

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35873

NORFOLK SOUTHERN RAILWAY COMPANY

- ACQUISITION AND OPERATION -

CERTAIN RAIL LINES OF THE DELAWARE AND HUDSON RAILWAY

PETITION TO ESTABLISH PROCEDURAL SCHEDULE

ENTERED  
Office of Proceedings  
November 17, 2014  
Part of  
Public Record

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November 17, 2014



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Norfolk Southern Railway Company (“NS”) hereby requests that the Board adopt the procedural schedule outlined in Appendix A attached hereto to govern disposition of this proceeding. In the Application filed contemporaneously herewith, NS seeks approval pursuant to 49 U.S.C. § 11323 et. seq. for NS to acquire and operate 282.55 miles of D&H rail lines located in Pennsylvania and New York, including any and all other tracks related to or auxiliary to the acquired lines. NS also will retain and modify 17.45 miles of existing overhead trackage rights over D&H’s line near Albany, NY, including the right to use Mohawk Yard, to ensure NS’s continued access to NS’s Mechanicville Terminal and NS’s continued interchange with Pan Am Southern LLC. In addition, D&H will retain exclusive local access trackage rights to serve the General Electric facility at Schenectady, NY, generally located between milepost (“MP”) 485 and MP 486. D&H also will retain certain existing operating rights to operate within the limits of Buffalo, NY (collectively, the “Transaction”).

As set forth in the Application, NS requests that the Transaction be treated as a “minor” transaction under the Board regulations pursuant to 49 C.F.R. § 1180.2(b). If the Board accepts NS’s characterization of the Transaction as minor, the Board will be required to issue its decision within 180 days from the filing date of the Application. 49 U.S.C. § 11325(d). The proposed

procedural schedule provides for issuance of a final Board decision by May 7, 2015. The comment period provided in NS's proposed procedural schedule provides the maximum statutory time for parties to submit comments, evidence or argument in response to the Application and provides the full statutory time for the Board to issue its final decision. The schedule contemplates 29 days for the effective date period, otherwise the normal effective date would fall on a weekend.

The Transaction is an end-to-end line acquisition that does not involve parallel lines or a merger. As set forth in the Application, the Transaction preserves and enhances competition; provides significant benefits to shippers in the form of increased operating efficiencies, more reliable and sustainable service, and better, more extensive single line routing options to larger markets; and preserves jobs that could have otherwise been lost in the absence of the Transaction. Given the limited and end-to-end nature of the proposed Transaction, no further evidentiary proceedings should be necessary after the initial comment period, and NS does not envision the need for briefs or oral argument, although the proposed schedule would accommodate such processes if necessary.

No proposed discovery guidelines are being submitted with this Petition. In the event NS is served with discovery, NS suggests that the parties follow the Board's discovery rules as set forth in 49 C.F.R. § 1114.21, Subpart B. If those rules prove insufficient, however, NS is willing to join with any affected party filing discovery to jointly agree upon discovery guidelines tailored to the scope of this minor transaction, with any provisions that cannot be mutually agreed upon being resolved by the Board or by an Administrative Law Judge appointed by the Board to preside over discovery issues. All filings and discovery requests will be governed by the

Protective Order, which NS has requested the Board to issue pursuant to the concurrently filed Petition for a Protective Order.

WHEREFORE, NS respectfully requests that the Board adopt the proposed procedural schedule set out in Appendix A hereto to govern disposition of this proceeding.

Respectfully Submitted,

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## APPENDIX A

### Proposed Procedural Schedule

(Filing)	Monday, November 17, 2014	Application, Petition for Procedural Schedule, Motion for Protective Order filed
(Filing + 30)	Wednesday, December 17, 2014	Application accepted and notice published in the <u>Federal Register</u>
(Filing + 39)	Friday, December 26, 2014	Notices of Intent to Participate due
(Filing + 60)	Friday, January 16, 2015	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) due
(Filing + 120)	Tuesday, March 17, 2015	Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the application due
(Filing + 179)	Friday, May 15, 2015 <sup>1</sup>	Final decision to be served
(Filing + 210)	Monday, June 15, 2015	Decision becomes effective

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<sup>1</sup> The 180th day after filing falls on a Saturday. Pursuant to 49 U.S.C. § 11325(d)(2), the Board “must” issue a final decision by the end of the 45th day after the conclusion of the evidentiary proceedings. To meet that statutory requirement, the final decision would need to be issued no later than May 15, 2015.

CERTIFICATE OF SERVICE

I have this 17<sup>th</sup> day of November, 2014, served a copy of the foregoing Petition to Establish Procedural Schedule upon the governor, public service commission, and the department of transportation of each state where NS owns property that is involved in the proposed transaction (i.e. New York and Pennsylvania), upon the Secretary of the Department of Transportation, the Attorney General of the United States and the Federal Trade Commission by depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon.



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