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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36496
APPLICATION OF THE NATIONAL PASSENGER RAILROAD CORPORATION UNDER
49 U.S.C. § 24308(E)—CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN
RAILWAY COMPANY

**REPLY COMMENTS AND EVIDENCE OF THE ALABAMA STATE PORT
AUTHORITY AND TERMINAL RAILWAY ALABAMA STATE DOCKS**

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RAILWAY ALABAMA STATE DOCKS**

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In keeping with the modified procedural schedule set forth in the Surface Transportation Board’s (the “Board”) order served on October 15, 2021, the Alabama State Port Authority (“ASPA”) and its rail common carrier operating division, Terminal Railway Alabama State Docks (“TASD”) – collectively, the “Port” – hereby tender reply evidence and comments in the above-referenced proceeding in response to the Opening Evidence filed jointly in this proceeding by CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”)¹ on November 3, 2021. CSXT/NSR’s Opening Evidence indicates to the Port an incomplete understanding of non-CSXT railroad operations in and around the Mobile terminal area, including, most critically for current purposes, TASD’s operations within that terminal (as discussed below). Nevertheless, the Opening Evidence clearly demonstrates, as the Port also showed in its own November 3rd evidentiary filing, that the application (the “Application”) of the National Railroad Passenger Corp. (“Amtrak”) filed on March 16, 2021, must be denied under

¹ Collectively, CSXT and NSR will be referred to herein as “CSXT/NSR.”

the applicable statutory standard.² Accordingly, the Board must not, in this proceeding issue an order compelling CSXT and NSR to allow Amtrak to commence operations over their lines between New Orleans, LA, and Mobile, AL (the proposed “Gulf Coast Service”), as Amtrak currently proposes, and the Board may not, under the statute Amtrak has chosen to invoke, order or prescribe terms and conditions (including freight-service-protecting mitigation) under which Amtrak’s Gulf Coast service might, in the future, be allowed to commence.

The Opening Evidence, including CSXT/NSR traffic modeling clearly demonstrates (despite possible shortcomings) that the Board must deny Amtrak’s Application over the (presumed) objection of CSXT, NSR and the Port, because Amtrak’s passenger train service proposal would unreasonably impair freight service.

It appears that there is no dispute at this juncture of the proceeding that under the statute Amtrak has invoked – 49 U.S.C. § 24308(e) – the Board may order CSXT and NSR to make their facilities available in support of Amtrak’s proposed Gulf Coast Service over CSXT’s and NSR’s (presumed) objection, *unless* the evidence provided by affected railroads demonstrates that the additional³ passenger trains would “impair unreasonably freight

² The Port reiterates that, while it does not support Amtrak’s application, it would not oppose, and would possibly support, Amtrak’s Gulf Coast Service proposal were it responsibly advanced with due regard, and if it were to contain appropriate provision, for freight-service-protecting infrastructure. See Port Comments (April 5, 2021). As such, the Port cannot fairly be said to be opposed to Amtrak’s general passenger service concept for the New Orleans-Mobile corridor. Rather, the Port opposes the proposal only as Amtrak specifically has advanced it, since Amtrak has demonstrated its minimal regard for the freight service impacts of its proposal, including the impacts on TASD freight operations in Mobile.

³ Section 24308(e) addresses Amtrak’s proposed operation of “additional trains” where the host railroad(s) do not agree to allow for the operation of such additional trains. Here, as a threshold issue, the Port questions whether Amtrak’s proposal encompasses “additional trains” as that term is used in the statute, considering that neither CSXT nor NSR currently host any trains over the proposed Gulf Coast Service corridor. The Port has already questioned whether the Board has correctly ascertained that CSXT and NSR have truly objected to Amtrak’s new rail service proposal (assuming that it involves “additional trains”) to warrant this proceeding.

transportation.”⁴ The Port has shown in its November 3 filing that Amtrak’s proposal would unreasonably impair TASD operations in and around the Mobile terminal, detailing in the process the frequent, complex, and time-consuming train operations that TASD must undertake to operate between TASD facilities that are separated by the single-track CSXT mainline through Mobile over which Amtrak seeks to operate as many as eight daily passenger train movements (including empty layover train movements to and from CSXT’s Choctaw Yard or some other, nearby train storage and servicing track).

