

**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 REQUESTS FOR PRODUCTION OF
DOCUMENTS TO NORFOLK SOUTHERN RAILWAY COMPANY”**

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Dated: September 2, 2021

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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 Requests for Production of Documents to Norfolk Southern Railway (“Amtrak Requests”) served on August 18, 2021.

GENERAL OBJECTIONS

NSR’s General Objections, set forth herein, apply to each one of the specific Amtrak Requests. 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 Requests 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 Requests 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 Requests 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 Requests.

9. NSR objects to the Amtrak Requests 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 Requests 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 Requests, 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 Requests 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 Requests 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 Requests.

14. NSR objects to Amtrak Requests 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 Requests to the extent that it is (a) overbroad; (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 Requests 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. 1, which requests that NSR provide its production and answers to these Requests within fifteen (15) days of service of these Requests unless otherwise agreed upon by the parties. While NSR is producing Documents with NSR's Response, NSR's production will remain ongoing until all Documents are reviewed and a determination has been made as to whether any Documents located are relevant, privileged, or otherwise responsive, and designated for production as Public, Confidential, or Highly Confidential under the Protective Order.

18. NSR objects to production of documents as called for in Instruction No. 7, which states "[w]hen any Request calls for the production of any portion of any document, the entire document containing any such portion must be produced," on the basis that production, as instructed by Amtrak, would be (a) overly broad; (b) burdensome, and (c) not relevant to the extent such documents contains any information other than information related to Gulf Coast Service.

DOCUMENT REQUESTS

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

RESPONSE: Subject to the General Objections set forth above, NSR further objects to Document Request No.1 on the basis that the request is overbroad and unduly burdensome in that it asks NSR to provide documents and or describe every communication exchanged between NSR and HDR, between or among CSX, NSR, and/or HDR, or between CSX and NSR relating to any RTC Study or similar study in any medium and at any location for over a three-year period. Despite NSR's objection, NSR has identified likely custodians of information, is producing potentially responsive documents to both Document Request Nos. 1 and 2 and continues to search for Documents, and to the extent said Documents, if any are located, are not otherwise subject to objection or privilege, NSR will produce such Documents if such documents are related to the Gulf Coast Route.

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

RESPONSE: Subject to the General Objections set forth above, NSR further objects to Document Request No.2 on the basis that the request is overbroad, unduly burdensome, and in that it asks NSR to provide documents and or describe every communication within NSR in any medium over a more than six-year period about any RTC Study or similar study at any location that is not related to the CSXT and NSR lines between New Orleans, La., and Mobile, Ala. and is not likely to lead to the discovery of admissible evidence. Despite NSR's objection, NSR

has identified likely custodians of information, is producing potentially responsive documents to both Document Request No. 1 and 2 and continues to search for Documents, and to the extent said Documents, if any are located, are not otherwise subject to objection or privilege, and are related to the CSXT and NSR lines between New Orleans, La., and Mobile, Ala, NSR will produce such Documents, if any, are located.

3. All documents and communications NSR 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:

Subject to the General Objections set forth above, specifically General Objection Nos. 6, NSR objects to Document Request No. 3 as overbroad and unduly burdensome to the extent Document Request No. 3 requires NSR to run special reports or studies. However, NSR has identified likely custodians of such information, continues to search for Documents, and to the extent said Documents are not otherwise subject to objection or privilege, NSR will produce such Documents, if any, are located.

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:

Subject to the General Objections set forth above and notwithstanding the Protective Order, NSR does not disclose highly confidential third party (shipper) information unless it has the shipper's permission to do so, or is directed by a lawful legal order to produce such information. NSR is very protective of shipper information, and only produces documents/data

directly related to parties involved in the underlying matter. NSR continues to search for Documents, and to the extent said Documents are not otherwise subject to objection or privilege, NSR will disclose any portion of such Documents, specifically related and relevant to potential service interferences and shipper concerns related to freight service schedules and service upon the introduction of Amtrak passenger service over the lines of CSXT and NSR between New Orleans, La., and Mobile, Ala.

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

RESPONSE:

Subject to the General Objections set forth above, NSR specifically objects to Document Request No. 5 to the extent it for assumptions and disclosures related to NSR's evidence which NSR is only in the preliminary stages of assembling and preparing. Given this proceeding is only at the discovery stage and NSR's evidence continues to evolve, objects to Document Request No. 5 in its entirety. Consistent with standard STB practice, NSR intends to make workpapers, if any, underlying any modeling of the Gulf Coast Route available to the STB and Amtrak when and if such a model is submitted in evidence in the proceeding.

6. All documents and communications relating to NSR's position that reinstating the Gulf Coast Service, including on the New Orleans Terminal area portion of the route, would impair unreasonably freight transportation for NSR.

RESPONSE:

Subject to the General Objections set forth above, specifically General Objection Nos. 6, NSR objects to Document Request No. 6 as overbroad and unduly burdensome to the extent

Document Request No. 6 requires NSR to run special reports or studies. However, NSR has identified likely custodians of such information, continues to search for Documents, and to the extent said Documents are not otherwise subject to objection or privilege, NSR will produce such Documents, if any, are located.

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") Response to "Amtrak's First Set of Requests for Production of Documents 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