

# MULLINS LAW GROUP PLLC

*Transportation Solutions for the 21<sup>st</sup> Century*

2001 L Street NW, Suite 720

Washington, DC 20036

**William A. Mullins**

[wmullins@mullinslawgroup.net](mailto:wmullins@mullinslawgroup.net)

mullinslawgroup.net

Telephone: (202) 663-7850

Direct: (202) 663-7823

Facsimile: (202) 464-9123

January 2, 2026

310638

## **VIA E-FILING**

Chief of Case Administration

Office of Chief Counsel

Surface Transportation Board

395 E Street, SW

Washington DC 20423-0001

ENTERED  
Office of Chief Counsel  
January 2, 2026  
Part of  
Public Record

Re: Union Pacific Corporation and Union Pacific Railroad Company —  
Control— Norfolk Southern Corporation and Norfolk Southern Railway  
Company, FD No. 36873

Dear Chief of Case Administration:

Enclosed for filing in the above-captioned docket is Norfolk Southern Corporation's and Norfolk Southern Railway Company's Reply Comments To The Comments Of CSX Transportation, Inc. On The Completeness Of Application With Respect To The Norfolk & Portsmouth Belt Line Railroad (NS-16). If there are any questions about this matter, please contact me directly, either by telephone at 202-663-7823 or by e-mail at [wmullins@mullinslawgroup.net](mailto:wmullins@mullinslawgroup.net).

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins

Attorney for Norfolk Southern Corporation and  
Norfolk Southern Railway Company

Enclosures

cc: Parties of Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**DOCKET NO. FD 36873**

---

**UNION PACIFIC CORPORATION AND  
UNION PACIFIC RAILROAD COMPANY  
—CONTROL—  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY**

---

**NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY'S REPLY COMMENTS  
TO THE COMMENTS OF CSX TRANSPORTATION, INC. ON THE  
COMPLETENESS OF APPLICATION WITH RESPECT TO THE NORFOLK &  
PORTSMOUTH BELT LINE RAILROAD**

---

**Jason M. Morris  
Joseph H. Carpenter  
Thomas E. Zoeller  
Hanna M. Chouest  
T. Matthew Lockhart  
Julianne C. Freeman  
NORFOLK SOUTHERN CORPORATION  
650 W Peachtree St N.W.  
Atlanta, GA 30308  
Tel: (470) 571-5208**

**William A. Mullins  
Rose-Michele Nardi  
John V. Edwards  
MULLINS LAW GROUP PLLC  
2001 L St., N.W.  
Suite 720  
Washington, D.C. 20036  
Tel.: (202) 663-7823**

**Attorneys for Norfolk Southern  
Corporation and Norfolk Southern Railway  
Company**

**January 2, 2006**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**DOCKET NO. FD 36873**

---

**UNION PACIFIC CORPORATION AND  
UNION PACIFIC RAILROAD COMPANY  
—CONTROL—  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY**

---

**NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY'S REPLY COMMENTS  
TO THE COMMENTS OF CSX TRANSPORTATION, INC. ON THE  
COMPLETENESS OF APPLICATION WITH RESPECT TO THE NORFOLK &  
PORTSMOUTH BELT LINE RAILROAD**

---

**INTRODUCTION AND SUMMARY OF ARGUMENT**

For more than ten years, CSXT Transportation (“CSX”) has engaged in a futile attempt to seek government intervention to provide it with a competitive advantage for intermodal traffic to/from the East Coast Ports and the heartland of the United States. This time, CSX asks the Board to require Union Pacific (“UP”) to submit a separate application for authority to control the Norfolk & Portsmouth Belt Line Railroad (“NPBL”) so that CSX can have yet another bite at the apple to obtain regulatory conditions to give it an unearned advantage at the Port of Virginia, specifically at the Norfolk Intermodal Terminal (“NIT”). CSX has opened up this other front presumably as a back-up in the event it fails in its attacks and requests for conditions in FD 36836, Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line R. Co., (“NS/NPBL”) whereby NS seeks legal authority to do what it has de facto done for 42 years – which is to legally control NPBL.

In this proceeding, CSX contends that UP's application to acquire control of Norfolk Southern Corporation ("NSC"), and thereby Norfolk Southern Railway ("NS"), is incomplete because it implicitly seeks control of the NPBL without filing a separate control application. The core claim is that UP cannot lawfully obtain control of NPBL through its acquisition of NS because NS itself does not have Surface Transportation Board ("STB") authority to control NPBL. Therefore, according to CSX, UP must file a separate, full control application for NPBL, including a competitive-impact analysis.

CSX once again misconstrues the law and regulations. UP's control application is forward-looking and seeks authority to acquire whatever interests NS is legally authorized to hold at the time the Board may approve its application. By April 2026, long before the Board rules on the UP/NS application, the Board will have decided in the separate NS/NPBL control proceeding. That decision will determine whether NPBL is among the assets UP would acquire. That sequencing ensures that UP's application accurately reflects the corporate structure in place at the time of decision. Furthermore, there is no need for UP to file a separate application to account for the traffic and financial impacts of UP controlling NPBL because such impacts are already reflected in NS's traffic data and financial information and are therefore already part of the application.

