

302329

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW

SUITE 300

WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820

FACSIMILE: (202) 663-7849

ENTERED
Office of Proceedings
May 12, 2021
Part of
Public Record

William A. Mullins

Direct Dial: (202) 663-7823

May 12, 2021

Via E-Filing

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

Re: FD 36496
Application Of The National Railroad Passenger Corp. Under 49 U.S.C. §
24308(e) – CSX Transportation, Inc. And Norfolk Southern

Dear Ms. Brown:

Norfolk Southern Railway Company (NSR) submits this letter in response to the U.S. Department of Transportation's (DOT) letter by Acting General Counsel John Putnam, which was filed with the Surface Transportation Board (STB) in the above referenced docket on May 10, 2021. NSR concurs with the DOT that the introduction of new passenger service to the freight rail system should be data-driven and reviewed by operational studies to identify what capital improvements would be required to mitigate any potential negative effects on the operating performance of the host freight railroads' service. However, NSR believes this letter is necessary to offer a brief response to clarify a number of statements in the DOT's letter.

First, the DOT notes that the Federal Railroad Administration (FRA) has been closely involved in efforts to restore intercity passenger rails service on the Gulf Coast since 2015, and by Congressional direction, convened the Gulf Coast Working Group (GCWG) to evaluate this service. The *restoration* of the Gulf Coast Service is of a single three day per week train between New Orleans and Orlando, Florida. The passenger service at issue in this docket is not the restoration of that service, but rather, the establishment of new, twice daily service between Mobile and New Orleans.

Secondly, the DOT states that the "work of the GCWG was intended to include both an examination of potential options for service characteristics (e.g. frequencies, trip times, end

Ms. Cynthia T. Brown

May 12, 2021

Page 2

points, etc.) of the restored service, and the identification of what, if any, capital improvements would be required to support restoration of that service.” The reliance on the GCWG report is flawed in two respects: (1) the FRA explicitly failed to test whether the infrastructure it proposed in the GCWG report would have permitted reliable on time performance of the passenger service; and, (2) it *did not* include the study of any movement of any of the frequencies over the tracks of NSR.

Thirdly, DOT’s statements with respect to the role of the FRA are somewhat misleading because they are not directly applicable to the pending matter. For example, the DOT states that FRA estimated a cost of \$118 million for the restoration of the service, while the CSX estimated that \$2.3 billion in capital improvements is necessary. However, these are amounts for the *restoration* of service between New Orleans and Orlando, not for the new proposed service between Mobile and New Orleans.

DOT correctly states that the studies it seeks to undertake are used to identify what, if any, capital improvements are necessary to support enhancement to existing, or new, intercity rail passenger service and mitigate any negative impacts on existing freight rail service. The DOT rightly notes that Amtrak, NSR and CSXT entered into an agreement to study to determine what, if any capital improvements were necessary, *for two daily round trips between New Orleans and Mobile, AL*. It is that study that remains to be completed and is the crux of the pending matter.

We share the DOT’s commitment to ensuring that passengers and freight shippers have reliable and safe rail transportation along the Gulf Coast. For that reason, Norfolk Southern again respectfully requests that the STB grant the NSR and CSXT join motion to dismiss Amtrak’s complaint and direct that the parties complete the study necessary to establish this new rail passenger service.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins

cc: Parties of Record