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September 2, 2021

VIA-EMAIL

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

Dear Jessica and Kali:

Pursuant to 49 C.F.R. §§ 1114.21–.31, Norfolk Southern Railway Company (“NSR”) hereby provides NSR’s Response to “Amtrak’s First Set of Interrogatories to Norfolk Southern Railway Company” and NSR’s Response to “Amtrak’s First Set of Requests for Production of Documents to Norfolk Southern Railway Company” served on August 18, 2021. NSR will be forwarding a link via separate email to potentially responsive confidential documents designated NSR-00000001 to NSR-00001164. Note, NSR will continue producing responsive documents as they become available.

If there are any questions concerning NSR’s response, please contact me by phone at (202) 663-7823 or by email at wmullins@bakerandmiller.com. If I am not available, please contact my associate, Crystal Zorbaugh, at 202-663-7831 or czorbaugh@bakerandmiller.com.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins

cc Judge Thomas McCarthy (w/o documents)
Tom Zoeller, Mary Richardson, and Joe Carpenter

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36496

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

**NSR’S RESPONSE TO “AMTRAK’S FIRST SET OF INTERROGATORIES TO NORFOLK
SOUTHERN RAILWAY COMPANY”**

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**Attorneys for Norfolk Southern Railway
Company**

Dated: September 2, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36496

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

**NSR’S RESPONSE TO “AMTRAK’S FIRST SET OF INTERROGATORIES TO NORFOLK
SOUTHERN RAILWAY COMPANY”**

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Norfolk Southern Railway Company (“NSR”) hereby responds (referred to herein as “NSR’s Response”) to Amtrak’s First Set of Interrogatories to Norfolk Southern Railway Company (“Amtrak Interrogatories”) served on August 18, 2021.

GENERAL OBJECTIONS

NSR’s General Objections, set forth herein, apply to each one of the specific Amtrak Interrogatories. NSR’s General Objections shall not waive, limit, or prejudice any objections it may later assert.

1. NSR objects to any and all definitions and/or instructions to the extent that they either expand upon or conflict with 49 CFR Part 1114, Subpart B, other Surface Transportation Board ("Board" or "STB") rules or Board precedents. NSR further objects to the Amtrak Interrogatories to the extent that they seek to impose obligations on NSR greater than, or inconsistent with, those imposed under 49 CFR Part 1114, Subpart B.

2. NSR objects to Amtrak Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, any applicable common interest or joint defense privilege, or any other applicable privilege, doctrine, statute, regulation, agreement, or protective order. If any such privileged, protected, or exempt information is

unintentionally produced or provided, NSR reserves all rights under applicable law to demand and/or require the return of all copies thereof and non-use by NSR or any other person or entity in this or any other proceeding.

3. NSR objects to the definition of “Document” to the extent that it seeks information or data that is protected by the attorney-client privilege, work product doctrine, or otherwise protected or privileged, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine. In its production, unless specifically waived for a particular document that is produced herein, NSR will interpret the term “Document” as excluding any data or other information that is protected from discovery or disclosure by such privilege, protection, doctrine, or rule.

4. NSR objects to the definition of “Identify” to the extent it seeks contact information, including business telephone number, business address, and business email address for any individuals identified. Any attempts to contact individuals identified herein should be coordinated through counsel for NSR.

5. NSR objects to the additional definition of “Identify” as it relates to the production of documents. Amtrak’s definition asks NSR 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. NSR objects to the definition and related instructions, which call for NSR to identify documents relating to any specified topic and/or call for an explanation of a “document’s substance” as calling for a legal conclusion. Each document speaks for itself and NSR is not required to identify for Amtrak what documents relate to which subjects.

6. NSR objects to the definition of “Gulf Coast Route” to the extent it seeks information about rail lines other than those involved in the above-captioned proceeding: the lines of CSXT and NSR between New Orleans, La., and Mobile, Ala., which are proposed to be used for Gulf Coast Service.

7. No response contained herein waives nor shall be deemed to waive any claim of privilege as to any information or Document not produced.

8. NSR reserves the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the Amtrak Interrogatories and in any responses NSR may provide thereto, in any subsequent proceeding, or further proceedings in the above-referenced docket. To the extent that NSR produces responsive information or Documents, NSR does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of NSR's objections to any of the Amtrak Interrogatories.

9. NSR objects to the Amtrak Interrogatories to the extent that they seek information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation.

10. NSR objects to Amtrak Interrogatories to the extent that they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.

11. NSR objects to Amtrak Interrogatories, including all Definitions and Instructions, to the extent they call for information or documents that are confidential, proprietary, or commercially or competitively sensitive. Despite this objection, NSR is producing any relevant and responsive information and documents subject to the STB's Protective Order issued on April 14, 2021, and all responses and Documents should be treated in accordance with that order.

12. NSR objects to Amtrak Interrogatories to the extent they seek information and/or documents that are neither relevant to the subject matter of this proceeding nor are reasonably calculated to lead to the discovery of admissible evidence.

13. NSR objects to Amtrak Interrogatories to the extent that they seek information that would require NSR to undertake any special study. NSR will produce responsive information that it

possesses which is not otherwise subject to objection in the form in which it possesses such information but will not conduct any studies to respond to Amtrak Interrogatories.