## **ARGUMENT**

### **I. UP IS NOT REQUIRED TO FILE A SEPARATE APPLICATION TO ACQUIRE CONTROL OF NPBL**

Under 49 U.S.C. § 11323(a), a carrier must obtain Board approval to acquire control of another rail carrier. UP's application complies with this requirement by seeking authority to acquire whatever interests NS is legally authorized to hold when the Board rules. NS has a pending application seeking authority to control NPBL. The Board has stated that it will issue a

decision in that proceeding by April of 2026. The UP/NS control application will not be decided until after that ruling. Thus, the Board's decision in the NPBL proceeding will determine whether NS's controlling shares of NPBL are among the assets UP would acquire.

Simply put, there is no requirement that UP file a separate application to acquire control of NPBL. If the STB grants the pending request of NS for control of NPBL, then NS's control of NPBL in this proceeding will be treated the same as NS's control of any other carrier or subsidiary. The UP/NS application expressly seeks STB approval for UP to acquire control of NS, and by extension of all subsidiary carriers NS controls at the time of STB approval. There is no more logic to CSX's claim that UP must file a separate application to control NPBL than a plainly spurious claim that UP must file a separate application to control every single subsidiary carrier controlled by NS. The entire point of this major application is that UP seeks STB approval to control NS and all subsidiary entities it controls. And the forthcoming STB decision in FD 36836, Norfolk S. Corp. and Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line R. Co., will determine whether NPBL is within, or outside, the scope of UP's application to acquire control of NS. Of course, in the unlikely event the Board denies NS's control application in FD 36836, NS will be required to divest at least a 7% interest in NPBL shares. In that scenario, NS would not control NPBL at the time the UP/NS decision would be issued and therefore UP would not acquire control of NPBL through controlling NS. But if approval is granted, then NS's control of NPBL will be embraced within the broader application, no different from all the other subsidiaries controlled by NS.

Requiring UP to file a separate application to acquire NPBL at this time based upon assumptions that may or may not occur is inconsistent with 49 C.F.R. § 1180.4(b) (applications must reflect actual operating plans), the Board's policy against contingent filings, and basic

administrative law principles prohibiting agencies from requiring filings based on conjecture and speculation. Here, the efficient path required by the law is clear. NS has a pending request to acquire control of NPBL that will be decided in April. UP is independently seeking STB approval to acquire control of NS, which embraces control of all subsidiaries and carriers within the control of NS at the time of the STB decision. The two proceedings are unrelated and should proceed separately.<sup>1</sup>

## **II. THE UP/NS APPLICATION IS NOT INCOMPLETE BECAUSE IT ALREADY REFLECTS THE COMPETITIVE, OPERATIONAL, AND FINANCIAL IMPACTS OF NS CONTROLLING NPBL**

If CSX's argument is that the Board needs to assume that UP will control NPBL (assuming NS's control is approved) or will seek to control NPBL at some point in the future such that UP needs to account for that control now in a separate application, there is no need for such a separate application filed now to analyze such impacts. This is because the UP/NS

---

<sup>1</sup> If the Board approves NS's NPBL control application with conditions that materially affect traffic flows or competitive dynamics separate from those already included in the UP/NS application, UP can supplement its application at that time. This approach is consistent with prior cases where the Board has allowed supplemental filings when new material facts arise during the course of a proceeding. See Trivest Fund VII, L.P. and Passenger Transport Holdings, L.P., MCF 21131 (STB served May 30, 2025 (allowing party to should supplement a pending application with the requested information rather than initiating a new proceeding); Delaware And Hudson Railway Company, Inc.--Discontinuance Of Trackage Rights Exemption--In Broome County, N.Y.; Essex, Union, Somerset, Hunterdon, And Warren Counties, N.J.; Luzerne, Perry, York, Lancaster, Northampton, Lehigh, Carbon, Berks, Montgomery, Northumberland, Dauphin, Lebanon, And Philadelphia Counties, Pa.; Harford, Baltimore, Anne Arundel, And Prince George's Counties, Md.; The District Of Columbia; And Arlington County, Va., Ab 156 (Sub-No. 27x) (STB served May 13, 2015) (ordering the submission of supplemental information rather than requiring a new proceeding); AEP Texas North Company v. BNSF Railway Company, No. 41191 (Sub-No. 1) (STB served Sept. 10, 2007) (STB directed the parties to file supplemental evidence to address gaps in the evidentiary record and to reflect methodological changes adopted in a related rulemaking allowing the Board to continue the existing proceeding without requiring a new one); NS/NPBL at 2, n. 1 (STB served Nov. 17, 2025) (Decision No. 12) (allowing supplementation of the record in the event not yet to be completed discovery produces new information not previously obtained).

application already reflects the outcomes associated with UP acquiring control of NS, including control of NPBL. If UP were to file such a separate application, the information contained in such a separate application with respect to the competitive, operational, and financial impacts of NPBL would be exactly the same as what the current UP/NS application reflects and exactly the same as reflected in the NS/NPBL control application and proceeding.

