

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

ENTERED
Office of Proceedings
October 20, 2021
Part of
Public Record

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

AMTRAK'S MOTION FOR CLARIFICATION

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The National Railroad Passenger Corp. (“Amtrak”) respectfully requests that the Surface Transportation Board (“the Board”) clarify that the Alabama State Port Authority and Terminal Railway Alabama State Docks (collectively “the Port”) are not parties to this proceeding and are not entitled to present evidence and argument in this proceeding without first seeking and being granted leave of the Board to do so.

On October 8, 2021, the Port filed a letter in the docket of this proceeding giving notice of “the Port’s intent to present evidence and argument in this proceeding.” (Port Letter at 1.) Specifically, the Port stated that it “will present its opening evidence and argument on November 3, 2021 (assuming the Board acts as expected to grant a pending multi-party extension request), and at other prescribed filing intervals in this proceeding as may prove necessary thereafter.” (*Id.* at 2.)

The Port, however, is not a party to this proceeding and is not entitled to participate as a party absent leave of the Board. The Board’s regulations explicitly define a party as “a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding” or a person who is “permitted or directed by the Board to participate in a proceeding.” 49 C.F.R. § 1101.2(d). Importantly, the definition of party does “not include persons merely

signing certificates of support” and the regulation specifically states that “[p]ersons on the docket service list merely for the purpose of receiving copies of Board releases are not considered parties to the proceeding.” *Id.*

While the Port is a “party of record” on the docket service list and has filed letters of support for CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway (“NS”) in this proceeding, the Port has not sought or been granted actual party status under the Board’s regulations. The Port has not even attempted to make the required showing for intervention as a party under either 49 C.F.R. § 1113.7 or 49 C.F.R. § 1112.4.

The Port likewise has not sought leave to file comments as *amicus curiae*. If the Port wishes to file a brief as an *amicus* in this proceeding, it must seek leave from the Board, not simply assert that it will do so. *Cf. Application of the National Passenger Railroad Corporation Under 49 U.S.C. § 24308(a)—Canadian National Railway Co.*, FD 35743, slip op. at 5, n.12 (STB served Aug. 9, 2019) (granting motions for leave to file comments as *amicus curiae* by CSX and NS and accepting their comments into the record).

The Board’s decision establishing a procedural schedule allowed for presentation of “CSXT and NSR opening evidence” followed by “Amtrak reply evidence” and “CSXT and NSR rebuttal evidence.” *Application of the National Passenger Railroad Corporation Under 49 U.S.C. § 24308(E)—CSX Transportation, Inc., and Norfolk Southern Railway Company*, FD 36496, slip op. at 12 (STB served Aug. 6, 2021). Amtrak respectfully requests that the Board clarify that the only parties entitled to present *evidence* in these proceedings are those the Board has already named in its procedural schedule (Amtrak, CSX, and NS). Any other entity wishing to present its perspective to the Board may seek leave to do so as an *amicus curiae*.

CONCLUSION

Amtrak respectfully requests that the Board clarify that the Port may not further participate in this proceeding without first seeking and being granted leave of the Board.

October 20, 2021

Respectfully submitted:

/s/ Jessica Ring Amunson

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that I have this day served copies of this document upon all parties of record in this proceeding, by email on the service list to Finance Docket No. 36496.

October 20, 2021

/s/ Jessica Ring Amunson
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