

**BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496**

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

**CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY
COMPANY'S RESPONSE TO AMTRAK'S SURREBUTTAL**

One year ago, Amtrak filed an Application under 49 U.S.C. § 24308(e), seeking an order from the Board requiring CSXT and NSR to provide for the operation of four daily passenger trains between New Orleans and Mobile during daylight hours.¹ From the filing of the March 2021 Application to prejudicial Surrebuttal submitted on February 1, 2022, Amtrak has stood firm in its position that not a single penny of additional rail infrastructure is necessary to support the proposed Gulf Coast passenger service and avoid harm to freight service. Indeed, the only investments Amtrak has committed to making prior to the commencement of Gulf Coast passenger service are for passenger station upgrades. Amtrak does not even plan to first construct a dedicated layover track at the Mobile station location, a project that every stakeholder agrees is critical, including FRA. Further, Amtrak has refused to complete a joint study of rail operations on the Gulf Coast Corridor to determine what infrastructure might be required.²

¹ All acronyms and short forms have the same meaning they had in CSXT's and NSR's Opening Evidence and Rebuttal Evidence.

² Prior to the commencement of this proceeding, CSXT, NSR, and Amtrak entered

Fortunately, and as directed by the Board, CSXT and NSR were able to complete an RTC study of freight traffic between New Orleans and Mobile and the impact of the proposed Gulf Coast passenger service. The 2021 Gulf Coast RTC Study definitively establishes that the introduction of Gulf Coast passenger service will cause immediate and significant harm to freight service without infrastructure investments. The introduction of passenger trains in 2019 with no additional infrastructure would “result[] in an increase in freight delays by 22.7%, reduce train speeds by 4.5%, increase dispatching conflicts by 38.1%, increase re crews by 37.7%, and increase the variability of service.”³ For context, these delay and speed performance metrics equate to an average of over 13 hours of additional delay per day across all freight trains.⁴

CSXT local trains that serve customers along the route in 2019 are hit the hardest, experiencing a 45.4% increase in delays and a 6.9% reduction in speed.⁵ This equates to, on average, an additional five hours of delay per day with significant variability. Interchange traffic in New Orleans and Mobile suffers

an RTC Study Agreement and engaged HDR Engineering, Inc. (“HDR”) to conduct an RTC study beginning in early 2020. HDR was tasked with analyzing the freight operations between New Orleans and Mobile, whether existing capacity could accommodate freight service over a 20-year horizon, and the impact of Amtrak’s proposed Gulf Coast service on the quality and provision of freight service. The RTC Study Agreement’s one-year term expired in January 2021, before completion of the study. While restrictions agreed upon by CSXT, NSR, and Amtrak in the RTC Study Agreement and the Data Sharing Agreement prevented sharing prior RTC-generated files, NSR and CSXT chose to utilize the same data agreed upon in the original RTC study to the maximum extent possible to mimic the unfinished HDR study and terms agreed upon by Amtrak.

³ 2021 Gulf Coast RTC Report at 45 (§ 6.0).

⁴ 2021 RTC Rebuttal Report at 34 (§ 4.3).

⁵ 2021 Gulf Coast RTC Report at 46 (§ 6.0).

greatly as well. The Port of Mobile's trains experience a 33.6% increase in delays and a 7.8%% reduction in speed.⁶ Interchange traffic going to and from CSXT via NSR in New Orleans experiences a 10.9% increase in delays and a 4.3% reduction in speed.⁷ At a more granular level, trains from other carriers waiting to interchange with NSR experience a 33.6% increase in delays. And this is just the harm to freight service experienced in 2019. By 2039, there is complete dispatching gridlock.

Amtrak's response has been to bury its head in the sand. Rather than grapple with the results of the 2021 Gulf Coast RTC Study and put forward a constructive solution of its own, Amtrak has leveled baseless criticisms against the Model in an effort to have the Board disregard the results altogether. And Amtrak continues to argue that the projected harm to freight service set out in the 2021 Gulf Coast RTC Study is mere "inconvenience[]" and that a rail carrier can only prevail under § 24308(e) if the harm to freight service is "clearly inappropriate" or "excessive."⁸ This subjective legal standard is completely unmoored from the statutory language enacted by Congress and, if adopted by the Board, would render it nearly impossible for any rail carrier to ever prove unreasonable impairment of freight service to justify infrastructure investments.

