

**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.'S RESPONSES AND OBJECTIONS TO
THE NATIONAL RAILROAD PASSENGER CORPORATION'S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, CSX Transportation, Inc. ("CSXT"), through undersigned counsel, responds as follows to the National Railroad Passenger Corporation's ("Amtrak") First Set of Requests for Production of Documents. CSXT reserves the right to supplement or amend these Responses and Objections as circumstances may require.

GENERAL OBJECTIONS

CSXT's General Objections, as set forth herein, are to be considered objections to each of the specific requests for production (including subparts) that follow. CSXT's objections shall not waive or prejudice any objections that it may later assert.

1. CSXT objects to any and all definitions and/or instructions to the extent that the definitions and instructions either seek to expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. Further, CSXT objects to these Requests for Production to the extent that they seek to impose obligations on CSXT that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

2. CSXT objects to each and every Request for Production to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, exemption, or protection from discovery or disclosure. In the event that any such information is inadvertently produced or provided, and such information is the proper subject of the attorney-client privilege, the attorney work-product doctrine, the joint defense and common interest privilege, and/or other applicable privilege, exemption, or protection, such disclosure is not to be construed as a waiver of any of these privileges, exemptions, or protections. CSXT reserves the right to demand that such inadvertently produced privileged information be returned to it and that all copies in Amtrak's possession, and that of its counsel, consultants, subsidiaries, or other agents, be destroyed.

3. CSXT objects to each and every Request for Production that requests documents, communications, or information that is already in the possession of Amtrak or that is readily available or accessible to Amtrak.

4. CSXT does not concede the relevance, materiality, competency, or admissibility as evidence of documents or information requested in the Requests for Production. CSXT reserves its right to object on any ground to the use of the responses herein in this proceeding or in any subsequent appeal, proceeding, action or trial.

5. CSXT objects to Amtrak's Definition No. 11 defining "Gulf Coast Route" defining "Gulf Coast Route" because it is vague. Amtrak defines "Gulf Coast Route" to include tracks running through (or touching upon tracks within) the "Gulf Coast Corridor," but never defines the "Gulf Coast Corridor." In these Responses, CSXT will interpret the term "Gulf Coast Route" to include the tracks running between New Orleans, LA and Mobile, AL and, where relevant, extending over the Three-Mile Bridge to Montgomery, AL

6. CSXT objects to Amtrak's Instruction No. 3 as vague and ambiguous to the extent that it requires production through "the present," which is an ever-moving target. Except as otherwise noted, the time frame for CSXT's document search is January 1, 2015 through August 18, 2021.

7. CSXT objects to Amtrak's Instruction No. 5 defining "documents" to the extent it seeks to impose obligations broader than, or inconsistent with, those imposed by 49 C.F.R. Part 1114 Subpart B. CSXT particularly objects to Amtrak's demand that CSXT produce documents "previously within CSX's possession, custody and control." It is both unreasonable and illogical to demand that CSXT produce documents that are not in its current possession, custody, or control.

8. CSXT objects to Amtrak's Instruction No. 7 to the extent it calls for any data or information that is protected from discovery or disclosure by any privilege, protection, doctrine, or rule.

9. CSXT objects to Amtrak's Instruction No. 10 seeking a log of documents that have purportedly been "destroyed, lost, or become beyond CSXT's possession, custody, or control." Such request is the equivalent of requiring CSXT to perform a "special study" to determine whether any documents have been destroyed, lost, or are otherwise no longer within CSXT's possession, custody, or control. CSXT is not required to prove a negative. CSXT has issued an internal litigation hold notice and taken all reasonable steps to preserve relevant documents and information in accordance with standard discovery practices.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to its General Objections (which apply in full to each and every Request for Production, without further enumeration), below CSXT sets forth Specific Objections and Responses to each Request for Production. CSXT preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive its General Objections. Nor shall any of CSXT's Specific

Objections limit the scope, breadth, generality, or applicability of those General Objections.

Request No. 1

All documents and communications between CSX and HDR, between or among CSX, Norfolk, Southern, and/or HDR, or between CSX and Norfolk Southern relating to any RTC Study or similar study or otherwise relating to the Gulf Coast Route.

