

SERVICE DATE – JANUARY 19, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36496

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(e)—CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN
RAILWAY COMPANY

Digest:¹ The Board directs the parties to provide additional information in their upcoming status report and schedules a hearing.

Decided: January 18, 2024

On March 16, 2021, the National Passenger Railroad Corporation (Amtrak) filed an application with the Board, pursuant to 49 U.S.C. 24308(e), seeking an order requiring CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) to allow Amtrak to operate additional intercity passenger trains, consisting of two round-trips per day, over the rail lines of CSXT and NSR between New Orleans, La., and Mobile, Ala.² On April 4, 2022, the Board commenced the evidentiary hearing phase of this proceeding, which continued on April 5, 6, 8, 12, 14, 18, and 19, and on May 9, 11, and 12. The Board provided notice on October 28, 2022, that the evidentiary hearing would continue on November 17 and 18, 2022, and scheduled a voting conference for December 7, 2022. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(e)—CSX Transp., Inc., FD 36496 (STB served Oct. 28, 2022). In response to the Parties' joint motion to amend the procedural schedule, the Board granted the motion, directed the Parties to file a joint status report by November 21, 2022, indicating whether a settlement agreement had been reached, and postponed the November 17 and 18, 2022 hearing dates until November 30, 2022. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(e)—CSX Transp., Inc., FD 36496 (STB served Nov. 10, 2022).

The Parties notified the Board that they reached a settlement, and by decision served November 22, 2022, the Board granted the Parties' joint motion to hold the proceeding in

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Board granted a request to intervene filed by the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks, (collectively, the Port). See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(e)—CSX Transp., Inc., FD 36496 (STB served Jan. 28, 2022). Amtrak, CSXT, NSR, and the Port will be referred to collectively herein as "the Parties."

abeyance while the Parties worked to implement their settlement agreement, reached with the assistance of Board-sponsored mediators, and directed the Parties to notify the Board as soon as the terms of the settlement were fulfilled or to file a status report by June 20, 2023. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(e)—CSX Transp., Inc., FD 36496, slip op. at 1-2 (STB served Nov. 22, 2022).

Subsequently, the Board twice continued to hold the proceeding in abeyance at the Parties' request as they work to implement their settlement agreement. The Parties are currently scheduled to file a status report by February 1, 2024 (February Status Report).

Given the amount of time that has elapsed since the Board placed the proceeding in abeyance and the fact that there is a public interest in the resolution of this matter, the Board will direct the Parties to provide, in the February Status Report, detailed information regarding the status of the implementation of the settlement agreement and, in particular, to describe any issues that remain outstanding. In addition, the Board will schedule a hearing with the Parties on **February 14, 2024**, at 11:00 a.m. EST, for the Parties to report more fully on the settlement status. While the Board plans to hear only from the Parties at the February 14 hearing, because of public reports about ongoing and apparently as yet unresolved negotiations between the City of Mobile, Ala. (Mobile), and Amtrak, the Board will also invite Mobile to participate in the hearing, if it so chooses. If Mobile chooses to participate, its representative should be a person authorized to inform the Board as to any issues that remain to be resolved between Mobile and Amtrak.³ Further details on the hearing will be provided in the hearing notice to be published in the Federal Register.

The Board is conscious of the potential confidential nature of aspects of the Parties' settlement agreement. However, given the public interest in the resolution of this matter, the Parties should provide the Board with as much information as possible in order to assist the Board's understanding of the remaining obstacles to fully implement their settlement agreement. If necessary, the Parties may file a confidential version of the February Status Report (along with an appropriately redacted version for the public record).

It is ordered:

1. The Parties are directed to include a discussion of the issues described above in the February Status Report.

³ If the February Status Report provides sufficient information so that the Board needs no further information to obtain a reasonable understanding of the outstanding issues and the plan to resolve those issues in a timely manner, the Board may determine that the February 14 hearing can be cancelled.

2. A hearing in this proceeding is scheduled for **February 14, 2024**, at 11:00 a.m. A notice of the hearing will be published in the Federal Register.

3. This decision is effective on its service date.

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