Amtrak could have developed its own RTC study or modified the 2021 Gulf Coast RTC Model based on its various criticisms and reported out revised performance metrics. Indeed, in October 2021, Amtrak requested expanded data—

⁶ *Id.*

⁷ *Id.*

⁸ Amtrak's Surrebuttal, *Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. and Norfolk S. Corp.*, STB Docket No. FD 36496 (filed Feb. 1, 2021) ("Amtrak Surrebuttal"), at 6.

complete 2019 and 2020 traffic—but did not use it to develop its own RTC model. Amtrak instead proffers an analysis to prove there is sufficient theoretical capacity on the Gulf Coast Corridor to accommodate the passenger trains. But this has never been in dispute. The 2021 Gulf Coast RTC Study also reveals that the passenger trains can be added in 2019 without causing the corridor to grind to a halt (though that is not true in 2039). What the Board requested from the parties was “evidence on the [passenger] service’s potential effects on freight transportation.”⁹ The 2021 Gulf Coast RTC Study is the only evidence in the record that quantifies the impact of adding passenger trains on the quality of freight service.

Part I responds to Amtrak’s mischaracterization of CSXT and NSR’s arguments concerning the proper interpretation of the legal standard under § 24308(e), as well as the unconstitutional nature of Amtrak’s proposed interpretation. Part II addresses Amtrak’s claim that it could not produce an RTC model of its own. Part III explains why the capacity marketplace analysis by Amtrak’s experts answers the wrong question and is unresponsive to the Board’s request for evidence of the Gulf Coast passenger service’s potential impact on freight service. And Part IV corrects Amtrak’s confusion over CSXT and NSR’s consistent position throughout the litigation that any infrastructure necessary to protect freight service must be constructed before Gulf Coast passenger service may commence.

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⁹ Decision, *Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. and Norfolk S. Corp.*, STB Docket No. FD 36496 (served Aug. 6, 2021) (“August 6 Decision”), slip op. at 7; *see* CSXT and NSR Rebuttal Evidence at 1–2.

This Response is not intended to comprehensively address the entirety of Amtrak's Surrebuttal. CSXT and NSR reserve the right to supplement this Response to Amtrak's Surrebuttal through the examination of witnesses and exhibits at the March evidentiary hearing. On February 1, 2022, Amtrak filed its 40-page Surrebuttal that included two surrebuttal verified statements. This filing came on the eve of the Board's two-part hearing schedule, seven weeks after CSXT and NSR submitted their Rebuttal evidence. Over CSXT, NSR, and the Port of Mobile's objections, the Board accepted Amtrak's Surrebuttal via oral ruling at the pre-hearing conference on February 16, 2022, and provided CSXT, NSR, and the Port of Mobile just seven days (to file a written response and a further two weeks to prepare a response to the Surrebuttal at the evidentiary hearing.¹⁰ CSXT and NSR maintain that this ruling severely prejudiced their ability to adequately prepare for the evidentiary hearing. CSXT and NSR have had to divert significant time and resources to prepare a written response in the final weeks before the evidentiary hearing while at the same time preparing witnesses for examination, developing exhibit lists and visual aids, working with Amtrak to reach agreement on a list of

¹⁰ In the Board's oral ruling, the Chairman notified the parties that "our ruling **will be** that the surrebuttal **will be** accepted, that if CSX wants to respond in writing they can do so within seven days, or any of the other parties want to respond." Using the future tense implies an action is expected to occur in the future and then be complete, so CSXT and NSR initially expected a decision by the STB in the days immediately after the hearing. It was therefore unclear whether the seven-day deadline was expected run from a future STB written decision, which the STB has not yet issued, or if the Chairman intended the deadline to be seven business days to accommodate the federal holiday. If the Chairman intended the parties to use calendar days from the date of the public hearing, we ask the Board to accept this filing into the record one day late. No party would be prejudiced. Amtrak took seven weeks to file its Surrebuttal. And CSXT and NSR sought to fashion a joint statement over a holiday weekend rather than burden the Board with separate responses.

stipulated facts, preparing responses to the issues flagged by the Board during the pre-hearing conference, and attempting to contact the Coast Guard about moveable bridge regulations. The ruling from the bench, so to speak, is also an unexplained departure from agency precedent and offered no rationale. Consequentially, CSXT and NSR respectfully request that the Board issue a written decision setting out its reasoning for granting Amtrak's untimely Surrebuttal and declining to grant CSXT and NSR a fair amount of time to respond.