Response: CSXT objects to Request No. 1 on the grounds that it is vague. Specifically, CSXT objects to Amtrak's failure to define what constitutes a "similar study." CSXT will interpret "similar study" to mean a study or analysis of proposed Amtrak passenger service over the Gulf Coast Route. CSXT further objects to the request to the extent that it seeks documents and communications protected by the attorney client privilege, the work product privilege, or the joint defense and common interest privilege. Subject to and without waiving these objections or the General Objections, CSXT is producing non-privileged documents that are responsive to this request.

Request No. 2

All documents and communications within CSX relating to any RTC Study or similar study or to the Gulf Coast Working Group.

Response: CSXT objects to Request No. 2 on the grounds that it is vague, overbroad, and seeks irrelevant documents and communications. Specifically, CSXT objects to Amtrak's failure to define what constitutes a "similar study." CSXT will interpret "similar study" to mean a study or analysis of proposed Amtrak passenger service over the Gulf Coast Route. CSXT also objects to Request No. 2 as being overbroad, to the extent that it purports to reach studies that do not relate to proposed Amtrak service over the Gulf Coast Route. CSXT further objects to Request No. 2 to the extent that it seeks documents and communications protected by the attorney client privilege, the work product privilege, or the joint defense and

common interest privilege. Subject to and without waiving these objections or the General Objections, CSXT is producing nonprivileged documents that are responsive to this request and that relate to the proposed Amtrak service over the Gulf Coast Route.

Request No. 3

All documents and communications CSX has used or transmitted relating to modeling for the Gulf Coast Route, including all inputs, assumptions, and methodologies underlying any study results, including all relevant traffic projections.

Response: CSXT objects to Request No. 3 to the extent it seeks documents and communications protected by the attorney client privilege, the work product privilege, or the joint defense and common interest privilege. Subject to and without waiving these objections or the General Objections, CSXT is producing non-privileged documents that are responsive to this request.

Request No. 4

All documents and communications relating to operations, activities, or shippers on the Gulf Coast Route, including schedules and changes to schedules for all trains running on that route.

Response: CSXT objects to Request No. 4 as it is extremely overbroad, seeks information or data that is not relevant, and imposes undue burdens on CSXT that outweigh any probative value the information sought may have in this proceeding. As phrased, the request would reach nearly every document or communication related to CSXT's business operations on the Gulf Coast Route. CSXT further objects to Amtrak's requests for "[a]ll . . . documents and communications" with CSXT shippers on the Gulf Coast Route, which would reach a wide swath of irrelevant and commercially sensitive material. In response to this request, CSXT is producing documents that will provide a full picture of CSXT's actual and planned

train operations over the Gulf Coast Route during the discovery period, including detailed train operating plans and documentation of actual train movements.

Request No. 5

All documents relating to additional modeling of the Gulf Coast Route, including the results of that modeling and any documents that CSX plans to introduce into evidence relating to such additional modeling.

Response: CSXT objects to Request No. 5 as it is premature and seeks information protected by the attorney client privilege, the work product privilege, or the joint defense and common interest privilege. Subject to and without waiving these objections or the General Objections, CSXT refers Amtrak to its response to Request for Production No. 2.

Request No. 6

All documents and communications relating to the Gulf Coast Route, including:

- a. Track charts;
- b. String lines;
- c. Traffic volumes;
- d. Train consists;
- e. Horsepower/ton ratios;
- f. Dispatch playbacks;
- g. Lift bridges.

Response: CSXT objects to Request No. 6 as overbroad and unduly burdensome to the extent that it requests “all” documents and communications relating to the Gulf Coast Route. CSXT further objects to the request for all “dispatch playbacks” relating to the Gulf Coast Route, which would cover a massive amount of data. CSXT conducted an initial search of files for a single dispatcher and determined that over a six-month period a single dispatcher had 292,000 recordings in separate .wav files amounting to approximately 200 GB of data. The universe of responsive documents for all four dispatchers over the entire discovery period would likely consist of millions of audio files. CSXT cannot search these files electronically

and the recordings would have to be listened to individually. Moreover, the content of individual historical dispatcher recordings has no apparent relevance to the issues in this proceeding. CSXT further objects to Amtrak's request for "horsepower/ton ratios" as irrelevant and overbroad. Subject to and without waiving these objections or the General Objections, CSXT is producing actual and scheduled train movement files, which will include information on train length, schedules, and volumes over the discovery period. CSXT is also producing track charts for the Gulf Coast Route and information on the bridges on the route.

