CSXT and VPA regarding CSXT’s access to NIT, the Board is unable to conclude on the face of Applicants’ submission that the Proposed Transaction *clearly* would not have any anticompetitive effects. For the same reason, the Board is unable to conclude at this stage that any anticompetitive effects would *clearly* be outweighed by the Proposed Transaction’s potential contribution to the public interest in meeting significant transportation needs. Indeed, Applicants make no argument in their submission that anticompetitive effects would be outweighed by the Proposed Transaction’s contribution to the public interest in meeting significant transportation needs, and instead rested on their assertion that there would be no anticompetitive effects. (Notice 17 n.29.) Because the Board cannot make either of the determinations required by 49 CFR 1180.2(b), the Board finds that the Proposed Transaction is a significant transaction.⁶ The Board is therefore unable to accept the February 14, 2025 submission as an application.⁷

Because Applicants argue that the Proposed Transaction is a minor transaction, they did not file the required prefiling notification before their February 14, 2025 submission. The Board will consider the February 14, 2025 submission as a prefiling notification and publish notice of it in the Federal Register.⁸ This will permit Applicants to perfect their application by

⁶ The classification of the Proposed Transaction as significant should not be read to suggest how the Board might ultimately assess and weigh the effects of the transaction under 49 U.S.C. 11324(d) after development of a more complete record.

⁷ CSXT’s petition to reject, to the extent that it is not addressed by the Board’s determinations, is denied.

⁸ CSXT asks the Board to reject Applicants’ February 14, 2025 submission as untimely and direct Applicants not to file a significant application until after resolution of the district court proceeding, including any appeals. (CSXT Pet. CSXT-1-9, CSXT-1-31.) Given the current status of the antitrust litigation, the Board will treat Applicants’ submission as a prefiling notification for a significant transaction but will direct Applicants to promptly notify the Board

supplementing their submission, to the extent discussed below, with the requisite information for a significant transaction, within two to four months of the February 14, 2025 submission.⁹ See 49 CFR 1180.4(b), 1180.6(c), 1180.7(a) & (c), 1180.8(b).

As noted above, a transaction classified as significant must meet different informational requirements than one classified as minor. While the Board finds that its analysis would benefit from some of the more robust data required for significant transactions, not all of the additional information required for significant transactions is necessary here. Specifically, the Board will waive the requirements in 49 CFR 1180.6(b)(3), (b)(6), and (b)(8), all of which require information about an applicant's corporate structure. The Board will also waive 49 CFR 1180.6(b)(7), which applies only to noncarriers, because NSR is a carrier. (See Notice 40.) Lastly, given that Applicants are already the majority shareholder of NPBL and have stated that there will be no change from current operations or in existing traffic volumes should the Board approve the Proposed Transaction, (see, e.g., Notice 43, 45, 109), the Board will waive the requirements of 49 CFR 1180.8(b), which require a more detailed operating plan than is required for minor applications. Applicants are expected to meet all informational requirements for significant transactions that are not waived by the Board in this decision.

In addition to the impact analysis and any supporting documents Applicants provide pursuant to 49 CFR 1180.7(a) and (c), the Board will direct Applicants to file (1) two years of traffic tapes for NPBL and (2) a list of the top 10 NPBL customers for the past five years, including volumes moved by each customer (tons by two-digit Standard Transportation Commodity Code for non-containerized freight and containers otherwise). See 49 CFR 1180.4(c)(2)(v) ("The applicant shall submit such additional information to support its application as the Board may require."). Additionally, Applicants should address and present information on the costs and operational efficiencies of the alternative approaches to moving containerized freight by rail in and out of the two major container terminals at the Port of Virginia (NIT and VIG). This information should include the use of on-dock, near dock, NPBL, and Commonwealth Railway, and include the costs and impacts of drayage, when required. This information will provide the Board with more insight into the nature of competition in the port area.

Upon filing a supplement perfecting their application for a significant transaction, Applicants will also be required to pay the remainder of the filing fee applicable for a significant transaction. See 49 CFR 1002.2(f).

