

**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 INTERROGATORIES**

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's") First Set of Interrogatories. 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 interrogatories (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 Interrogatories 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 Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, the joint defense and common interest privilege, 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 Interrogatory requesting that CSXT produce "all" responsive information. For those requests to which it is obliged to respond, CSXT will produce such responsive non-privileged information or documentation as it is able to locate or identify in a reasonable search and which is not otherwise subject to an applicable privilege or other protection.

4. CSXT objects to each and every Interrogatory to the extent that it would require CSXT to perform a "special study" to identify or derive the requested information or to "recreate information that was not kept in the ordinary course of business." *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co.*, Docket No. NOR 42104, slip op. at 6 (S.T.B. served May 19, 2008).

5. CSXT objects to each and every Interrogatory that requests information that is already in the possession of Amtrak or that is readily available or accessible to Amtrak.

6. CSXT objects to Amtrak's Definition 9 defining "identify" when referring to a "document" to the extent it seeks to impose obligations or

requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114 Subpart B. CSXT has no duty to search for, gather, and catalog every document possibly implicated by an interrogatory with the multiple pieces of information specified as required by the definition. This definition would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding. CSXT will respond to any interrogatory asking it to “identify” particular documents as if it were a request for production of those documents and respond in accordance with 49 C.F.R. § 1114.30.

7. CSXT objects to Amtrak’s Definition No. 10 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.

8. 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.

9. CSXT does not concede the relevance, materiality, competency, or admissibility as evidence of documents or information requested in the Interrogatories. 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.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to its General Objections (which apply in full to each and every Interrogatory, without further enumeration), below CSXT sets forth Specific

Objections and Responses to each Interrogatory. 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.

Interrogatory No. 1

Identify all persons who assisted in the preparation of CSX's answer of these Interrogatories or who have knowledge relating to the topics covered in these Interrogatories.

Response: CSXT objects to Amtrak's request for contact information for persons who assisted with the preparation of these interrogatories as they are all employees of CSXT. All communications to these persons relating to the above-captioned proceeding should be made through Sidley Austin LLP. Subject to and without waiving that objection or the General Objections, CSXT states that the following persons assisted in the preparation of CSXT's answers of these Interrogatories or have knowledge relating to the topics covered in these Interrogatories.

- Christopher Cruz – Manager, Performance Analysis
- Andrew Daly – Senior Director, Passenger Operations
- William Roseborough – Director, Project Management
- Hannah Rosse – Director, Performance Measurements, Network Modeling
- Marco Turra – Director, Passenger Operations

Interrogatory No. 2

Identify all documents used to prepare CSX's answers to these Interrogatories.

Response: CSXT objects to this interrogatory insofar as it imposes obligations beyond what is required by the STB's rules and regulations, including

49 C.F.R. § 1114.26(b). CSXT directs Amtrak to the documents and communications produced in response to Amtrak's First Set of Requests for Production of Documents to CSXT or in response to individual Interrogatories.

Interrogatory No. 3

Identify all documents relating to the matters covered in these Interrogatories.

Response: CSXT directs Amtrak to the business records being produced in response to Amtrak's discovery requests, from which a response to this interrogatory can be derived. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 4

Describe in detail the information CSXT provided to HDR related to its participation in any RTC Study or any similar study.

Response: CSXT directs Amtrak to the business records being produced in response to Amtrak's discovery requests, from which a response to this interrogatory can be derived. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 5

Describe in detail information regarding shippers using the Gulf Coast Route, including the following information regarding traffic during relevant period and projected traffic for the twenty-year period following the date of CSXT's response or objection to this Interrogatory:

- a. Each shipper's identity;
- b. Each shipper's address;
- c. The number of cars for each train;
- d. Each shipper's service schedule(s) as they pertain to the Gulf Coast Route, including detail regarding the portions of the Gulf Coast Route each shipper uses and at what time(s).

Response: CSXT objects to this interrogatory as it is overbroad, seeks irrelevant information, and imposes undue burdens on CSXT that outweigh any probative value the information sought may have in this proceeding. Specifically, CSXT objects to Amtrak's demand for shipper identities and addresses as this

information is not relevant to any issue in this proceeding. Subject to and without waiving these objections or the General Objections, CSXT directs Amtrak toward the data on train schedules and train movements being produced in response to Amtrak's discovery requests, and toward other business records that CSXT is producing relating to forecasted traffic growth. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 6

Describe in detail information regarding local trains using the Gulf Coast Route, including the following information regarding traffic during the relevant period and projected traffic for the twenty-year period following the date of CSXT's response or objection to this Interrogatory:

- a. Each local train operator's identity;
- b. Each local train operator's address;
- c. The number of cars for each local train;
- d. Each local train operator's service schedule(s) as they pertain to the Gulf Coast Route, including detail regarding the portions of the Gulf Coast Route each local train uses and at what time(s).

