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November 3, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **FD 36496**

***Application of the National Passenger Railroad Corporation under
49 U.S.C. § 24308(E) – CSX Transportation, Inc., and Norfolk
Southern Railway Company***

Dear Ms. Brown:

On October 20, 2021, the National Railroad Passenger Corp. (“Amtrak”) filed in the above-referenced proceeding a “motion for clarification” (the “Motion”) seeking to have the Surface Transportation Board (the “Board”) establish that the Alabama State Port Authority (“ASPA”) and its rail carrier division, the Terminal Railway Alabama State Docks (“TASD”)¹ – collectively, the “Port” – “are not parties to this proceeding and cannot present evidence and argument in this proceeding [except in the limited capacity of *amicus curiae*] without first seeking leave of the Board to do so.” Motion, 1-2. The Port hereby responds.

The Port is a party of record here, and is entitled to submit evidence and argument in light of both the Port’s past, substantive participation, and the Board’s specific assurance that this proceeding would provide a forum to hear and consider the Port’s concerns over the potentially substantial freight rail service impacts that could arise from Amtrak’s new passenger rail service proposal. The Port objects to, and is alarmed by, Amtrak’s insistence that the Board should preclude the Port from submitting evidence bearing on the Board’s statutory mandate under 49 U.S.C. § 24308(e)(2)(A) to protect against undue harms to rail freight traffic.

¹ TASD is the operating rail common carrier division of ASPA, serving, and connecting to, multiple railroads within the terminal area of Mobile, Alabama.

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If, however, the Board were to adopt Amtrak's restrictive interpretation of what it is to be a party in this proceeding, then, out of an abundance of caution, the Port seeks leave to intervene so that it may avail itself of the promised forum and thereby assure, through appropriate mitigating measures, that TASD's railroad freight operations in the Mobile terminal (provided in support of eight separate rail carriers to which TASD supplied terminal switching services) are not unreasonably impaired by Amtrak operations.

As indicated in the Port's prior filings, TASD is a rail carrier subject to the Board's jurisdiction² serving the Mobile terminal, and connecting there with, and supporting the traffic of, eight different railroads. Much of TASD's facilities and operations in and around Mobile are located adjacent to, and are bisected by, the single-track main line of CSX Transportation, Inc. ("CSXT"), over which Amtrak seeks to provide service pursuant to its Application in this docket. The Port thus has a critical interest in this proceeding. TASD must already contend with CSXT terminal operations and the variable of nearby drawbridge openings (to permit the movement of any and all watercraft) to be able to obtain clearance from CSXT to move between TASD's railroad facilities on one side of the CSXT corridor and TASD facilities located on the other side of that corridor. As relevant here, TASD's cross-corridor operations entail relatively complicated and time-consuming train movements over anywhere between several thousand feet to 2.6 miles of CSXT's single-track main line and ancillary trackage in Mobile (over which Amtrak proposes to operate) to link interdependent TASD terminal facilities located on opposite sides of the CSXT corridor. Under Amtrak's proposal, TASD would have the added, and potentially insurmountable, challenge of contending with Amtrak's operations, substantially impairing TASD's cross-CSXT-corridor train movements.

Amtrak's dismissive supposition that CSXT, or any other of the named disputants in this case, would serve as proxy to protect adequately the Port's concerns about potential Amtrak-triggered gridlock in Mobile is badly misplaced. The only way that the Port can assure that its interests are heard, and that TASD's freight operations are adequately protected, is for the Port to present evidence on how and why inadequately-mitigated Amtrak operations could severely impede TASD's complex cross-corridor operations. While CSXT might advance a position that coincides with the Port's concerns, that is yet to be seen and far from assured. CSXT could just as easily reach an accord with Amtrak addressing CSXT's concerns with little, if any, measures to adequately protect TASD's cross-corridor traffic. As Amtrak should know, the Port cannot afford to make the potentially fatal strategic mistake of entrusting the protection of its own future freight traffic flows to CSXT as a proxy. For that reason, Amtrak's disregard for the Board's stated assurance that this proceeding would be a forum for addressing the Port's

² See, e.g., *Terminal Railway Alabama State Docks – Temporary Trackage Rights Exemption – Norfolk Southern Railway Company*, FD 36190 (STB served May 11, 2018).

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concerns³ is troubling, and bespeaks Amtrak's lack of consideration for the Congressional intent behind the Section 24308(e)(2)(A) mandate to protect freight traffic.

Amtrak would have this Board dispense with addressing directly the potential adverse impacts upon TASD operations resulting from Amtrak's proposed train service, despite the fact that much has changed in and around the Mobile terminal since Amtrak last operated there. Barring the Port from offering evidence of such adverse freight traffic impacts would likely constitute reversible agency error under the statute. But if the Board were to conclude that the Port is not already entitled to resort to this forum for addressing its concerns, then the Port hereby requests leave to intervene as a party to present evidence as its interests may appear, and not merely in the sequestered, and ill-fitting, context of an *amicus*.

The Port's intervention, if a necessary prerequisite to offering evidence, is warranted under the applicable standards. Further participation by the Port, and, in particular, by TASD, "[w]ill not unduly disrupt the schedule for filing verified statements, except for good cause shown" and "[w]ould not unduly broaden the issues raised in the proceeding."⁴ The Port has already committed to submit evidence and argument in keeping with the current procedural schedule, so its participation going forward would not affect the applicable filing deadlines. Also, the Port's participation, and the evidence it intends to present, would focus upon Amtrak's proposed operations in and around Mobile, and the impact that such operations would have upon local freight service, particularly TASD's. Finally, in keeping with the Board's own assurances, the Port's participation would not broaden the issues in this proceeding, considering that the Board's August 6 Order committed to provide a forum to assess precisely the Port's concerns.

For these reasons, the Board should clarify as necessary that the Port is a party of record, and that, as such, it is entitled to submit evidence regarding adverse freight traffic impacts resulting from Amtrak's proposed passenger train operations. In the alternative, the Board should grant the Port's request to intervene, having satisfied the criteria for intervention at Section 1112.4(a) as set forth above. The Board must in no event allow Amtrak's self-serving and dangerous attempt to diminish both the Port's interests and the Board's statutory mandate to protect freight transportation (including TASD's freight traffic flows in the Mobile terminal) by relegating the Port to the limited and unsuited role of *amicus curiae*.

³ August 6, 2021 Order, 7 ("this proceeding, *including* evidence submitted by the parties, will provide a forum to assess precisely the matter of concern to Alabama state officials and others, i.e., whether the additional train operations will unreasonably impair freight transportation.") (emphasis added).

⁴ 49 C.F.R. § 1112.4(a).

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Respectfully submitted,

/s/ *R. A. Wimbish*

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rail carrier operating division, the Terminal Railway
Alabama State Docks)

cc: All parties of record