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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: FD 36496, *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(e) – CSX Transportation, Inc., and Norfolk Southern Railway Company*

Request for leave to reply to hearing proposals, and response to hearing proposals advanced by CSX Transportation, Inc./Norfolk Southern Railway Company and by the National Railroad Passenger Corporation

Dear Ms. Brown:

The Alabama State Port Authority (“ASPA”) and its terminal railroad operating division, the Terminal Railway Alabama State Docks (“TASD” – and collectively with ASPA, the “Port”) hereby request leave to submit the following, brief reply to the competing proposals filed on December 30, 2021, as advanced jointly by CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”) on the one hand, and the National Railroad Passenger Corporation (“Amtrak”), on the other. The Port also hereby submits its reply.

As the record reflects, the Port has asserted party status in this proceeding over Amtrak’s objection, and with CSXT/NSR’s collective consent. Moreover, the Port, out of an abundance of caution, has requested leave to intervene in this proceeding, if necessary – a request to which no one has timely objected. The Port is entitled under the circumstances to address the proposed structure and scope of the hearing as recently advanced by Amtrak and CSXT/NSR (jointly), because the Port has, in an earlier phase, offered evidence and comments on the substantial adverse impacts to freight service in the Mobile terminal that would result from Amtrak’s specific passenger service proposal. The Port’s evidence will be particularly relevant to the hearing and to the Board’s ruling on Amtrak’s Application. In addition, this brief

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response is warranted, given that Amtrak has (for the first time, it appears) accounted – albeit in a very limited way – for the participation of others beyond CSXT/NSR and itself.

The Port takes no position as to the relative benefit of either “hearing on the record” proposal – whether that hearing is to be under the experienced oversight of an administrative law judge (“ALJ”) or by the Board members and staff instead. Rather, the Port wishes here primarily to reinforce that, regardless of the ultimate form of the hearing, that phase of the proceeding, like the presentation of evidence by way of formal filings, must provide for the presentation of hearing evidence and testimony by the Port.

On that note, the Port commends CSXT/NSR for a proposed hearing format that would allow the Port to participate in the hearing on a basis equal to CSXTR/NSR and Amtrak. The Port is pleased to see that Amtrak, for its part, has included provision for “interested stakeholders . . . to present their views” at the hearing it envisions (Amtrak Proposal, 1). But the Port is concerned by Amtrak’s proposal to limit entities other than CSXT/NSR and Amtrak to an expression of “views” on Amtrak’s application, and by Amtrak’s proposal to restrict a second day of the hearing to the Board’s questioning of the parties’ expert witnesses. Given Amtrak’s strained interpretation of what it is to be a party to this proceeding – and Amtrak’s expectation that the Board will endorse that objectionable interpretation – the Port objects to the idea implicit in Amtrak’s proposal that anyone that Amtrak considers to be unworthy of (or unentitled to) party status would be relegated to the virtual equivalent of an evidentiary and procedural “kiddie table” reserved for what Amtrak generally describes as stakeholders.

The Port respectfully requests an equal opportunity to present testimony and to be able, if it so wishes, to present its witnesses for questions from the Board (or an ALJ), and it expects the same of the Board in its order establishing the parameters of the hearing.

Finally, the Port hereby registers its support for a pre-hearing technical conference as proposed by CSXT/NSR. (The Port acknowledges that Amtrak has proposed a pre-hearing conference, also, but that proposal leaves unclear what the intended scope and purpose of Amtrak’s recommended conference would be.) The Port has not offered a traffic impacts model as part of the evidence it has submitted – it has instead pointed to the missed opportunity that resulted from the Board declining to order the parties back to a collaborative effort on traffic modeling, as the Port had urged earlier in this proceeding. But the Port is confident that, whether the hearing is administered by an ALJ or the Board members and staff, the Board staff assisting in this case would benefit greatly from such a technical conference that would review the complexities of the traffic model functions, configuration, and inputs, among other things, as the Board has recognized in previous cases where railroad traffic models have been employed.

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The Port thanks the Board for its consideration of the foregoing Reply.

Respectfully submitted,

/s/ *R. A. Wimbish*

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Terminal Railway Alabama State Docks

cc: All parties of record