



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
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December 14, 2021

VIA ELECTRONIC FILING

303355

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

ENTERED
Office of Proceedings
December 14, 2021
Part of
Public Record

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

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is the United States Department of Transportation and the Federal Railroad Administration's Motion for Leave to File Comments as *Amici Curiae*, together with their Comments. If you have any questions, please feel free to contact me.

Thank you for your assistance with this matter.

Respectfully,
/s/ Christopher S. Perry

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Enclosures

cc: Counsel for Parties of Record (via electronic mail)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36496

**APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION
UNDER 49 U.S.C. § 24308(e) – CSX TRANSPORTATION, INC., AND
NORFOLK SOUTHERN RAILWAY COMPANY**

**MOTION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND
THE FEDERAL RAILROAD ADMINISTRATION FOR LEAVE TO FILE COMMENTS
AS AMICI CURIAE**

The United States Department of Transportation (Department or DOT) and the Federal Railroad Administration (FRA), an operating administration of DOT,¹ respectfully move for leave to file the accompanying Comments in this matter as *amici curiae*. DOT has critical interests at stake here in light of the role that it has played, and will continue to play, in fostering the restoration of passenger rail service in the Gulf Coast region. In particular, as discussed in the accompanying Comments, DOT has provided significant funding for capital improvements and operating financial support for the restored Gulf Coast service. FRA also led a Working Group on these issues that included the parties to this proceeding, as well as various other public and private sector stakeholders. This case is central to the Department's role in advancing the goals of Congress and the Biden-Harris Administration to enhance passenger rail service nationwide.

In addition, these Comments expand upon the views that DOT previously submitted to the Board at an earlier stage, which the Board relied upon in reaching its decision to institute this

¹ For convenience, this submission sometimes refers collectively to DOT and FRA as the Department or DOT.

proceeding. *See* Decision, FD No. 36496 (Aug. 5, 2021), at 6 (discussing the views presented in DOT's docketed Letter of May 10, 2021). DOT's Comments as *amicus* should aid in the Board's examination of the issues and the determination of appropriate relief.

Undersigned counsel for DOT has contacted counsel for the Parties of Record in this proceeding to notify them of DOT's anticipated filing and to ask for their positions. Counsel for Amtrak has advised that Amtrak consents to DOT's motion for leave to file comments as *amicus*. Counsel for CSX Transportation, Inc. (CSX) and Norfolk Southern Railway Company (NS) have advised that CSX and NS do not object.

December 14, 2021

Respectfully submitted,

/s/ Christopher S. Perry

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UNDER 49 U.S.C. § 24308(e) – CSX TRANSPORTATION, INC., AND NORFOLK
SOUTHERN RAILWAY COMPANY**

**COMMENTS OF *AMICI* UNITED STATES DEPARTMENT OF TRANSPORTATION
AND FEDERAL RAILROAD ADMINISTRATION**

The United States Department of Transportation (DOT or the Department) and the Federal Railroad Administration (FRA), an operating administration of DOT, respectfully submit their comments in this matter as *amici curiae* to expand upon their previously filed letter of May 10, 2021, and to aid in the Board’s consideration of the important issues here.¹ DOT has a critical interest in this proceeding in light of the Department’s continuing efforts to restore Gulf Coast service; the significant funding that DOT has provided for this purpose; and the importance of this service as a component of passenger rail enhancement efforts nationwide. DOT therefore appreciates the Board’s close and expeditious attention to this matter. As the Department previously explained, the Gulf Coast region has gone without passenger rail service for far too long, and the Board’s intercession is necessary to resolve the remaining disputes and to bring about a successful outcome.

