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May 23, 2022
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EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

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

AMTRAK'S MOTION TO COMPEL

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

Jessica Ring Amunson
Kali N. Bracey
Alex S. Trepp
Jenner & Block LLP
Suite 900
1099 New York Avenue, NW
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

*Counsel for National Railroad Passenger
Corporation*

The National Railroad Passenger Corp. (“Amtrak”) hereby moves the Surface Transportation Board (“Board”) to compel CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway Company (“NS”) to produce to Amtrak by no later than May 31, 2022, all of the information requested in Amtrak’s Supplemental Interrogatories to CSX and NS dated May 17th and attached hereto as Exhibits A and B.¹ These supplemental interrogatories were necessitated by the Board’s requests made at the conclusion of the hearing on the record on May 12, 2022.

Specifically, on May 12th, the Board stated that the following things were missing from the record and invited the parties to supply this information by June 13, 2022: (1) data that would allow the Board to compare the impact of Amtrak service on the Gulf Coast to the impact of Amtrak service on “other lines that are similar to this” so that the Board can “know whether” the impact of Amtrak service on freight service predicted by the 2021 RTC study “is or isn’t reasonable” under the statutory standard; (2) data that “could be described as impairment of customer-centric freight service” and would show “whether any particular customer is suffering or benefiting from the kind of service they’re getting,” including “any indication on whether the 19-[minute] delay [and] the four and a half percent reduction in velocity” that the RTC study says will result from the introduction of Amtrak service actually “means [anything] to a customer”; and

¹ In making this motion, Amtrak does not waive and instead expressly reserves all rights to argue that at the conclusion of the hearing on the record, the Board erroneously shifted the burden of proof to Amtrak and that the Board’s requests for additional information from Amtrak are improper. However, because the Board warned that Amtrak would “proceed at its peril” if Amtrak failed to comply with the Board’s requests for additional information, Amtrak is attempting to fulfill the Board’s requests for additional information and requires the relief sought herein to do so. Amtrak also does not waive and expressly reserves all rights to argue that at the conclusion of the hearing, the Board erred by permitting the carriers to supplement their evidence and by permitting the carriers to do so without providing Amtrak adequate time to review and reply to that evidence.

(3) “facts on which to judge” that the \$100 million of infrastructure projects recommended by the Gulf Coast Working Group is “the right amount.”²

Amtrak’s counsel discussed with counsel for CSX and NS Amtrak’s need for additional information to address the Board’s concerns on the morning of May 17th. Later that day, Amtrak propounded the attached interrogatories to CSX and NS requesting responses within the fifteen days provided by the Board’s regulations. *See* 49 C.F.R. § 1114.26(a). When Amtrak served the interrogatories, Amtrak asked CSX and NS to let Amtrak know by May 20th if they objected to any particular request so that the parties might expeditiously meet and confer on whether the information sought by Amtrak might be available in some other form that would be more easily producible by CSX and NS given the timing constraints. Rather than engaging with Amtrak on its specific requests, CSX and NS instead sent Amtrak a letter at 4:49 pm on May 20th stating that CSX and NS would not respond to the interrogatories at all. *See* Letter from R. Atkins to J. Amunson (May 20, 2022) (attached hereto as Exhibit C).

CSX and NS state that they will not answer Amtrak’s discovery requests because the Board’s May 17, 2022 order holding open the evidentiary record did not order the reopening of discovery. But the Board’s rules governing discovery do not prohibit additional discovery requests after the close of the initial discovery period. Indeed “[u]nder 49 C.F.R. § 1114.21, parties may seek discovery without prior Board approval and the rule does not prohibit parties from seeking additional discovery after an initial discovery period.” *Application of the Natl. R.R. Passenger Corp. Under 49 U.S.C. 24308(a) – Canadian Natl. Ry. Co.*, FD 35743, slip op. at 2 (S.T.B. served Oct. 7, 2015). The Board has found additional discovery requests appropriate where the party adequately “explained its need for additional discovery.” *Id.* Here, Amtrak requires additional

² All quotations are taken from the rough transcript for May 12, 2022. *See* May 12, 2022 Rough Hr’g Tr. at 134:20-135:11; 131:13-132:9; 130:11-131:12.

discovery to respond to the Board's requests for specific information made at the conclusion of the hearing on the record on May 12, 2022.