The Opening Evidence supplied by CSXT/NSR corroborates the basic point of the Port’s own evidence – that the Board order that Amtrak has requested “would devastate first-mile last-mile service to freight customers in the region”⁵, and thus must not be granted. More to the point here, the CSXT/NSR Opening Evidence specifically reinforces the Port’s evidence showing that Amtrak’s proposed Gulf Coast Service Application, if granted, would substantially, and unreasonably, impair TASD’s train operations in Mobile, which fall generally under CSXT/NSR’s local train service analysis.⁶

The Port recognizes, and emphasizes, that CSXT/NSR’s traffic modeling shows dramatic, adverse impacts to TASD service from Amtrak’s proposal, as it should. But it nevertheless appears to the Port that CSXT/NSR’s modeling understates the scope and frequency of TASD’s cross-corridor operations in the Mobile terminal and the period of time that Amtrak

⁴ 49 U.S.C. § 24308(e)(2)(A).

⁵ Opening Evidence, 4.

⁶ Opening Evidence, Exhibit 2 (Verified Statement of Charles H. Banks and Larry R. Guthrie – “V.S. Banks/Guthrie”), Appendix A (New Orleans – Mobile Gulf Coast Passenger Service RTC Modeling Report – the “Report”), 35, 40 (TASD trains would face 10.9% increases in passenger train-related delays *even if* CSXT/NSR-recommended, freight service-protecting infrastructure improvements were to be implemented), 41, 46.

trains would tie up local train traffic in the Mobile terminal,⁷ which, in turn, would understate the severity of the TASD freight train service impacts that Amtrak's passenger train service proposal threatens. The Port would note, however, that, while CSXT/NSR's traffic modeling and evidence on adverse freight service impacts would have benefitted from better engagement with TASD – something that the Port would encourage CSXT/NSR to do going forward and to account for in its rebuttal evidence – that modeling still provides more than ample basis to deny Amtrak's Application in the interest of protecting against unreasonable freight service impacts.

Similarly, the Port recognizes that the CSXT/NSR traffic impacts analysis and modeling rely on what CSXT/NSR's expert witnesses acknowledge are conservative freight traffic growth estimates of less than 1.5% annually,⁸ which are substantially below the TASD freight traffic forecasts included in the Port's own opening evidence filing.⁹ Here, also, the CSXT/NSR evidence on unreasonable impairment to freight service – as severe as those projected impacts have been shown to be through such conservative traffic forecasting and modeling – substantially understates the harms to TASD cross-corridor freight train operations that would likely result from Amtrak's Gulf Coast Service proposal. Regardless, once again, the evidence nevertheless weighs heavily against Amtrak's Application.

The Port believes that the possible shortcomings of the CSXT/NSR traffic modeling and impacts analysis presented on opening are the avoidable by-product of insufficient CSXT/NSR consultation with TASD. Had adequate time and circumstances allowed

⁷ See Reply Verified Statement of Robert M. Golden ("Reply V.S. Golden"), 2-3 (addressing, among other things, CSXT/NSR erroneous reliance on Amtrak's asserted operating windows in the Mobile terminal).

⁸ Id., Report, 23-24.

⁹ Port Opening Evidence and Comments, Exhibit A (TASD Historic Railroad Volume Data, and ASPA Railroad Traffic Growth Forecasts: 2021-2026).

(considering the Board’s compressed and demanding procedural schedule for this case), such consultation among the freight carriers might have resulted in an even more definitive case against Amtrak’s harmful passenger-service-without-mitigation proposal. But, in the end, the Port’s criticisms go only to the marginal *degree* of the severity of the impact of Amtrak’s passenger service proposal, and not to the presence of impact. Either way, the difference between CSXT/NSR’s evidence, with or without the benefit of TASD’s input, is akin to the difference between showing that a Board order granting Amtrak’s application would be very bad for freight service in and around Mobile, or that it would be awful for the interstate transportation of freight by rail in and through the Mobile terminal area.