Response: CSXT objects to this interrogatory as it is overbroad, seeks irrelevant information, and imposes undue burdens on CSXT that outweigh any probative value the information sought may have in this proceedings. Specifically, CSXT objects to Amtrak's demand for the identities and addresses of individual CSXT employees, as this information is not relevant to any issue in this proceeding. Subject to and without waiving these objections or the General Objections, CSXT directs Amtrak toward the data on train schedules and train movements being produced in response to Amtrak's discovery requests, and toward other business records that CSXT is producing relating to forecasted traffic growth. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 7

Describe in detail information regarding freight trains using the Gulf Coast Route, including the following information regarding traffic during the relevant

period and projected traffic for the twenty-year period following the date of CSXT's response or objection to this Interrogatory:

- a. Each freight operator's identity;
- b. Each freight operator's address;
- c. The number of cars for each freight train;
- d. Each freight operator's service schedule(s) as they pertain to the Gulf Coast Route, including detail regarding the portions of the Gulf Coast Route each freight operator uses and at what time(s).

Response: CSXT objects to this interrogatory as it is overbroad, seeks irrelevant information, and imposes undue burdens on CSXT that outweigh any probative value the information sought may have in this proceeding. Specifically, CSXT objects to Amtrak's demand for the identities and addresses of individual CSXT employees, as this information is not relevant to any issue in this proceeding. Subject to and without waiving these objections or the General Objections, CSXT directs Amtrak toward the data on train schedules and train movements being produced in response to Amtrak's discovery requests, and toward other business records that CSXT is producing relating to forecasted traffic growth. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 8

Describe in detail all alterations CSXT has made to the Gulf Coast Line over the last ten (10) years, including:

- a. A description of the alteration;
- b. The date the alteration was made;
- c. The coordinates of the location where the alteration was made;
- d. The cost of the alteration;
- e. The basis upon which CSXT determined an alteration was needed.

Response: CSXT objects to this interrogatory as it is overbroad, seeks irrelevant information, and imposes undue burdens on CSXT that outweigh any probative value the information sought may have in this proceeding. Specifically,

CSXT objects to Amtrak's demand for ten years of data concerning "all alterations" as data that old is not relevant to present-day or future operations or probative of whether the proposed Gulf Coast passenger service will unreasonably impair freight service without additional infrastructure. CSXT also objects to Amtrak's demand because it fails to define what constitutes the "Gulf Coast Line." CSXT will interpret "Gulf Coast Line" in the same manner it interprets "Gulf Coast Corridor" to include the tracks running between New Orleans, LA and Mobile, AL and, where relevant, extending over the Three-Mile Bridge to Montgomery, AL. Subject to and without waiving these objections or the General Objections, CSXT directs Amtrak to the business records being produced in response to Amtrak's discovery requests from which a response to this interrogatory can be derived. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 9

Describe in detail all changes made to scheduling for all trains using the Gulf Coast Line over the last ten (10) years, including:

- a. A description of the change;
- b. The date the change was made;
- c. The portions of the Gulf Coast Line where the change was made;
- d. The reason for the change.

Response: CSXT objects to this interrogatory as it is overbroad, seeks irrelevant information, and imposes undue burdens on CSXT that outweigh any probative value the information sought may have in this proceeding. Specifically, CSXT objects to Amtrak's demand for ten years of data concerning "all changes made to scheduling for all trains" as data that old is not relevant to present-day or future operations or probative of whether the proposed Gulf Coast passenger service will unreasonably impair freight service without additional infrastructure. CSXT also objects to Amtrak's demand because it fails to define what constitutes the "Gulf Coast Line." CSXT will interpret "Gulf Coast Line" in the same manner it interprets

“Gulf Coast Corridor” to include the tracks running between New Orleans, LA and Mobile, AL and, where relevant, extending over the Three-Mile Bridge to Montgomery, AL. Subject to and without waiving these objections or the General Objections, CSXT directs Amtrak toward the data on train schedules and train movements being produced in response to Amtrak’s discovery requests. *See* 49 C.F.R. § 1114.26(b).