As discussed below, since Hurricane Katrina struck in 2005, Congress has sought to improve intercity passenger rail service and to reaffirm the importance of this service across the

¹ See Letter from John E. Putnam, DOT Acting General Counsel, to Chairman Martin J. Oberman (filed May 10, 2021), Docket No. FD 36496. For convenience, this submission sometimes refers collectively to DOT and FRA as the Department or DOT.

country, most recently, in the 2021 Bipartisan Infrastructure Law. The Biden-Harris Administration has taken the lead in working to enhance passenger rail service as well. DOT remains concerned not only about the extended passage of time without Gulf Coast service, but also, with some of the positions advanced by the host railroads before the Board.²

In the Department's view, it is important to set a precedent in this case that vindicates the governing statute and the purposes underlying it. Rail carriers have obligations in hosting Amtrak service, and these obligations were part and parcel of Congress's decision five decades ago to create Amtrak and to relieve rail carriers of their obligations to carry passengers. The Board should not countenance an interpretation of the statute that makes passenger rail service illusory. Nothing in the governing statute, 49 U.S.C. § 24308(e), indicates that Congress anticipated a protracted period of time or the expenditure of extraordinary sums as a condition precedent to the addition of passenger trains along an existing rail line. In DOT's view, in the event that the Board determines it necessary to undertake any further examination of capital improvements or other measures along the line, those efforts should be expeditious and transparent, and the Board should retain oversight of the matter to ensure that service is promptly restored. Any such analysis should also ensure fair terms for reasonably necessary expenditures to support the passenger rail service.

I. The Board Should Order the Restoration of the Gulf Coast Service.

The restoration of intercity passenger rail service to the Gulf Coast is an important undertaking for the region and is a priority for DOT and FRA. It has now been sixteen years since this service was suspended due to the damage to rail infrastructure caused by Hurricane

² DOT sometimes refers to CSX Transportation, Inc. (CSX) and Norfolk Southern Railway Company (NS) as the "rail carriers" or the "host railroads," and DOT's comments apply equally to both parties unless noted otherwise.

Katrina, and for the past six years, FRA has actively engaged in efforts to restore service. FRA led the Gulf Coast Working Group from 2015 to 2017, and closely participated in the Gulf Coast Rail Traffic Controller (RTC) study in 2020. FRA also provided funding for these efforts and has made grant program selections for capital improvements and operating financial support for the restored Gulf Coast service totaling \$47.6 million. Each additional day of delay in restoring this service deprives the region of a valuable transportation option, in addition to the resulting broader economic benefits.³ Continued delay also threatens the long-term viability of this service by prolonging uncertainty and potentially increasing the cost of capital improvements.

This proceeding is also important to the development and enhancement of other intercity passenger rail services that operate, or seek to operate, over privately owned rail lines, which are generally owned by host railroads providing freight services. The party developing the service and the party that owns the infrastructure must attempt to work collaboratively in identifying appropriate capital investments or operational changes. A breakdown in that collaborative process causes delays and, in cases such as this one, may require the Board to intercede to order the operation of additional trains or other relief. As the interpretation of section 24308(e) is essentially a matter of first impression, the framework that the Board adopts here will be important in governing future disputes, and will set the backdrop against which Amtrak and host railroads negotiate for the addition of passenger trains along host railroad lines.

In the Department's view, the host railroads have advocated here for an unduly restrictive interpretation of the statute, one that fails to vindicate Congress's intent regarding the obligation to host passenger rail service. DOT respectfully asks the Board to hold the host railroads to their

³ See Amtrak's Reply at 9 and Ex. 1 at 3-5; *see also* Gulf Coast Working Group Final Report at App. C, p. 3-5.

high burden of proof under the statute, and to issue a ruling that prevents continued, undue delays in the restoration of the Gulf Coast service.

A. Historical Context for Hosting Passenger Rail Service

The use of a rail line by both Amtrak and a host railroad's freight service is central to the past, present, and future of rail transportation in the United States, and today's operating framework arose directly from Congress's creation of Amtrak. As the Board knows, for many years, private railroads had a common carrier obligation to carry both freight and passengers on their lines. *See National Railroad Passenger Corporation v. Atchison, Topeka & Santa Fe Ry.*, 470 U.S. 451, 453-54 (1985). However, the United States railroad industry, particularly in the Northeast, faced sweeping financial challenges in the 1960s and early 1970s as a result of competition from other forms of transportation and the changing demand for rail service. In response to these challenges,⁴ Congress created Amtrak in 1970 to provide and promote intercity rail passenger service, and allowed the railroads to enter into agreements with Amtrak to relieve them of their common carrier obligation to carry passengers, along with their accompanying operating losses, in exchange for a statutorily prescribed payment. *Rail Passenger Service Act of 1970*, Pub. L. No. 91-518, 84 Stat. 1327, at § 401; *see also* House Report No. 91-1580 (Oct. 7, 1970) ("[T]he overriding purpose of this legislation is to preserve and promote intercity rail passenger service . . ."); *The Past and Future of U.S. Passenger Rail Service*, CBO Study, Sept. 2003, at 8 ("Fearful that losses from passenger service would contribute to the weakening of other railroads, policymakers looked for a way to relieve the freight railroads of that burden.").