I. AMTRAK DOUBLES DOWN ON ITS IMPROPER INTERPRETATION OF THE STATUTORY STANDARD BY MISCHARACTERIZING CSXT AND NSR'S POSITION.

Putting aside the fact that Amtrak simply failed to engage with the vast majority of CSXT and NSR's statutory arguments, Amtrak also mischaracterized CSXT and NSR's position concerning the meaning of Section 24308(e)'s "impair unreasonably" standard. According to Amtrak, there is no daylight between the parties' respective interpretations of "impair unreasonably." To reach this conclusion, Amtrak attempts a sleight of hand, suggesting that "*exceeding* the bounds of reason or moderation" is the equivalent of Amtrak's proffered interpretation of "clearly inappropriate" or "*excessive*."¹¹ That is wrong.

Apart from being ancillary, dictionary-shopped, and partial, Amtrak's definition has the further distinction of being entirely subjective. In advancing a standalone inquiry into whether something is "excessive" or "inappropriate," Amtrak provides no floor or benchmark against which to compare the potential harm to freight service, thus rendering any exercise in measuring the harm impossible. In other words, Amtrak invites the Board to jettison the objective core of

¹¹ Amtrak Surrebuttal at 5–6 (emphasis added).

the reasonableness standard that Congress enacted in favor of a standardless, indefinite inquiry that encourages arbitrary and subjective decision-making. In contrast, the term “exceeding” in CSXT and NSR’s definition is tethered to the objective standard of “reason” and “moderation.” Thus, “‘to make worse’ or ‘do harm to’ freight transportation in a manner that ‘exceeds the bounds of reason or moderation’” tracks the objective test of “impairs unreasonably” established by Congress. Any impairment caused by Amtrak’s proposed Gulf Coast passenger service must be measured against that objective standard of reasonableness.

Wielding its subjective and unlawful definition, Amtrak claims that CSXT and NSR have done nothing more than show “that they will be inconvenienced” by the new Gulf Coast passenger service.¹² Amtrak regurgitates its talking point that a “4.5% decrease in freight train speeds [in 2019] . . . amounts to a reduction of just 0.7 miles per hour,”¹³ while conveniently omitting that this “equates to over 13 hours of additional delay per day” caused directly by the introduction of passenger traffic.¹⁴ This is plainly a significant amount of impairment to freight operations that cannot be brushed off as a mere “inconvenience.”

Amtrak then claims that “the 37.7% increase in train crews by 2039 . . . amounts to one additional train crew every three days seventeen years from now.”¹⁵ To start, Amtrak incorrectly attributes this statistic to 2039 when in fact, this harm will be realized immediately, as it is a 2019 performance metric.¹⁶ Moreover, it is again CSXT local trains that bear the brunt of this harm, experiencing a 41.5%

¹² *Id.* at 6.

¹³ *Id.* (emphasis removed).

¹⁴ 2021 RTC Rebuttal Report at 34 (§ 4.3).

¹⁵ Amtrak Surrebuttal at 7 (emphasis removed).

¹⁶ 2021 Gulf Coast RTC Report at 45, 47 (§ 6.0).

increase in recrews, or an additional two recrews per week.¹⁷ Amtrak’s position that two additional, unplanned recrews a week for local trains is not unreasonable reveals a startling lack of knowledge regarding railroad operations. A recrew is defined as “the number of times trains require an additional crew to complete [the train’s] scheduled route” due to the original crew reaching its allowable hours of service.¹⁸ To recrew a train, the train must “stop along the corridor, often in a siding, to allow for the swapping of the crews,” which can cause delays.¹⁹ An unplanned recrew is “even more problematic” because the railroad may not have a new crew ready and in position to take over the train, causing additional delays to freight service. In the context of a local train, this could mean that customers do not receive raw materials or goods because a replacement crew is not available until the following day. As the RTC Modelers explained, “[r]ecrews are an indicator of unreliable and unstable operations and are a major source of operating costs to a railroad.”²⁰ Amtrak’s effort to minimize the impact of recrews simply falls flat.

Amtrak also misstates CSXT and NSR’s takings argument. CSXT and NSR do not contend that “*any* expansion of Amtrak service amounts to an *unconstitutional* taking.”²¹ To be clear: By “appropriat[ing] for the enjoyment of [Amtrak] the owners’ right to exclude,” any order under § 24308(e) effects a physical intrusion and thus a *per se* taking.²² Thus, as with any taking, a Board order under § 24308(e) must be accompanied by just compensation to be constitutional.