To the extent the Board finds information missing from the record relevant to determining whether Amtrak's *Gulf Coast* service will unreasonably impair freight transportation, this simply underscores Amtrak's point that CSX and NS failed to carry their statutory burden of demonstrating unreasonable impairment.³ However, because the Board has informed Amtrak that if Amtrak continues to rely on the statutory burden of proof established by Congress, this would be "risky" and a "poor litigation strategy," Amtrak is attempting to respond to the Board's requests.⁴ This puts Amtrak in a bind because the following information is uniquely in the possession of CSX and NS: (1) information on how the predicted impact of Amtrak service on freight service on the Gulf Coast compares with the impact of Amtrak service on freight service on other lines on CSX's and NS's networks; (2) information on the needs of customers along the Gulf Coast route and whether the needs of those customers are being met; and (3) information that will allow Amtrak to provide the Board with a further basis for assessing whether an investment of approximately \$100 million phased in on the corridor after Amtrak service begins is the "right amount" based on comparison to investment on other CSX and NS lines. Accordingly, those are

³ See, e.g., Amtrak Reply Evidence (Dec. 3, 2021) at 4 (arguing that CSX and NS failed to meet their burden because "[o]ther than bare percentages [set forth in an RTC study] of how, in CSX's and NS's opinion, their future freight transportation will be impacted by the introduction of the Gulf Coast service, CSX and NS give no real-world evidence of whether and to what extent the reintroduction of passenger service will, in practice, unreasonably impair their ability to provide freight transportation to shippers"); *id.* at 21 (arguing that the "numbers [in the RTC study] do not offer useful evidence regarding the real-world impact on CSX's and NS's ability to run their freight transportation business" and pointing out that CSX and NS failed to supply any evidence or cite anything in support of their assertion of the impacts of Gulf Coast service on their customers).

⁴ See May 12, 2022 Rough Hr'g Tr. at 139:12-13; 155:7.

the three categories of information sought in the attached interrogatories and that CSX and NS should be compelled to provide to Amtrak by May 31, 2022.⁵

CONCLUSION

For the above-stated reasons, Amtrak respectfully requests that the Board grant its motion to compel the production of the information requested by Amtrak by no later than May 31, 2022.

May 23, 2022

Respectfully submitted:

/s/ Jessica Ring Amunson

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

Jessica Ring Amunson
Kali N. Bracey
Jenner & Block LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

*Counsel for National Railroad Passenger
Corporation*

⁵ Amtrak reserves the right to seek exclusion of any evidence that is responsive to the interrogatories if it is not produced before the submission of additional evidence and offered in subsequent written, oral, or other submissions to the Board. Amtrak also reserves the right to seek an adverse inference should CSX and NS fail to provide evidence on the above three issues.

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 use of the service list, consistent with 49 C.F.R. § 1104.12.

/s/ Jessica Ring Amunson
Jessica Ring Amunson

May 23, 2022

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

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

AMTRAK’S SUPPLEMENTAL INTERROGATORIES
TO CSX TRANSPORTATION, INC. PER THE INSTRUCTIONS OF THE SURFACE
TRANSPORTATION BOARD ON MAY 12, 2022

At the Surface Transportation Board (“Board”) Hearing on May 12, 2022, the Board made additional requests of the parties, which necessitate these Interrogatories. These Interrogatories are to be interpreted and answered in accordance with the Definitions and Instructions below.

DEFINITIONS

1. The present tense shall be construed to include the past and future tenses and the past and future tenses shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these interrogatories.
2. The singular shall be construed to include the plural and the plural shall be construed to include the singular as required by the context to elicit all information discoverable within the broadest scope of these interrogatories.
3. “And” and “or” have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these interrogatories.
4. “Any” and “all” shall mean “each and every.”

5. The term “documents” shall be construed broadly, and includes every writing, recording, photograph, summary, spreadsheet, or record in any form, whether handwritten, printed, typed, taped, electronic, or in any other graphic, digital, magnetic, optical, or mechanical form, however produced, reproduced, or recorded and includes electronic documents (such as electronic mail messages and all attachments to mail messages).
6. The term “include” is illustrative and not limitative and shall be construed to elicit all information discoverable within the broadest scope of these interrogatories.
7. The terms “relating to” and “related to” include: addressing referring to, concerning, showing, concerning, comprising, identifying, stating, consisting of, evidencing, alluding to, responding to, connected with, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of, incorporating, mentioning, embodying, containing, studying, reporting on, commenting on, considering, recommending, constituting in any way, or having any logical or factual connection with the subject matter.
8. The term “identify” when used with reference to a person shall mean to provide that person’s: (1) full name; (2) title; (3) position and business affiliation; and (4) contact information, including business telephone number, business address, and business email address.
9. The term “identify” when used with reference to a document shall mean to provide: (1) the type of document; (2) the document’s date; (3) the document’s author, signer, and originator; (4) the person to whom the document was sent; (5) the document’s title, heading, or other designation; (6) the document’s location; and (7) the document’s substance.