⁴ Penn Central Railroad, then the largest railroad in the country, filed for bankruptcy on June 21, 1970 (at that time, the largest corporate bankruptcy in U.S. history), four months before Congress created Amtrak in October of that same year. Ultimately, seven Northeastern railroads failed during this time.

Congress recognized that this arrangement forced Amtrak to rely on the railroad-owned infrastructure, and “as a condition of relief from [the railroads’] common-carrier duties,” Congress provided Amtrak with certain rights in support of the passenger service (and maintained certain corresponding obligations of the railroads to support passenger rail service), including, for example, the right to use railroad facilities. *DOT v. Ass’n of Am. R.R.s*, 575 U.S. 43, 46-47 (2015); *see also* 49 U.S.C. § 24308(a) (“Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree.”).

Since Amtrak’s creation five decades ago, Congress has reaffirmed and further specified the railroads’ continuing obligations to host passenger rail service, particularly as part of Congress’s efforts to improve Amtrak’s operations. In 1973, for example, Congress established in statute a “preference” for rail passenger transportation provided by Amtrak over freight transportation in using a rail line. *Amtrak Improvement Act of 1973*, Pub. L. No. 93-146, 87 Stat. 548 (codified at 49 U.S.C. § 24308(c)) (“Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection.”). More recently, in 2008, Congress required the development of new or improved metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, and authorized the Board to investigate poor on-time performance or service quality (to include identifying reasonable measures and making recommendations to improve the service, quality, and on-time performance of the train and awarding damages and prescribing other relief). *Passenger Rail Investment and Improvement Act of 2008*, Pub. L. No. 110-432,

122 Stat. 4907, at §§ 207, 213; 49 U.S.C. § 24308(f); *see also* 49 CFR part 273 (codifying regulations on metrics and minimum standards for performance and quality).

In addition, starting in 2008, Congress began authorizing programs and appropriating significant funding for intercity passenger rail development, much of which has involved investments in host railroad infrastructure that directly benefit freight, as well as passenger, operations. In 2008, for example, Congress authorized several new grant programs to support intercity passenger rail development, and then swiftly appropriated more than \$10 billion for these programs. *See Passenger Rail Investment and Improvement Act of 2008*, Pub. L. No. 110-432 (Oct. 16, 2008); *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5 (Feb. 17, 2009); *Consolidated Appropriations Act, 2010*, Pub. L. No. 111-117 (Dec. 16, 2009). In 2015, Congress renewed its commitment to intercity passenger rail development by authorizing several more grant programs, and then annually appropriated significant funding for these programs.⁵ *See Fixing America's Surface Transportation Act*, Pub. L. No. 114-94 (Dec. 4, 2015), §§ 11301-11303 (establishing the Consolidated Rail Infrastructure and Safety Improvements grant program, the Federal-State Partnership for State of Good Repair grant program, and the Restoration and Enhancement Grants program).