Although NS does not have “authorized” control of NPBL, NS has de facto controlled NPBL since 1982. NS’s operating plan already anticipates NPBL routings based upon NPBL’s current operations. NS traffic data already includes NPBL movements in line with NPBL’s current operations. NS’s consolidated reporting already includes amounts normally received from NPBL. The ICC and STB accounting rules and reports have treated NPBL as being controlled and affiliated with NS for over 42 years. As a result, as part of NS’s current operations and competitive landscape, the competitive analysis in the UP/NS application already accounts for NPBL’s role in the international intermodal competitive landscape because those effects are already part of NS. And the UP/NS application examines the impacts associated with UP acquiring control of NS, which includes NPBL. Thus, no supplemental or additional application would add any new information.

Requiring a duplicative UP/NPBL control application putting forth the same information and argument contained in the NS/NPBL application, and which information is already part of the UP/NS application, would serve no regulatory purpose and contradict the Board’s preference for efficient, non-redundant filings. CSX is free to argue in this proceeding that UP’s control of NS—and, if approved, NS’s control of NPBL—raises competitive concerns. But the underlying data and operational facts supporting those arguments are already in the record. A separate NPBL control application would not provide any additional information for the Board’s analysis.

UP's application already incorporates NS's operating plan, traffic data, consolidated financials, and all routings—including those involving NPBL – the application is thus “complete” with respect to any possible UP acquisition of control of NPBL.

### **CONCLUSION**

CSX's position rests on a fundamental misunderstanding of both the Board's statutory framework and its long-standing administrative practice. Nothing in 49 U.S.C. § 11323(a), et. seq., the Board's regulations, or its precedent requires an applicant to file a control application based on hypothetical future circumstances, contingent ownership interests, or speculative conditions that may never materialize. Under 49 C.F.R. § 1180.4(c)(7), completeness is assessed based on whether the application contains the information required by the Board's rules and not on conjecture regarding potential outcomes in other dockets. Requiring UP to file a separate NPBL control application now—before the Board has even determined whether NS will control NPBL, and without knowing what conditions, if any, may attach to such control—would invert the Board's sequencing, undermine its own procedural design, and force UP to submit a filing grounded in speculation rather than fact. CSX can cite to no precedent requiring such a speculative and hypothetical application.

Equally misplaced is CSX's claim that the UP/NS application is “incomplete” because it does not reflect the effects associated with a hypothetical UP/NPBL control situation. The application already incorporates the full competitive, operational, and financial landscape associated with NS's long-standing de facto financial control of NPBL. NS's operating plan includes NPBL routings; its traffic data includes NPBL movements; its consolidated reporting includes NPBL financials; and the competitive analysis in the UP/NS application already accounts for NPBL's role in the Hampton Roads region. A separate NPBL control application

would add nothing—no new data, no new analysis, and no new insight. It would simply duplicate what is already before the Board, contrary to the Board’s preference for efficient, non-redundant filings. And if the Board approves NS’s control of NPBL without any conditions, which NS believes it should, then approval of UP’s control of NS will include approval to control NPBL, thereby making it meaningless for UP to file a separate UP/NPBL control application now, especially when the UP/NPBL impacts, if any, are already accounted for in the UP/NS application.

In short, CSX asks the Board to require UP to file an application based on assumptions the Board has not yet decided, conditions the Board may never impose, and ownership interests NS may never hold. That is not what the statute requires, not what the regulations contemplate, and not what the Board has ever demanded. UP’s application is complete, legally sufficient, and fully aligned with the Board’s established practice of evaluating control transactions based on real—not hypothetical—facts. For these reasons, the Board should reject CSX’s claim of incompleteness and proceed with review of the UP/NS application as filed.

Respectfully submitted,

Joseph H. Carpenter  
Thomas E. Zoeller  
Hanna M. Chouest  
Julianne C. Freeman  
NORFOLK SOUTHERN CORPORATION  
650 W Peachtree St N.W.  
Atlanta, GA 30308  
Tel: (470) 571-5208

/s/ William A. Mullins  
William A. Mullins  
Rose-Michele Nardi  
John V. Edwards  
MULLINS LAW GROUP PLLC  
2001 L St., N.W.  
Suite 720  
Washington, D.C. 20036  
Tel.: (202) 663-7823

January 2, 2026

Attorneys for Norfolk Southern Corporation and  
Norfolk Southern Railway Company

**CERTIFICATE OF SERVICE**

I certify that, on January 2, 2026, in accordance with 49 CFR 1114.21(f), I have caused to be served a copy of the foregoing Norfolk Southern Corporation's and Norfolk Southern Railway Company's Reply Comments To The Comments Of CSX Transportation, Inc. On The Completeness Of Application With Respect To The Norfolk & Portsmouth Belt Line Railroad upon the Secretary of the Department of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, and upon each Party of Record in these proceedings.

/s/ William A. Mullins  
William A. Mullins

Attorney for Norfolk Southern Corporation and  
Norfolk Southern Railway Company