¹⁷ *Id.* at 47.

¹⁸ *Id.* at 31 (§ 3.7).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Amtrak Surrebuttal at 7 (emphasis added).

²² *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021); *see id.* at 2077

But Amtrak’s interpretation of § 24308(e) would go even further, by actually preventing CSXT and NSR from using their property (existing rail capacity) for their own business purposes—at first partially (2019), and in the end completely (2039 gridlock). An indefinite physical occupation that deprives the owner “of the right to use and obtain a profit from property” is a further taking.²³ Alone, this argument thus raises Takings Clause issues, because—even if compensation would be available later—the courts will reject an “administrative interpretation of a statute” that “will necessarily [create] a taking” in “an identifiable class of cases.”²⁴ And Amtrak says it is entitled to all of this without paying the full cost of the work necessary to avoid degrading and ultimately destroying freight rail service—in other words, “without just compensation.”²⁵ The Board should not interpret and apply the statute to raise these issues.²⁶ Nor should it assume that Congress intended any of this.²⁷

(“appropriations of a right to invade are *per se* physical takings”).

²³ See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 421, 435–36 (1982) (holding that even “a minor but permanent physical occupation of an owner’s property authorized by government constitutes a ‘taking’” because it destroys the owner’s “power to exclude,” “right to use,” and “right to dispose”).

²⁴ *Bell Atl. Tel. Cos. v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994).

²⁵ U.S. Const., Amend V.

²⁶ See *Bell Atl.*, 24 F.3d at 1445 (preventing “agencies [from] us[ing] statutory silence or ambiguity to expose the Treasury to liability” “prevents executive encroachment on Congress’s exclusive powers”).

²⁷ See *id.*; cf. *Williams v. Babbitt*, 115 F.3d 657, 662 (9th Cir. 1997) (“just as we will not infer from an ambiguous statute that Congress meant to encroach on constitutional boundaries, we will not presume from ambiguous language that Congress intended to authorize an agency to do so”).

Amtrak cannot avoid these problems by declaring that CSXT and NSR eventually will be compensated.²⁸ The Supreme Court recently clarified that “a violation of the Takings Clause” occurs “as soon as a government takes [private] property for public use without paying for it.”²⁹ After-the-fact compensation cannot avoid a Fifth Amendment violation.³⁰ In turn, the doctrine of constitutional avoidance requires both (i) rejecting any reading of § 24308(e) that maximizes the taking of private property, and (ii) interpreting § 24308 to provide full, just compensation before or when a taking occurs—not later.³¹

II. AMTRAK REITERATES ITS BASELESS CRITICISMS OF THE 2021 GULF COAST RTC MODEL RATHER THAN PROFFER A COMPETING MODEL.

Amtrak received numerous RTC files from past studies during discovery including the same data that was provided to the RTC Modelers.³² Three months ago, CSXT and NSR filed the 2021 Gulf Coast RTC Study and served Amtrak with voluminous workpapers and RTC files associated with that study. And seven weeks elapsed between the filing of the 2021 Rebuttal RTC Report and supporting workpapers and Amtrak’s Surrebuttal submission. Yet Amtrak’s RTC experts have

²⁸ Amtrak Surrebuttal at 8.

²⁹ *Knick v. Township of Scott*, 139 S. Ct. 2162, 2170 (2019).

³⁰ *See id.* at 2174 (“A claim for just compensation ... [after a taking] is not a prerequisite to a Fifth Amendment takings claim—it *is* a Fifth Amendment takings claim.”).

³¹ This takings argument is not waived, *contra* Amtrak Surrebuttal at 7, because it responds directly to Amtrak’s proposed interpretation of the statute, which was advanced for the first time in Amtrak’s reply submission.

³² Notably, counsel for NSR specifically asked during discovery if Amtrak planned to do its own RTC modeling or any other modeling. Both NSR and CSXT notified Amtrak that it would provide any RTC modeling evidence in their Opening Evidence. Amtrak chose not to pursue its own RTC study at the onset.

still yet to offer a competing RTC model. Instead, Amtrak's experts double down on their baseless criticisms of the 2021 Gulf Coast RTC Model rather than do the work of adjusting the existing model, rerunning the model, and reporting out the revised performance metrics. Amtrak's experts have now had the same amount of time to adjust the 2021 Gulf Coast RTC Model as CSXT and NSR had to build the model in the first instance under the Board's accelerated procedural schedule. CSXT and NSR's experts will be prepared to testify in response to all of the baseless critiques of the 2021 Gulf Coast RTC Model contained in Amtrak's Surrebuttal at the March evidentiary hearing.