The Port steadfastly opposes the CSXT/NSR alternative proposal for the Board to consider and impose infrastructure mitigation in this proceeding (if the Board were to grant Amtrak’s Application), as the specific statutory provision that Amtrak has invoked conveys no such authority to the Board.

The Port respectfully takes issue with CSXT/NSR’s proposal for Mobile area mitigation, particularly compared to the infrastructure mitigation discussed by the Port in its November 3rd filing. CSXT/NSR’s infrastructure recommendations in and around the Mobile terminal – specifically, extending Brookley Siding (west of downtown Mobile), installing 14,000 feet of double-track through Mobile (with 3 crossovers), and installing a new Mobile Station Track¹⁰ – reflect a “through-freight-centric” view of mitigation under which CSXT, in this particular case, has taken measures to protect against harms to *its* movement of freight in and through Mobile, but has given TASD cross-corridor mitigation secondary consideration at best, a dangerous proposition given TASD’s last-in-line status (behind drawbridge closures for all

¹⁰ V.S. Guthrie/Banks, I-10.

water-borne traffic, Amtrak, and CSXT).¹¹ To be sure, the Port does not object to CSXT's suggested Mobile-area infrastructure improvements, but CSXT/NSR can and should know that CSXT's Mobile-area focus would do little to protect TASD's local, cross-corridor operations. Indeed, the CSXT/NSR Opening Evidence effectively admits that the recommended Mobile mitigation would not shield TASD traffic from substantial Amtrak-related delays,¹² and it is therefore unclear why CSXT/NSR stopped short of recommending a better, more comprehensive infrastructure plan for the Mobile terminal. The Port stands firmly behind its own mitigation as set forth in the Port's opening evidence filing, and the Port looks to CSXT/NSR in the course of rebuttal, to re-evaluate the focus and scope of appropriate mitigation for all Mobile terminal operations, and not just that mitigation geared toward protecting CSXT's through traffic.

The foregoing discussion responding to CSXT/NSR-recommended mitigation warrants two additional observations on reply. First, and fundamentally, the Port would remind the Board that the Application that Amtrak has chosen to file seeks a Board access order pursuant to Section 24308(e) – a straightforward “yes” or “no” decision. Under that statutory provision, the Board lacks the authority to impose mitigation or to prescribe other terms and conditions as prerequisites to the commencement of Amtrak's proposed Gulf Coast Service.¹³

¹¹ Reply V.S. Golden, 3. This is precisely the sort of development that the Port had anticipated when it sought to submit its own evidence in this phase of the proceeding, rather than to rely on CSXT/NSR to function as a proxy, as Amtrak dismissively had suggested. Only the Port can adequately protect its interests generally in freight traffic fluidity, and those of its terminal operator, TASD. To be fair, CSXT might have advanced many of the same mitigation measures as the Port did, had CSXT/NSR had additional time to confer with TASD, and to understand TASD's operating concerns.

¹² See footnote 5, *supra*.

¹³ Indeed, the history of Section 24308(e) shows that the Board's role is strictly limited under that provision to either granting Amtrak's application for the operation of “additional” trains, or denying such an application on the basis of persuasive evidence that granting a specific application would impair freight railroad service unreasonably. Among other things, until 2008,

Accordingly, the Port objects categorically to the alternative proposal raised by CSXT/NSR that the Board, nevertheless, could entertain prescription of freight-service-protecting infrastructure mitigation in this proceeding, rather than denying the Application outright.¹⁴

Second, the evident shortcomings of CSXT's recommended mitigation for the Mobile area (which focus, predictably, and primarily, upon service issues principally of concern to CSXT at the expense – and to the collateral detriment – of T ASD cross-corridor service) reinforce why it is essential that the Port be recognized as a party to this proceeding, why the Port's own evidentiary presentation should be accepted and considered, and why the trial-style form of proceeding the Board has opted to initiate, is a less-effective alternative to ordering Amtrak to re-commit to the Rail Traffic Control Study ("RTCS") that Amtrak unilaterally repudiated,¹⁵ subject, under the circumstances, to the use of the Board's good offices to oversee and direct the good faith development of that Study by all parties. The experience to this point indicates that, in the event of a future proceeding for the prescription of terms and conditions, including an exploration of appropriate mitigating infrastructure, under 49 U.S.C. § 24308(a)(2)(A), there is a substantial risk that the disputants (CSXT, NSR and Amtrak, nominally) would give short shrift to all but the issues and concerns of immediate interest to each, leaving other, directly affected carriers such as T ASD essentially in the lurch. Only the Port adequately can protect the Port's railroad freight service interests, and those interest, in the