PROCEDURAL SCHEDULE. When filing a pre-filing notification for a significant transaction, applicants must propose a procedural schedule for Board review of their proposed transaction. 49 CFR 1180.4(b)(4)(i). Concurrently with their February 14, 2025 submission, Applicants filed a motion for proposed procedural schedule reflecting the statutory deadlines for processing minor applications. The Board's determination that this transaction is significant

of any court orders in that litigation, including any order by the Supreme Court concerning the pending petition for certiorari.

⁹ The Board's regulations require that applicants give notice two to four months prior to the filing of an application in a significant transaction. See 49 CFR 1180.4(b)(1).

necessitates a different procedural schedule than that proposed by Applicants. Accordingly, no later than March 21, 2025, Applicants must file with the Board a revised proposed procedural schedule that reflects the Board's determination that this is a significant transaction. The proposed procedural schedule shall indicate the year to be used for the impact analysis and the approximate filing date of the supplement that will perfect the application in accordance with 49 CFR 1180.4(b). The Board will designate the year to be used for impact analysis when it publishes notice of the revised proposed procedural schedule. Comments on the proposed procedural schedule will be due 10 days after publication of the proposed procedural schedule in the Federal Register.¹⁰

SERVICE LIST. Every filing made by a Party of Record 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.

In past proceedings, the Board has served a notice containing the official service list and required each Party of Record to serve copies of all filings previously submitted by that party upon all other Parties of Record (to the extent such filings have not previously been served upon such other parties), and to file a certificate of service with the Board indicating that it had done so. Given the availability of the service list generated on the Board's website for individual proceedings, the Board finds it unnecessary to serve an official service list.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices on those persons designated on the service list as a Party of Record or Non-Party. All other interested persons are encouraged to secure 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 Notice and other filings in Docket No. FD 36836 will be furnished to interested persons upon request and will also be available on the Board's website at www.stb.gov.¹¹ In addition, the Notice and other filings by Applicants may be obtained from Applicants' representatives at the addresses indicated above.

¹⁰ CSXT states in its petition to reject that it strongly opposes the expedited procedural schedule Applicants had proposed concurrently with their February 14, 2025 submission. (See CSXT Pet. CSXT-1-31 n.18.) Because Applicants are ordered to submit a revised proposed procedural schedule that reflects the Board's determination that the Proposed Transaction is significant, parties may comment on the revised proposed procedural schedule after it is published in the Federal Register.

¹¹ Applicants have filed a public version and highly confidential version of the Notice. The highly confidential version may be obtained subject to the protective order issued by the Board on February 19, 2025.

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

It is ordered:

1. The submission filed by Applicants on February 14, 2025, is treated as the prefiling notification of the anticipated application.

2. Applicants are directed to supplement the prefiling notification by submitting to the Board, no later than March 21, 2025, a revised proposed procedural schedule that is consistent with the Board's determination that the Proposed Transaction is a significant transaction. The submission must indicate the year to be used for the impact analysis required in a significant transaction and the approximate filing date of the supplement that will perfect the application.

3. Applicants are directed to perfect their application for a significant transaction, as described above, and to submit the difference between the filing fee for a minor transaction and the fee for a significant transaction, between April 14 and June 14, 2025.

4. The Board's regulations are waived to the extent discussed in this decision.

5. CSXT's petition to reject, to the extent that it is not addressed by the Board's determinations above, is denied.

6. This decision is effective on March 14, 2025.

Decided: March 11, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz. Board Member Fuchs concurred with a separate expression.

BOARD MEMBER FUCHS, concurring:

I write separately to remind the parties in this proceeding, and practitioners generally, that the Board's regulations do not permit a reply to reply. 49 CFR 1104.13(c). A reply to a reply causes especially acute difficulties where, as here, the Board must act within a relatively short statutorily prescribed period. 49 U.S.C. 11325(a). Efficient management of the Board's resources requires the orderly administration of cases, and parties' filings play a critical role in achieving this objective. While I acknowledge that the Board has liberally accepted replies to replies over the years, going forward I plan to ask the Board to more strictly enforce this rule to ensure fulsome initial filings, reduce burden on parties, and better use agency resources.