The Board has made it crystal clear that this kind of gamesmanship has no place in agency proceedings. As we reminded Amtrak on rebuttal, under Board precedent involving complicated operations models, a party may not simply throw objections at the wall and see what sticks.³³ The Board requires that—once a party has made a prima facie case by submitting an RTC model with all the required elements—the other party must submit a competing RTC model (or an equivalent model) for the agency's consideration.³⁴ Amtrak was free to add alleged missing track, drop alleged phantom trains, change the preference to Amtrak trains, modify maintenance-of-way permits, adjust growth forecasts, or test different infrastructure solutions. In its Surrebuttal, Amtrak offers no coherent reasons for

³³ *Pub. Serv. Co. of Colo. D/B/A Xcel Energy v. The Burlington N. and Santa Fe Ry. Co.*, STB Docket No. 42057 (served Jan. 19, 2005), at 3 (rejecting BNSF's argument that the Board's "role is simply to act as an umpire, calling balls and strikes for the adversaries appearing before us, and that a significant deficiency in the complainant's opening presentation must therefore be fatal to its case").

³⁴ *Id.* at 5 (setting forth the expectation that the party on reply demonstrate the opening evidence to be "infeasible or unsupported and . . . offer[] feasible, realistic alternative evidence that avoids the infirmities in the [opening] evidence and that is itself supported").

not modifying and submitting a competing RTC model. Yet if there is one constant to Amtrak's position, it is its refusal to engage in meaningful modeling. But the Board specifically directed the parties to submit a workable model to show (1) the impact on freight service today (2019), (2) the impact on freight service in the future (2039), and (3) infrastructure that would address those impacts (2019 and 2039).³⁵ NSR and CSXT have complied with the Board's directions. Amtrak has not.

In the end, as the evidentiary hearing will reveal, Amtrak's criticisms are baseless. The 2021 Gulf Coast RTC Model is rock solid, and reflects the best and only evidence of record on the impact of adding this passenger service to existing freight operations.

III. THE DB ENGINEERING MODEL IS UNHELPFUL IN THIS PROCEEDING BECAUSE IT ANSWERS THE WRONG QUESTION.

On Rebuttal, CSXT and NSR pointed out that the capacity marketplace methodology employed by DB Engineering & Consulting USA, Inc. failed to provide the Board with the information it explicitly requested—"evidence on the service's potential effects on freight transportation."³⁶ DB Engineering's model merely establishes that there is sufficient theoretical capacity on the Gulf Coast Corridor in 2019. (And it offered no evidence of the impact in 2039, as directed by the Board).

³⁵ See August 6 Decision at 6–7 ("The Board therefore expects that evidence on the service's potential effects on freight transportation, such as an RTC study or other study or studies, will be part of the record in this proceeding, as well as any competing studies or other competing evidence, together with all the inputs, assumptions, and methodologies underlying any study results, including all relevant traffic projections (filed under seal, if necessary). As part of this effort, the Board also expects the parties will detail any infrastructure that they consider necessary for Amtrak to operate additional trains by its proposed start date as well as infrastructure needed in the future to factor in anticipated growth in traffic.").

³⁶ *Id.* at 7; see Rebuttal Evidence at 1–2.

The 2021 Gulf Coast RTC Study established this same fact. Passenger trains were added to the model in 2019 (the 2019 Passenger Case) and RTC was able to dispatch the corridor. But the question facing the Board is not whether there is sufficient theoretical capacity on the line to handle four additional passenger trains. The core legal question is whether the addition of passenger trains will “impair unreasonably freight service,”³⁷ not whether the passenger trains can merely “fit” on the line. The DB Engineering study simply does not answer this question, rendering it unhelpful to the Board in resolving this proceeding. In contrast, the 2021 Gulf Coast RTC Study clearly demonstrates the impact of new Gulf Coast passenger service on existing freight service through a variety of performance metrics including train speed, minutes of delay, and re crews.