10. The term “Gulf Coast Route” shall be construed to include the tracks running through the Gulf Coast Corridor, as well as any tracks crossing or otherwise touching upon the Gulf Coast Corridor tracks.
11. The term “2021 RTC Study” shall be construed to refer to the Rail Traffic Controller opening and rebuttal studies submitted in these proceedings by Messrs. Banks, Guthrie, and Dingler.
12. The terms “single-track” “double-track” “movable bridges” “grade crossings” “sidings” “daily through trains” “daily local trains” “daily intermodal trains” “foreign trains” “freight train delay” “freight train speed” and “recrews” shall be defined with reference to the 2021 RTC Study.

INSTRUCTIONS

1. Under 49 C.F.R. § 1114.26(a), answers or responses to these Interrogatories are due within fifteen (15) days of service of these Interrogatories, which is May 31, 2022. Because there is very limited time to prepare and submit supplement evidence requested by the Board, if you object to any Interrogatory, you shall notify Amtrak by no later than May 20, 2022, so that the parties can meet and confer to determine the basis for your objection and discuss whether the Interrogatory can be modified so as to permit Amtrak to obtain the information necessitated by the Board’s instructions.
2. Please provide separate written responses to each Interrogatory and repeat the Interrogatory with each response.
3. Whenever you are instructed to state a date, dollar amount, number, or quantification, if such date, dollar amount, number, or quantification is unknown to you, state your best

estimate, indicate that the response is an estimate, and explain why you are unable to provide a more precise response and how you arrived at your estimate.

4. If CSX is unable to answer any part of these Interrogatories in full after exercising due diligence to secure and provide the requested information, CSX should so state and answer the Interrogatory as completely as possible.
5. Each of the following Interrogatories is continuing in nature. If you obtain any additional responsive information at a later date, promptly submit supplemental or amended responses to these Interrogatories.

INTERROGATORIES

1. Identify all persons who assisted in the preparation of CSX's answer of these Interrogatories and separately identify all persons who have knowledge relating to the topics covered in these Interrogatories.
2. Identify all documents used to prepare CSX's answers to these Interrogatories.
3. For each CSX subdivision over which Amtrak service operated during all or any part of September through November 2019, identify the following for the period of September through November 2019. If information is not available for that period, provide the information for any period for which such information is available and identify the period of time for which such information is provided:
 - a. Name of subdivision
 - b. Length of subdivision
 - c. Length that is single-track
 - d. Length that is double-track
 - e. Number of movable bridges

- f. Number of grade crossings
- g. Number of sidings
- h. Number of sidings of insufficient length to accommodate all trains on the subdivision
- i. Number of sidings of insufficient length to accommodate train lengths anticipated to run on the subdivision in 2039
- j. Average number of CSX daily through trains
- k. Average number of CSX daily local trains
- l. Average number of CSX daily intermodal trains
- m. Average number of foreign daily through trains
- n. Average number of foreign daily local trains
- o. Average number of foreign daily intermodal trains
- p. Average number of daily commuter trains
- q. Average number of daily Amtrak trains
- r. Description and number of any other trains that use the subdivision that are not included in subsection j through q
- s. Average minutes of freight train delay per 100 miles*
- t. Average freight train speed*
- u. Average number of re crews*

*To be calculated using the same methodology applied in the 2021 RTC Study.

4. Identify any information CSX intends to rely on to compare the impact of Amtrak service on the Gulf Coast Route with the impact of Amtrak service on any other part of CSX's network.

5. Identify any information CSX reports at the subdivision level that permits comparison of CSX performance between subdivisions, and provide such comparative data for the period September through November 2019. If comparative data is not available for that period, provide the comparative data for any period for which such data is available and identify the period of time for which such data is provided.
6. Identify all customers on the Gulf Coast Route and for each such customer separately identify:
 - a. Contact information
 - b. Any timing requirements for pick-up or delivery of cars
 - c. Scheduled weekly switching days and times
 - d. Weekly percentage of cars delivered to each customer within four hours of the original estimated time of arrival for 2019, 2020, 2021, and 2022.
7. Identify any information CSX intends to rely on to demonstrate the impact of Amtrak service on the Gulf Coast Route on CSX customers along the Gulf Coast Route.
8. For any capital project completed by CSX on any division or subdivision in the past five years, identify the following:
 - a. Installed average cost per track foot for construction of new sidings (broken out for materials, labor, and overhead)
 - b. Installed average cost per installation of a new #20 and #15 main-line power turnout (broken out for materials, labor, and overhead)
 - c. Installed average cost of new miter rail replacement (broken out for materials, labor, and overhead)