Interrogatory No. 10

Describe in detail the improvements CSXT believes are needed prior to Amtrak reinstating the Gulf Coast Service and identify all documents supporting that belief, including by providing:

- a. A description of each improvement;
- b. The coordinates of where each improvement is needed;
- c. All methodology, criteria, data, and procedures CSXT employed to determine that each improvement was necessary;
- d. The basis upon which CSXT believes the improvement is needed prior to reinstatement of the Gulf Coast Service.

Response: CSXT objects to this interrogatory to the extent that it seeks information protected by the attorney client privilege, the work product privilege, or the joint defense and common interest privilege. CSXT further objects to this interrogatory on the grounds that it calls for a summary of CSXT’s Opening Evidence in advance of the deadline for such evidence established by the STB.

Interrogatory No. 11

Describe in detail the basis for CSXT’s position that reinstating the Gulf Coast Service would impair unreasonably freight transportation for CSXT.

Response: CSXT objects to this interrogatory to the extent that it seeks information protected by the attorney client privilege, the work product privilege, or the joint defense and common interest privilege. CSXT further objects to this interrogatory on the grounds that it calls for a summary of CSXT’s Opening Evidence in advance of the deadline for such evidence established by the STB.

Interrogatory No. 12

Identify the basis for and provide all evidence that supports your statement to the Gulf Coast Working Group on August 5, 2016 that the “necessary improvements for any Gulf Coast passenger restoration” would cost “at a minimum, \$2 billion.”

Response: CSXT objects to this interrogatory as it is vague and misleading. Specifically, CSXT objects to Amtrak’s failure to define the phrase “Gulf Coast passenger restoration” in the absence of additional context for the quoted language. CSXT further objects to this interrogatory as irrelevant. Five-year-old discussions about the potential infrastructure costs associated with a substantially longer and different passenger service than what Amtrak is proposing today have no relevance to the current questions in this litigation. Subject to and without waiving these objections or the General Objections, CSXT refers Amtrak to the August 15, 2016 letter from Jay S. Westbrook, Assistant Vice President of Passenger Operations at CSXT to Marc Dixon, Regional Manager – South Central of the Federal Railroad Administration, which clearly explained that CSXT’s position was based on the infrastructure recommended by a modeling study conducted by HDR that studied the proposed “resumption of Amtrak passenger service from New Orleans, LA, to Orlando, FL.”

Interrogatory No. 13

Identify the basis for and provide all evidence that supports your position, as reported to the Gulf Coast Working Group on May 10, 2017 that “all infrastructure improvements, based on 20-year growth projections, must be completed before [Amtrak] will start the first day of service” and why you have “zero interest in phasing the infrastructure improvements” over time.

Response: CSXT objects to this interrogatory on the grounds that the timing of completion of infrastructure projects is not relevant to what infrastructure is necessary to support passenger service without unreasonably degrading freight service. CSXT further objects to this interrogatory as irrelevant. Four-year-old

discussions about the potential infrastructure costs associated with a substantially longer and different passenger service than what Amtrak is proposing today have no relevance to the current questions in this litigation. Subject to and without waiving these objections or the General Objections, CSXT responds that infrastructure improvements to a railroad's plant are significant investments that require long-term planning. In the context of new passenger service, infrastructure improvements may be required to prevent unreasonable degradation to freight service. When projects are phased in over time, there is a substantial risk that there will be insufficient funding or commitment from other stakeholders to complete those projects. In the absence of adequate funding, host railroads could be forced to pay for the additional infrastructure projects that are properly the responsibility of the passenger operator in order to protect the quality of freight service to customers.

Interrogatory No. 14

Identify the basis for and provide all evidence regarding your change in position before the Gulf Coast Working Group that \$2.3 billion of infrastructure improvements is required for the Gulf Coast Service rather than \$700-800 million, as reported in the minutes of the Gulf Coast Working Group meeting on May 10, 2017.

Response: CSXT objects to this interrogatory on vagueness, because it fails to define "Gulf Coast Service," a term that has multiple present day and historical meanings. CSXT further objects to this interrogatory as irrelevant. Four-year-old discussions about the potential infrastructure costs associated with a substantially longer and different passenger service than what Amtrak is proposing today have no relevance to the current questions in this litigation. Subject to and without waiving these objections, CSXT refers Amtrak to CSXT's letters of August 15, 2016, March 28, 2017, and April 18, 2017, all of which were enclosed as part of Appendix A to the Gulf Coast Working Group's report.

Respectfully submitted,

/s/ Matthew J. Warren

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Dated: September 2, 2021

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 Interrogatories was served by email on the National Railroad Passenger Corporation.

/s/ Matthew J. Warren

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