As numerous stakeholders, the Board, and Amtrak itself observed at the public hearing, RTC is the gold standard for modeling train operations and assessing the impact of proposed operational changes to a subject corridor. Yet Amtrak inexplicably put forward a theoretical capacity analysis that does not quantify the impact (or lack thereof) to freight service, instead of an RTC study. As with Amtrak’s criticisms of the RTC model, CSXT and NSR will be prepared to respond to Amtrak’s contentions regarding the DB Engineering study through cross-examination at the evidentiary hearing.

IV. CSXT AND NSR’S POSITION WITH RESPECT TO THE NEED TO BUILD INFRASTRUCTURE BEFORE PASSENGER SERVICE COMMENCES REMAINS UNCHANGED.

CSXT and NSR have not changed their position with respect to what infrastructure is needed. The 2021 Gulf Coast RTC Study shows the level of

³⁷ 49 U.S.C. § 24308(e)(2)(A).

degradation to freight service that will result from the introduction of Gulf Coast passenger service and identifies a set of 14 infrastructure projects designed to mitigate that degradation.³⁸ That said, CSXT and NSR have consistently maintained that this set of 14 projects is not the only possible solution. The RTC Modelers expressly note that “[t]he proposed projects are just one set of possible solutions.”³⁹ For example, grade separations or closures “reduce freight service degradation to the same degree as a siding or double track project,” but require approval from Gulf Coast municipalities, which is why they were not modeled.⁴⁰

CSXT and NSR also appreciate that the Board may conclude (and ask CSXT and NSR to model) a slightly different solution set than what was put forward in the 2021 Gulf Coast RTC Study. And CSXT and NSR understand from the pre-hearing conference that the Board is grappling with whether its authority under Section 24308(e), includes the ability to issue an order regarding infrastructure for the present day and 20 years into the future. But CSXT and NSR have been clear throughout the record that any infrastructure deemed necessary by the best evidence of record (which is the 2021 Gulf Coast RTC Model) to mitigate degradation to freight service must be in place before passenger service may

³⁸ CSXT and NSR note that these 14 infrastructure projects are not designed to mitigate existing fluidity issues on the Gulf Coast Corridor prior to the introduction of passenger service. The present day capacity and freight service levels are baked into the 2019 Base Case and the 2039 Base Case, against which all other cases are measured. In other words, the projects are designed to return freight service to its present day situation, which would include any current congestion unrelated to passenger trains. Therefore, Amtrak is not being penalized for any existing freight service issues or being asked to subsidize freight service. The RTC Modelers will address these issues more thoroughly during the evidentiary hearing.

³⁹ 2021 Gulf Coast RTC Report at 55 (§ 8.0).

⁴⁰ *Id.* at 54.

commence.⁴¹ The reason for this position is that there is no way to remedy the harm to freight customers with infrastructure built after the fact. Stated another way, there is no feasible approach for the Board to compensate customers harmed from the introduction of passenger service while infrastructure solutions are being built, especially given the inter-connectedness of the rail network.

CSXT and NSR look forward to responding to the Board's questions regarding the proposed infrastructure solution set at the evidentiary hearing.

CONCLUSION

CSXT and NSR have met their burden under § 24308(e), by showing that freight service will be unreasonably impaired by the introduction of passenger service, and Amtrak's Application should therefore be denied. Nothing in Amtrak's Surrebuttal warrants a different outcome. CSXT and NSR reserve the right to supplement this Response to Amtrak's Surrebuttal through the presentation of witness testimony, cross-examination, and exhibits at the evidentiary hearing scheduled to commence on March 9, 2022.

⁴¹ Amtrak has consistently argued that CSXT and NSR want them to spend \$440 million prior to running a single passenger train. Amtrak completely disregards the fact that in Opening Evidence, CSXT and NSR specifically stated that the railroads would withdraw their objection to Amtrak's proposed new service if Amtrak agreed to fund and construct the full slate of Proposed Passenger Infrastructure prior to implementing service. Of course, Gulf Coast passenger service could begin prior to fully constructing the necessary infrastructure, but that would require Amtrak to commit to fund that infrastructure, to modify its passenger service schedule during construction of those projects, and to reach agreement with the host railroads on certain other terms and conditions concerning performance and compensation.

Respectfully submitted,

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Dated: February 24, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2022, a copy of the foregoing Joint Response to Amtrak's Surrebuttal was served by email or first-class mail on the service list for Finance Docket No. 36496.

/s/ Raymond A. Atkins

Raymond A. Atkins

SIDLEY AUSTIN LLP