the Secretary of Transportation (through the Federal Railroad Administration – "FRA")) was entrusted with entertaining and deciding access applications under Section 24308(e), and the FRA had established comprehensive regulations to govern such a proceeding (formerly set forth at 49 C.F.R. § 201 (2008)). But the FRA did not have, and never did have, the authority under the statute to impose terms and conditions for Amtrak's use of the railroad facilities of others. Such prescriptive authority is, and has always been, entrusted to this agency under the somewhat analogous 49 U.S.C. § 24308(a).

¹⁴ Opening Evidence, 47-52.

¹⁵ Port Comments (April 5, 2021).

Port's view, would be better addressed through Board efforts to guide and sustain the RTCS, rather than through an adversarial proceeding that seems to the Port to accede to Amtrak's prerogative.

WHEREFORE, the Port respectfully submits that, despite possible shortcomings to CSXT/NSR evidence borne of the limited time frames the Board's procedural schedule has afforded the parties, CSXT/NSR's Opening Evidence (as does the Port's) clearly militates in favor of the only option extended to the Board under the applicable statute in the presence of a clear threat of unreasonable impairment of railroad freight service – denial of Amtrak's Application.

Respectfully submitted,

/s/ *R. A. Wimbish*

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REPLY VERIFIED STATEMENT OF ROBERT M. GOLDEN

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My name is Robert M. Golden. I am General Manager of the Terminal Railway Alabama State Docks (“TASD”) in Mobile, Alabama. My qualifications to submit this verified statement are detailed in an earlier verified statement, submitted in support of the Opening Comments and Evidence of the Alabama State Port Authority (“ASPA”) and TASD (collectively, the “Port”), which is incorporated herein by reference. See Port Opening Comments and Evidence, Exhibit B (“Opening V.S. - Golden”). The purpose of this reply verified statement is to respond to the Opening Evidence jointly submitted by CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”) on November 3, 2021, in which CSXT and NSR have shown that, as proposed, the New Orleans-Mobile passenger train service the National Railroad Passenger Corporation (“Amtrak”) wants to initiate would result in serious harm to railroad freight service, including that provided by TASD.

I appreciate CSXT’s and NSR’s efforts to account for TASD’s operations in their traffic impacts analysis and modeling, but that analysis does not appear to fully reflect the negative impacts Amtrak’s proposed new service will have on TASD’s operations in at least one respect. Specifically, it appears from my reading of CSXT’s and NSR’s Opening Evidence that they have accepted, for purposes of assessing freight traffic impacts, Amtrak’s unsupported estimate that each Amtrak inbound and outbound train would require only fifteen minutes to move between Choctaw Yard and the proposed station site in downtown Mobile, and that each layover movement to or from storage (presumably at CSXT’s Choctaw Yard) would also consume fifteen minutes of Mobile terminal track capacity, during which all CSXT through freights, locals operating through downtown Mobile, and TASD cross-corridor trains would have to wait. (CSXT/NSR Opening Evidence, at 45, and Exhibit 2 (Verified Statement of Charles H. Banks

and Larry R. Guthrie), Appendix A (New Orleans – Mobile Gulf Coast Passenger Service RTC Modeling Report – the “Report”), 25.

This may be part of the conservative assumptions used in building CSXT’s and NSR’s traffic impacts model (Report, 23–24), but the evidence submitted does not indicate why that figure was accepted at face value. In my expert opinion, acceptance of Amtrak’s figure does not comport with operating reality, and thoroughly understates the scope of the delays that would be imposed particularly on TASD, whose cross-corridor traffic is nearly assured to be last in the service “packing order” behind watercraft (local drawbridge closures), Amtrak, and CSXT (the latter of which controls the corridor that TASD trains must cross, and which has been consistently unwilling to allot TASD operating windows through CSXT’s portion of the Mobile terminal, presumably to assure that CSXT train movements are always accorded priority over TASD, incidentally).

