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ENTERED
Office of Proceedings
December 8, 2021
Part of
Public Record

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December 8, 2021

E-Filing

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Railway Company, FD 36496

Dear Ms. Brown:

On December 3, 2021, The National Railroad Passenger Corp. (“Amtrak”) filed its Reply Argument and Evidence (“Reply”) in the above-captioned proceeding. In reviewing, Amtrak’s Highly Confidential and Public Versions, counsel for Norfolk Southern Railway Company (“NSR”) discovered several issues with Amtrak’s presentation of its evidence with respect to its designation as “highly confidential”, which create unnecessary challenges for both NSR and CSX Transportation, Inc. (“CSXT”), and the preparation of rebuttal evidence but also for the Board’s subsequent review of the evidence presented.

Amtrak did not mark its Highly Confidential evidence as “Highly Confidential” aside from naming its reply evidence as HIGHLY_CONFIDENTIAL_Amtrak_Reply_Evidence.pdf.” In fact, the actual document does not contain the Highly Confidential designation on the cover letter nor anywhere in the body of the pleading. This leaves open the possibility that a printed version of the document could be inadvertently circulated by the parties or the Board. Additionally, within the Highly Confidential version, Amtrak failed to use brackets or parentheses to inform a reader as to which information in the Highly Confidential version should be treated as such. It is customary in proceedings before the Board, to protect against inadvertent disclosure to reflect n evidence filed under seal information that was redacted in public versions of a filing by using single brackets to denote redacted confidential information and double brackets to reflect redacted highly confidential information. Amtrak did not follow this practice. The Board should order them to do so.

In a prior case, the Board after reviewing pleadings that failed to comply with the protective order regarding the designation and filing of "Confidential Information" and "Highly Confidential Information, held that the parties failed to designate exactly what information is "Confidential Information,” opting instead to take the position that the entire pleading was confidential or highly

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confidential, when in fact it clearly was not. When the issue was presented to the Board, the Board held that in order for it to prepare a decision in the proceeding based on the facts presented, the parties should re-file their pleadings and distinguish between public, confidential, and highly confidential information. See CF Industries, Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685, 1998 STB Lexis 787 (STB served Oct. 13, 1998). Amtrak should likewise be required to do so in this proceeding.

Even more troubling, however, is that when reviewing the Highly Confidential and Public versions, it became apparent that the versions are not identical. For example, page 16 in the Public Version and Page 23 in the Highly Confidential Version of the Verified Statement of Thomas D. Crowley and Daniel L. Fapp of L.E. Peabody & Associates, Inc. are not the same. See Exhibit A.¹ The same is true for other pages. This deficiency forced counsel for NSR to spend time it should have been able to devote to its rebuttal, trying to ascertain what was different about the two versions. There is simply no reason for the text placement in the Public and Highly Confidential versions to differ. This has created substantial confusion and has slowed down NSR's review and preparation of its rebuttal evidence. For all of the reasons above, the Board should direct Amtrak to submit revised pleadings following standard protocol and procedure regarding designation of public, confidential, and highly confidential information.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway Company

Enclosures

cc: Parties of Record
Tom Zoeller
Raymond A. Atkins, Matthew J. Warren, Stephen Laudone (CSXT)
Jessica Ring Amunson, Kali N. Bracey

¹ For the Board's convenience, copies of the Highly Confidential and Public versions of page 16 and 23 have been filed under seal as Exhibit A.

EXHIBIT A

Public Version of pages 16 & 23

These [REDACTED] of unnecessary “trains” that are unsupported by the provided data and perform little function except to create congestion in the RTC model translate to significant numbers of trains per day. Table 2 below illustrates the trains included in the 2019 Banks/Guthrie Base Case RTC simulation by train type on a trains per day basis.

Table 2 Trains Included in Banks/Guthrie RTC 2019 Base Case During 14-Day Modeling Period		
Train Type	Banks/Guthrie RTC Trains 1/	Average Trains Per Day 2/
(1)	(2)	(3)
1. [REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]	[REDACTED]
4. [REDACTED]	[REDACTED]	[REDACTED]
5. [REDACTED]	[REDACTED]	[REDACTED]
6. [REDACTED]	[REDACTED]	[REDACTED]
7. [REDACTED]	[REDACTED]	[REDACTED]
8. [REDACTED]	[REDACTED]	[REDACTED]
9. [REDACTED]	[REDACTED]	[REDACTED]
10. [REDACTED]	[REDACTED]	[REDACTED]
11. [REDACTED]	[REDACTED]	[REDACTED]
12. [REDACTED]	[REDACTED]	[REDACTED]
13. [REDACTED]	[REDACTED]	[REDACTED]
14. [REDACTED]	[REDACTED]	[REDACTED]
15. [REDACTED]	[REDACTED]	[REDACTED]
16. Total	[REDACTED]	[REDACTED]
1/ The total trains on Line 16 equal the total trains on Table 1, (Column (3), Line 14 minus the Amtrak trains included on Line 14 and Line 15 -- [REDACTED]		
2/ Column (2) ÷ 14 days.		

Table 2 demonstrates that the large numbers of trains that Banks/Guthrie arbitrarily inserted into the RTC model create an unreasonable number of trains per day. For example, while

While the CSXT dispatch data provided in this case is not granular enough to see train movements over the bridge, there is another source of data that identifies the number of trains that operate over the bridge every day. The Alomanster Avenue Bridge is owned by the Port of New Orleans, which operates and staffs the bridge. The bridge operators produce a daily shift report, which shows the number of vessels that move over the Industrial Canal and require the bridge to be opened. The daily shift reports also show the number of trains that operate over the bridge during the shift. While CSXT redacted the details of the trains moving over the bridge, we can still determine the number of trains that moved over the bridge because the bridge operator's daily shift report shows one train for each line of the shift report.

Exhibit No. 5 to this Reply VS summarizes the number of trains that operated over the Alomanster Avenue Bridge during the September 2019 to November 2019 period using the Port of New Orleans daily shift reports. Exhibit No. 5 shows that an average of [REDACTED] trains per day operate over the bridge with a maximum of [REDACTED] trains per day and minimum of [REDACTED] trains per day that moved over the bridge during the study period.

The Alomanster Avenue Bridge operator shift reports are independently produced data that indicate the number of trains moving over the bridge are significantly lower than the number of trains assumed by Banks/Guthrie. We could provide even more detailed analysis with these daily shift reports, but CSXT decided to redact the train data shown. We must infer that CSXT redacted

³⁸ See, Reply e-workpaper [REDACTED]