Most recently, Congress passed the Infrastructure Investment and Jobs Act of 2021 (the “Bipartisan Infrastructure Law” or “BIL”), which President Biden signed into law on November 15, 2021. The BIL provides an unprecedented \$66 billion in dedicated, advanced appropriations for railroad transportation grant programs, which is in addition to any annually appropriated amounts for such programs. The overwhelming majority of this funding is specifically targeted

⁵ In the five most recent annual appropriations, Congress has appropriated in total more than \$1.6 billion in funding for the Consolidated Rail Infrastructure and Safety Improvements grant program, more than \$1 billion in funding for the Federal-State Partnership for State of Good Repair grant program, and more than \$36 million in funding for the Restoration and Enhancement Grants program.

at intercity passenger rail improvements. In addition to providing this historic level of funding for intercity passenger rail, the BIL makes clear that the development of intercity passenger rail services operating over host railroads will continue to be a major part of our Nation's transportation system. *See, e.g., Infrastructure Investment and Jobs Act of 2021*, Pub. L. No. 117-58, Div. B, § 22308 (establishing a corridor identification and development program to facilitate the development of intercity passenger rail corridors) and § 22307 (broadening the Federal-State Partnership grant program, in part, to fund the expansion or establishment of new intercity passenger rail services not located on the Northeast Corridor).

In summary, Congress created Amtrak to provide and promote intercity passenger rail services that were always expected to operate primarily over host railroad infrastructure. This was part and parcel of an effort to strengthen struggling rail carriers, many of whom were in a precarious financial position, by relieving them of their longstanding common carrier obligations to transport passengers. Since then, Congress has taken numerous steps to reaffirm the importance of Amtrak's ability to operate over host railroad infrastructure, including through the recent provision of historic levels of funding for Amtrak intercity passenger rail development and related investments in host railroad infrastructure. This operational model, which Congress created, forms the foundation for the questions raised in this proceeding.

B. Providing for Additional Trains Under Section 24308(e)

By its terms, and consistent with the principles discussed above, subsection 24308(e) establishes a strong presumption in favor of allowing additional trains to operate along host railroad lines. The Board is authorized to “order the [host] carrier, within 60 days, to provide or allow for the operation of the requested trains” under conditions set forth in the statute. 49 U.S.C. § 24308(e)(1). While the Board is directed to “consider” whether an order would

unreasonably impair freight transportation “when conducting a hearing,” the carrier “ha[s] the burden of demonstrating” unreasonable impairment. *Id.* § 24308(e)(2)(A). With that said, the statute vests the Board with broad discretion to apply its expertise in ruling on an application; Congress directed the Board to “consider” unreasonable impairment, but did not dictate any specific result in the proceeding based solely upon that consideration. If the Board determines that additional trains should be ordered, the terms of compensation already established by contract among the parties shall govern, or, in the absence of such terms, the Board shall proceed to order compensation under subsection (a). *Id.* § 24308(e)(3).

In the Department’s view, the host railroads in this case have urged the Board to adopt an interpretation of section 24308(e) that would pose an undue obstacle to the addition of passenger rail trains, one that lowers the bar for demonstrating “unreasonable impairment” below what Congress required. This standard, as Amtrak correctly argues, is not merely that freight service will be “degraded” or inconvenienced. *See* Amtrak Reply at 15 & n.39. Nor is the addition of Amtrak trains subject to host railroads’ projections or expectations of future freight traffic growth. Rather, the “unreasonabl[e]” statutory standard in subsection 24308(e) necessarily envisions that host railroad lines will accommodate passenger rail services, consistent with other statutory provisions, including the preference requirement of section 24308(c). Amtrak services cannot simply be assumed out of the analysis, and should therefore not be assumed out of host railroads’ planning and projections. *See* Amtrak Reply at 19 (“[T]he potential for some delays in transporting goods due to the need to transport people is the whole premise of the deal Congress struck with the freight railroads when creating Amtrak.”); Host Railroads’ Opening Evidence at 49 (explaining the host railroads’ modeling standard and parameters, without any expected freight service delays or scheduling adjustments).

In addition, the statute’s language and structure shows Congress’s intent to provide for the allowance of additional trains through a swift and efficient procedure. Nothing in the statute indicates that Congress contemplated a protracted process for entering additional trains into service—especially in the case of an addition from *zero to two*, over a line that historically hosted passenger service, where stakeholders have worked with the host railroads for over a decade to restore service to the region. *See* Amtrak’s Reply at (Dec. 3, 2021) (discussing the history of Amtrak’s Gulf Coast service from 1984 until Hurricane Katrina in 2005).