As such, CSXT and NSR appear to assume swifter Amtrak train transit and far less consumption of track capacity than is realistic in the congested Mobile terminal. Further, their traffic modeling does not appear to account for the staging of trains clear of the main line which would be necessary to clear the interlockings of opposing freight train movements before the transits could be made, and does not account for potential delays at the passenger station. *Id.* Based on my experience supervising railroad operations at CSXT and TASD, I think a more likely scenario for the effects of Amtrak trains on freight operations in Mobile would be as follows:

- CSXT would need to start staging trains for Amtrak each day between 05:00 and 06:30 southbound at Mobile, while the northbound trains would be staged along their line halfway to New Orleans. CSXT would allow trains that could make their meets, starting as the first southbound trains around 06:30, running until around 09:30. This means there would be three hours in the morning for meets and passes between Amtrak and freight trains. CSXT would then start staging

trains again between 09:30 and 11:00 for arrival of the first northbound Amtrak train into Mobile. Running time for freight traffic, free of opposing Amtrak trains, would then run from around 11:00 to 15:00 each day, for a window of four hours.

- In the afternoon, this situation would repeat itself, with the second set of Amtrak trains. CSXT would start staging again between 15:00 and 16:30 for the second southbound Amtrak train to New Orleans. CSXT would allow southbounds and northbounds to make meets to do so beginning around 16:30, running until about 19:30, with three hours to make meets and passes between Amtrak and freight trains. Staging would begin in the evening around 19:30 to 21:00 for the second northbound Amtrak train. This would leave a window, free of opposing Amtrak trains, between 21:00 and 05:00, of eight hours.

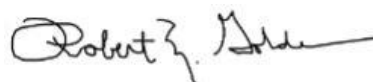
Second, while CSXT and NSR propose certain infrastructure mitigation for the Mobile area, I know from experience that such mitigation would primarily protect against significant delays to CSXT traffic (particularly through traffic, which I suppose is to be expected), it leaves unaddressed much of the impact which new Amtrak service would have on T ASD's train operations. If infrastructure mitigation were to be limited to what CSXT and NSR proposed for the Mobile area, T ASD would endure significant operational delays due to Amtrak service.

CSXT and NSR evidence of impact with and without mitigation indirectly proves my point. For example, CSXT and NSR offer a base case for 2019, a base case for 2039, and then assess the impacts of Amtrak operations on those base cases. *Id.*, 23–25. Their Report showed major freight traffic delays as the result of Amtrak service absent mitigation. *Id.*, 35, Table 12. The mitigation CSXT and NSR have proposed would help avoid delays—for CSXT. Even with the mitigation CSXT and NSR have proposed, however, their evidence establishes that T ASD traffic would still face significant delays. *Id.*, 41, Table 16. Again, T ASDs' cross corridor trains only move across CSXT's facilities at CSXT's discretion, and T ASD remains last in line of priority for traffic through Mobile. Taken from this perspective, it is clear that CSXT and NSR have not accounted for mitigation necessary to avoid serious adverse impacts on T ASD's

operations. Such harm to T ASD traffic can only be avoided for the most part by way of the sort of infrastructure mitigation advanced in my Opening V.S. - Golden at 36–38.

VERIFICATION

I, Robert M. Golden, verify under penalty of perjury that I have read this verified statement on behalf of the Alabama State Port Authority and the Terminal Railway Alabama State Docks, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this verified statement on behalf of the Alabama State Port Authority and the Terminal Railway Alabama State Docks.

A handwritten signature in black ink, appearing to read "Robert M. Golden", written over a horizontal line.

Robert M. Golden

Executed on December 3, 2021.

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of December arranged to serve the foregoing Reply Comments and Evidence of the Alabama State Port Authority and Terminal Railway Alabama State Docks upon all parties of record by electronic service or, where such service is not available, by U.S. Mail, postage prepaid.

/s/ *R. A. Wimbish*
Robert A. Wimbish