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

Re: Finance Docket No. 36496, *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern*

Dear Ms. Brown:

CSX Transportation, Inc. (“CSXT”) submits this response to the May 10, 2021 letter filed by the United States Department of Transportation (“DOT”) and the Federal Railroad Administration (“FRA”) in the above-referenced docket (“DOT/FRA Letter”). CSXT appreciates DOT’s and the FRA’s commitment to ensuring that passenger rail projects “are not pursued in a manner that would materially lessen, or unreasonably impair, the quality of rail freight service provided to shippers.” DOT/FRA Letter at 2. And CSXT shares the FRA’s view that the best way to understand the potential impact on freight service is through “data-driven operations studies.” *Id.*

CSXT respectfully disagrees, however, with DOT’s and FRA’s conclusion that there is no “clear path forward” for completing the necessary modeling study “absent the Board’s involvement.” *Id.* at 3. The path is clear: allow HDR Engineering, Inc. (“HDR”) to complete its in-progress study, at CSXT’s and Norfolk Southern Railway Company’s (“NSR”) expense. Substantial work has already been done by HDR to complete the Gulf Coast Simulation Study that CSXT, NSR, and the National Railroad Passenger Corporation (“Amtrak”) agreed to do in January 2020. CSXT and NSR have offered to fully fund HDR’s completion of that study and to share “the final results and all underlying RTC model work product” with both Amtrak and the STB, subject to the terms of an STB protective order.¹ The STB has now entered a protective order, and CSXT and NSR are still willing to fund the study’s completion. The only party

¹ See Motion to Dismiss, Ex. B at 2 (CSXT-NSR Joint Letter to Amtrak (Mar. 19, 2021)).

standing in the way is Amtrak, which refused to consent to the study's completion, claiming that it "would not be useful to reengage HDR."²

A host of stakeholders—apparently including DOT and FRA—disagree with Amtrak about the "useful[ness]" of conducting a data-driven operations study to model the impact of Amtrak's new proposed service on existing freight operations. The completion of HDR's study will provide the ground work for a consensus agreement, and it would moot any lingering concerns Amtrak might have about being able to test the analysis.³ Amtrak (and the Board) would have access to both the final results and to all underlying RTC model work product, subject to the Protective Order. This is the clear path forward. Amtrak just needs to allow the agreed-upon consultant to finish its work.⁴

CSXT welcomes DOT's and FRA's participation in this proceeding and encourage them to urge Amtrak to allow completion of the HDR study.

Sincerely,

/s/ Raymond A. Atkins

Raymond A. Atkins, Ph.D.

cc: FD 36496 Service List

² See Motion to Dismiss, Ex. C (Amtrak Letter to CSXT and NSR (Mar. 26, 2021)).

³ CSXT and NSR would reiterate that—like Amtrak—DOT and FRA do not argue that CSXT or NSR failed to comply with the terms of the Data Sharing Agreement or the RTC Study Agreement. Those agreements were carefully negotiated with Amtrak to preserve the confidentiality of each party's information, and they contained specific provisions granting FRA access to particular information, including summaries of data and communications between the parties and HDR. The fact that Amtrak later wanted to change the terms of the deal (or later realized that the confidentiality provisions it agreed to with CSXT and NSR may have been inconsistent with commitments it might have made to FRA) is beside the point. Regardless, Amtrak's attempts to justify its decision to discontinue the HDR study are no reason for it to continue blocking CSXT and NSR from completing the study.

⁴ In the event that the STB were to grant CSXT's and NSR's motion to dismiss, CSXT and NSR would remain committed to fund HDR's completion of the study and Amtrak would receive the results just as the parties had originally agreed, all of which would be subject to the terms of the protective order.