14. NSR objects to Amtrak Interrogatories to the extent those requests seek information and/or Documents in NSR's possession that are publicly available and/or are already in Amtrak's possession or would require NSR to search for and produce information or Documents that are not within NSR's possession, custody, or control. NSR objects to each and every one of the Amtrak Interrogatories to the extent that it is (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; or (d) would impose an undue burden or expense on NSR that outweighs any relevance or probative value the information sought may have in this proceeding.

15. NSR's General Objections and responses are based upon information presently known to it. NSR reserves the right to rely upon facts, Documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections and to supplement or amend these responses pursuant to 49 C.F.R. § 1114.29 at any time as this proceeding continues.

16. NSR objects to any Amtrak Interrogatories that contain unlimited timeframes as being overbroad and unduly burdensome. Requiring NSR to search records to answer Amtrak's unlimited timeframe questions would be highly prejudicial, force NSR to incur significant costs, and unduly delay timely responses.

17. NSR objects to Instruction No. 7, which calls for six different disclosures related to documents withheld based on privilege, as overbroad, unduly burdensome, and on the basis that it would require the disclosure of information or data that is itself protected by the attorney-client privilege, work product doctrine, or otherwise protected or privileged, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine.

INTERROGATORIES

NSR has reviewed the Amtrak Interrogatories and conducted an initial search for Documents and answers responsive to the Amtrak Interrogatories and that are not subject to the foregoing General Objections (which NSR hereby incorporates by reference into the following responses to each of the individual Amtrak Interrogatories without repeating same with each response). Accordingly, and without waiver of any of the foregoing, NSR responds to the Amtrak Interrogatories as follows:

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

RESPONSE:

Subject to the General Objections set forth above, NSR objects to Interrogatory No. 1 as overbroad and unduly burdensome to the extent it asks NSR to disclose every individual at NSR that might have "knowledge," a broad and undefined term, relating to the topics covered in these Interrogatories." The following individuals, all of whom are employed by Norfolk Southern Corporation ("NSC")(the parent company), assisted in the preparation of NSR's Answer to Amtrak's Interrogatories and/or have knowledge of the topics related to Amtrak's Interrogatories.

Elaina L. Blanks-Green	Deputy General Counsel
Joseph H. Carpenter IV	Senior General Counsel
Hanna Chouest	Deputy General Counsel, Markets & Regulations
John Edwards	General Director Passenger Policy, Strategic Planning
Randall W. Hunt	Senior Director – Interline Services
Randal Noe	Assistant Vice President Regulatory Affairs
Mary Anne Richardson	Deputy General Counsel
Holly M. Sinkkanen	Capacity Planning Analyst
Frank Voyack	Vice President of Government Relations
Thomas E. Zoeller	General Counsel Markets and Regulation
Christopher Blenden	Director, Legal Analytics and Operations

The individuals listed above should be contacted through Baker & Miller, PLLC, counsel for NSR.

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

Subject to the General Objections set forth above, NSR further objects to Interrogatory No. 2 as overbroad, unduly burdensome, and/or duplicative of Document Request Nos. 2, 3, and 6. NSR refers

Amtrak to the documents that will be produced in response to Document Request Nos. 2, 3, and 6. NSR specifically objects to Interrogatory No. 2, to the extent it calls for a legal conclusion as explained in General Objection No. 5. Each document speaks for itself and NSR is not required to identify for Amtrak what documents relate to which subjects.

RESPONSE:

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

Subject to the General Objections set forth above, NSR further objects to Interrogatory No. 3 as overbroad, unduly burdensome, and/or duplicative of Document Request Nos. 2, 3, and 6. NSR refers Amtrak to the documents that will be produced in response to Document Request Nos. 2, 3, and 6. NSR specifically objects to Interrogatory No. 3, to the extent it calls for a legal conclusion as explained in General Objection No. 5. Each document speaks for itself and NSR is not required to identify for Amtrak what documents relate to which subjects.

RESPONSE:

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

RESPONSE:

Subject to the General Objections set forth above, specifically General Objection Nos. 5, NSR further objects to Interrogatory No. 4 as overbroad, unduly burdensome, and in part duplicative of Document Request No. 3, which seeks all inputs, assumptions, and methodologies underlying any study results, including all relevant traffic projections. Despite NSR's objections, NSR responds that HDR was provided the following inputs to be used in its RTC analysis:

- Seabrook Bridge Opening Times
- GIS Data of Track Assets
- Timetables
- Track Charts
- Train departure times and consist data
- Train movement narratives, frequencies, and schedules

- Track patrol schedule
- Train growth forecast and adjusted schedules
- Public projects manual
- Standard design speeds

5. Describe in detail the basis for NSR's position that reinstating the Gulf Coast Service, including on the New Orleans Union Terminal area portion of the route, would impair unreasonably freight transportation for NSR.

RESPONSE:

Subject to the General Objections set forth above, NSR specifically objects to Interrogatory No. 5 to the extent it seeks information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation or asks for assumptions and disclosures related to NSR's evidence which NSR is only in the preliminary stages of assembling and preparing. Given the above objections, NSR objects to Interrogatory No. 5 in its entirety.

Respectfully submitted,

/s/ William A. Mullins

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Attorneys for Norfolk Southern Railway Company

Dated: September 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused Norfolk Southern Railway Company's ("NSR") Written Responses and Objections to Amtrak's First Set of Interrogatories to Norfolk Southern Railway Company to be served on this date upon counsel for Amtrak, Judge Thomas McCarthy, and counsel for CSX Transportation, Inc. by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Dated: September 2, 2021

/s/ William A. Mullins

William A. Mullins

Attorney for Norfolk Southern Railway Company