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VIA ELECTRONIC FILING

Ms. Cynthia C. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20006

ENTERED
Office of Proceedings
May 7, 2021
Part of
Public Record

Re: *Application of National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e)*
STB Finance Docket No. 36496

Dear Ms. Brown:

Amtrak respectfully requests that the letter filed by counsel for Norfolk Southern Railway Company (“NS”) on April 30, 2021 be stricken from the record.¹ Although NS claims that its letter is necessary to “clarify a glaring and misleading statement contained in Amtrak’s response pleading,” NS does not identify any such statement in Amtrak’s response pleading and therefore no “clarification” is necessary. Reply-to-reply at 1-2.

Amtrak’s response pleading correctly states that the Federal Railway Administration (“FRA”) required certain information from Amtrak as part of the grant agreement between the FRA and Amtrak that funded the Rail Traffic Controller (“RTC”) modeling study. Resp. at 10. Amtrak’s response pleading also correctly states (as both NS and CSX Transportation, Inc. (“CSX”) have previously conceded, *see* Mot. to Dismiss at 14) that NS and CSX refused to provide Amtrak with such information. Resp. at 11. Amtrak’s response pleading likewise correctly states that the FRA considered such information necessary for the RTC study because “without a

¹ Under the Board’s rules, a “reply to a reply is not permitted.” 49 C.F.R. § 1104.13(c). The Board has permitted a reply to a reply “in the interest of having a more complete record” where a party has offered verified statements necessary to supplement the record. *See Atlas Land And Bldg. Corp. And Atlas Materials Recycling Corp. – Petition for Declaratory Order – Industry Spur Track in Pittsburgh, PA*, FD 36380, 2020 STB LEXIS 379, at *3, n.4 (STB served Aug. 17, 2020). Here, NS offers nothing by way of record evidence to support its assertions or to create “a more complete record.” A reply to reply is “not permitted” unless the filing party can “show good cause for departing from [the Board’s] rule.” *Union Pac. Corp., Union Pacific R.R. Co. And MO Pac. R.R. Company – Control and Merger – S. Pac. Rail Corp., S. Pac. Transp. Co., St. Louis Sw. Ry. Co., SPCSL Corp. And The Denver And Rio Grande W. R.R. Co.*, FD 32760, at *3 (S.T.B. served July 27, 2005). No good cause is shown for this filing.

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thorough understanding of all the operationally relevant inputs, the simulation becomes a completely opaque black box, and the outputs become meaningless.” Resp. at 10 (quoting FRA).

Amtrak’s response pleading neither stated nor implied that NS was a party to Amtrak’s grant agreement with the FRA, nor that NS “violated an agreement to which it was not a party.” Reply-to-reply at 2. NS has failed to show good cause for departing from the Board’s rule disallowing replies to replies and its letter should therefore be stricken.

Sincerely,

/s/ Jessica Ring Amunson
Jessica Ring Amunson

*Counsel for the National Passenger Railroad
Corp. (“Amtrak”)*

cc: All parties of record (via email)