Request No. 7

All documents and communications relating to daily operations management reports for the past three (3) years.

Response: CSXT objects to Request No. 7 because CSXT does not know what "daily operations management reports" are nor does CSXT maintain "daily operations management reports" in the ordinary course of business. Subject to and without waiving these objections or the General Objections, CSXT is producing actual and scheduled train movement files, which will include information on train length, schedules, and volumes over the discovery period.

Request No. 8

All documents and communications relating to internal reports regarding the activity, dispatching, or performance of the Gulf Coast Route.

Response: CSXT objects to Request No. 8 because CSXT does not produce an internal report with respect to velocity, train delay, and other potentially relevant metrics over the Gulf Coast Route. Subject to and without waiving these objections or the General Objections, CSXT is producing actual and scheduled train movement files, which will include information on train length, schedules, and volumes over the discovery period. CSXT is also producing the regional scorecards described in its response to Request No. 9.

Request No. 9

All documents and communications regarding performance on the Gulf Coast Route.

Response: CSXT objects to Request No. 9 as being vague, in that it does not define “performance,” and overbroad, in that it requests “all” documents and communications. CSXT is interpreting “performance” to mean operating metrics relating to CSXT freight trains. Subject to and without waiving these objections or the General Objections, CSXT states that it does not separately track operating metrics for trains on the Gulf Coast Route in the ordinary course of business. CSXT does create regular regional scorecards that track certain operating metrics by division. Regional scorecards for the divisions that include the Gulf Coast Route are being produced in response to this Request. CSXT also directs Amtrak to the actual train records that CSXT will be producing.

Request No. 10

All documents and communications regarding alterations on the Gulf Coast Route.

Response: CSXT objects to Request No. 10 as being vague, in that it does not define “alterations,” and overbroad, in that it requests “all” documents and communications. CSXT is interpreting “alterations” to mean capital improvements or other physical changes to the CSXT infrastructure on the Gulf Coast Route. Subject to and without waiving these objections or the General Objections, CSXT states that it is producing nonprivileged documents from which Amtrak can ascertain all completed and planned capital improvements or other physical changes to the CSXT infrastructure on the Gulf Coast Route during the requested discovery time frame.

Request No. 11

All documents and communications with or relating to the Port of Mobile, the Alabama State Port Authority or the Terminal Railway State Docks.

Response: CSXT objects to Request No. 11's request for "all" documents and communications with the Port of Mobile, the Alabama State Port Authority, and Terminal Railway State Docks as overbroad and unduly burdensome, because it would encompass documents and communications with these stakeholders that have nothing to do with the proposed Gulf Coast passenger service. Subject to and without waiving these objections or the General Objections, CSXT is producing documents and communications with or related to the Port of Mobile, the Alabama State Port Authority, or the Terminal Railway State Docks that concern Amtrak's proposed Gulf Coast service.

Request No. 12

All documents and communications relating to lift bridges, bridge tender logs, bridge maintenance activity logs, and other bridge activity logs on the Gulf Coast Route.

Response: CSXT objects to Request No. 12 for "all" documents "relating to lift bridges" as being overbroad and unduly burdensome. Subject to and without waiving this objection or the General Objections, CSXT is producing bridge tender logs in its possession during the requested discovery timeframe of January 1, 2015 to August 18, 2021. In response to this request, CSXT also directs Amtrak's attention to the documents produced in response to Request No. 1.

Request No. 13

All documents and communications relating to CSX's position that reinstating the Gulf Coast Service would impair unreasonably freight transportation for CSX.

Response: CSXT objects to Request No. 13 to the extent that it seeks documents and communications protected by the attorney client privilege, the work product privilege, or the joint defense and common interest privilege. Subject to and without waiving this objection or the General Objections, CSXT is producing nonprivileged documents that are responsive to this request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2021, a copy of the foregoing Responses and Objections to the National Railroad Passenger Corporation's First Set of Requests for Production of Documents was served by email on the National Railroad Passenger Corporation.

/s/ Matthew J. Warren

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