- d. Installed average cost of a 20', 40', 60', 80', 100' 200' through girder and deck girder bridge (broken out for materials, labor, and overhead)
 - e. Actual costs by bridge (using historical data, by individual bridges in Gulf Coast and elsewhere) to remote a lift span or swing span bridge.
9. For each category of percentage change in Table 19 of the 2021 RTC Study, identify the percentage change that CSX considers a reasonable impairment of freight transportation.
10. Identify any additional information CSX intends to rely on or submit to the Board to demonstrate unreasonable impairment of freight transportation on the Gulf Coast Route.

May 17, 2022

Respectfully submitted:

/s/ Kali N. Bracey

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

Jessica Ring Amunson
Kali N. Bracey
Jenner & Block LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com
kbracey@jenner.com
ccease@jenner.com

*Counsel for National Railroad
Passenger Corporation*

CERTIFICATE OF SERVICE

I, Kali N. Bracey, certify that I have this day caused a copy of this document to be served upon CSX by email to the service list for Finance Docket No. 36496.

May 17, 2022

/s/ Kali N. Bracey
Kali N. Bracey

EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

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

AMTRAK’S SUPPLEMENTAL INTERROGATORIES
TO NORFOLK SOUTHERN RAILWAY PER THE INSTRUCTIONS OF THE
SURFACE TRANSPORTATION BOARD ON MAY 12, 2022

At the Surface Transportation Board (“Board”) Hearing on May 12, 2022, the Board made additional requests of the parties, which necessitate these Interrogatories. These Interrogatories are to be interpreted and answered in accordance with the Definitions and Instructions below.

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8. The term “identify” when used with reference to a person shall mean to provide that person’s: (1) full name; (2) title; (3) position and business affiliation; and (4) contact information, including business telephone number, business address, and business email address.
9. The term “identify” when used with reference to a document shall mean to provide: (1) the type of document; (2) the document’s date; (3) the document’s author, signer, and originator; (4) the person to whom the document was sent; (5) the document’s title, heading, or other designation; (6) the document’s location; and (7) the document’s substance.

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11. The term “2021 RTC Study” shall be construed to refer to the Rail Traffic Controller opening and rebuttal studies submitted in these proceedings by Messrs. Banks, Guthrie, and Dingler.
12. The terms “single-track” “double-track” “movable bridges” “grade crossings” “sidings” “daily through trains” “daily local trains” “daily intermodal trains” “foreign trains” “freight train delay” “freight train speed” and “recrews” shall be defined with reference to the 2021 RTC Study.

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2. Please provide separate written responses to each Interrogatory and repeat the Interrogatory with each response.
3. Whenever you are instructed to state a date, dollar amount, number, or quantification, if such date, dollar amount, number, or quantification is unknown to you, state your best

estimate, indicate that the response is an estimate, and explain why you are unable to provide a more precise response and how you arrived at your estimate.

4. If NS is unable to answer any part of these Interrogatories in full after exercising due diligence to secure and provide the requested information, NS should so state and answer the Interrogatory as completely as possible.
5. Each of the following Interrogatories is continuing in nature. If you obtain any additional responsive information at a later date, promptly submit supplemental or amended responses to these Interrogatories.

INTERROGATORIES

1. Identify all persons who assisted in the preparation of NS's answer of these Interrogatories and separately identify all persons who have knowledge relating to the topics covered in these Interrogatories.
2. Identify all documents used to prepare NS's answers to these Interrogatories.
3. For each NS division or subdivision over which Amtrak service operated during all or any part of September through November 2019, identify the following for the period of September through November 2019. If information is not available for that period, provide the information for any period for which such information is available and identify the period of time for which such information is provided:
 - a. Name of division or subdivision
 - b. Length of division or subdivision
 - c. Length that is single-track
 - d. Length that is double-track
 - e. Number of movable bridges

- f. Number of grade crossings
- g. Number of sidings
- h. Number of sidings of insufficient length to accommodate all trains on the division or subdivision
- i. Number of sidings of insufficient length to accommodate train lengths anticipated to run on the division or subdivision in 2039
- j. Average number of NS daily through trains
- k. Average number of NS daily local trains
- l. Average number of NS daily intermodal trains
- m. Average number of foreign daily through trains
- n. Average number of foreign daily local trains
- o. Average number of foreign daily intermodal trains
- p. Average number of daily commuter trains
- q. Average number of daily Amtrak trains
- r. Description and number of any other trains that use the division or subdivision that are not included in subsection j through q
- s. Average minutes of freight train delay per 100 miles*
- t. Average freight train speed*
- u. Average number of re crews*

*To be calculated using the same methodology applied in the 2021 RTC Study.

4. Identify any information NS intends to rely on to compare the impact of Amtrak service on the Gulf Coast Route with the impact of Amtrak service on any other part of NS's network.

5. Identify any information NS reports at the division or subdivision level that permits comparison of NS performance between divisions or subdivisions, and provide such comparative data for the period September through November 2019. If comparative data is not available for that period, provide the comparative data for any period for which such data is available and identify the period of time for which such data is provided.
6. Identify any information NS intends to rely on to demonstrate the impact of Amtrak service on the Gulf Coast Route on NS customers.
7. For any capital project completed by NS on any division or subdivision in the past five years, identify the following:
 - a. Installed average cost per track foot for construction of new sidings (broken out for materials, labor, and overhead)
 - b. Installed average cost per installation of a new #20 and #15 main-line power turnout (broken out for materials, labor, and overhead)
 - c. Installed average cost of new miter rail replacement (broken out for materials, labor, and overhead)
 - d. Installed average cost of a 20', 40', 60', 80', 100' 200' through girder and deck girder bridge (broken out for materials, labor, and overhead)
 - e. Actual costs by bridge (using historical data, by individual bridges in Gulf Coast and elsewhere) to remote a lift span or swing span bridge.
8. For each category of percentage change in Table 19 of the 2021 RTC Study, identify the percentage change that NS considers a reasonable impairment of freight transportation.
9. Identify any additional information NS intends to rely on or submit to the Board to demonstrate unreasonable impairment of freight transportation on the Gulf Coast Route.

May 17, 2022

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

Respectfully submitted:

/s/ Kali N. Bracey

Jessica Ring Amunson
Kali N. Bracey
Jenner & Block LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com
kbracey@jenner.com
ccease@jenner.com

*Counsel for National Railroad
Passenger Corporation*

CERTIFICATE OF SERVICE

I, Kali N. Bracey, certify that I have this day caused a copy of this document to be served upon NS by email to the service list for Finance Docket No. 36496.

May 17, 2022

/s/ Kali N. Bracey
Kali N. Bracey

EXHIBIT C



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 202 736 8889
RATKINS@SIDLEY.COM

May 20, 2022

By Email

Jessica Ring Amunson
Kali Bracey
Alex Trepp
Jenner & Block
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412

Re: Finance Docket No. 36496, *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern*

Dear Counsel:

We are writing in response to several outstanding requests from Amtrak to CSX Transportation, Inc. and Norfolk Southern Railway Company with respect to the Gulf Coast matter.

To start, Amtrak served new discovery requests on CSXT on May 17, 2022, which were styled “Amtrak’s Supplemental Interrogatories to CSX Transportation, Inc. Per The Instructions of the Surface Transportation Board on May 12, 2022.” Amtrak served NSR with similar discovery requests. The discovery period in this proceeding concluded on October 4, 2021. The Board issued an order on May 17, 2022, holding open the evidentiary record for the parties to submit additional evidence, but nothing in that order reopened discovery. Therefore, CSXT and NSR will not be responding to these new discovery requests.

Amtrak inquired by email dated May 16, 2022, whether CSXT and NSR would agree to redesignate all materials produced in connection with the 2020 RTC Study performed by HDR Engineering, Inc. and the 2021 Gulf Coast RTC Study submitted into evidence in this proceeding as confidential. In that same email, Amtrak also requested that CSXT and NSR produce all additional RTC analysis performed since the December 23, 2022 rebuttal filing, including any supplemental analysis referenced but not disclosed in Mark Dingler’s testimony. CSXT and NSR will address these two requests in its response to Amtrak’s Motion for Redesignation and Production of Rail Traffic Controller Study Materials and for Expedited Consideration of Same.

Please let me know if you have any questions.

SIDLEY

STB Docket No. FD 36496

May 20, 2022

Page 2

Sincerely,

/s/ William A. Mullins

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Penn. Ave. N.W.
Suite 300
Washington, D.C. 20037

*Counsel for Norfolk Southern Railway
Company*

/s/ Raymond A. Atkins

Raymond A. Atkins
Matthew J. Warren
SIDLEY AUSTIN LLP

Counsel for CSX Transportation, Inc.

cc: Robert Wimbish
Counsel for the Port of Mobile