To be sure, as discussed below, there must be an appropriate analysis of whether freight traffic is unreasonably impaired, and in all events, FRA retains its full authority to take appropriate action to ensure that services along the line are operated safely. But as Amtrak correctly notes, under section 24308’s framework, many of these questions relate to compensation; they are not all prerequisites for the Board to order additional trains. *See* 49 U.S.C. § 24308(e), (a) (compensation to be decided by the parties’ agreement or, in the absence of such agreement, by the Board).⁶

Moreover, the extended time that has already passed without passenger service, as well as the time horizon that the host railroads appear to envision here before trains can be added, is plainly at odds with the fast-track procedures that Congress embedded in the statute.⁷ It is also at odds with the bargain that Congress struck when it created Amtrak, and relieved rail carriers of their longstanding obligations in (and the resulting financial consequences of) providing

⁶ The parties already have agreements in place to govern such compensation. *See* Amtrak Reply at 5.

⁷ Section 24308 is replete with indications of Congress’s intent to keep passenger service running and to restore it quickly when problems arise. *See* 49 U.S.C. § 24308(a)(2)(c) (the Board shall decide specified disputes about agreements and compensation within 90 days); *id.* § 24308(a)(3) (failure of Amtrak to pay compensation can be recovered in an action brought by host railroads, but without any provision for the Board to order cessation of passenger service pending such recovery); *id.* § 24308(a)(4) (“Amtrak shall seek immediate and appropriate legal remedies” to enforce track maintenance standards); *id.* § 24308(b) (ordering the operation of Amtrak services during emergencies).

passenger rail service. DOT stands ready to work with the parties to examine and implement continuing investments to maintain and enhance services along the line, but the Board should not allow the statute to be used as a means of facilitating undue delay in restoring the operation of passenger trains in the first instance.

C. The Host Railroads Have Not Demonstrated that the Additional Amtrak Trains Would Impair Unreasonably The Freight Transportation of Rail Carriers.

The host railroads have not demonstrated that the additional Amtrak trains would “impair unreasonably freight transportation of the rail carrier[s]” affected here. 49 U.S.C.

§ 24308(e)(2)(A). In the Department’s view, the host railroads’ operational analysis is insufficient, and also fails to consider non-construction solutions to address the additional trains.

i. The Operational Analysis is Insufficient.

Given the Department’s experience with the issues here, the Department has concerns about the host railroads’ operational analysis. First, regarding the railroad infrastructure characteristics used in the analysis, the host railroads’ Opening Evidence supplies route diagrams showing track configuration and siding lengths, along with information on the operation of the movable bridges. However, insufficient information is provided on many other essential characteristics of the infrastructure that bear upon operating performance, including, for example, the following: engineering track charts; speed tables showing the authorized speeds over the subject territory; the type and sizes of turnouts (which dictate the speed at which trains may move from one track to another); the extent of track equipped with track circuits (the absence of which generally requires trains operating on such track to do so at an exceedingly slow “restricted speed”); the locations of grade crossings (the blocking of which by stopped trains should be avoided or minimized); and signal locations, aspects, and design

speeds (which provide the authority for train movements). These details directly affect how trains operate over the territory.

Second, DOT is also concerned about the railroad traffic characteristics subject to analysis in the host railroads' Opening Evidence. There is no information on the number of trains operating over the territory that was the subject of the simulation; where or when those trains may enter or exit that territory (some trains do not operate over its entire length); or even some categories of basic information on the characteristics of those trains, such as length, trailing tonnage, or aggregate horsepower. Nor is information provided regarding time-specific service requirements for freight operations. Without this information, none of which appears to be commercially sensitive, stakeholders cannot fully understand the influence of traffic characteristics on the operation.

Finally, the host railroads' analysis provides little insight into how the operation functioned in each simulated case, and what factors may have contributed to the operational performance reported for each case. Essentially, the model outputs reported are percentage changes in delays, train speeds, dispatching conflicts, and recrews between simulated cases. *See, e.g.,* Opening Evidence at 38, 40-41, 43-44. The lack of actual values of those metrics makes it impossible to judge the likelihood that the reported percentage changes are either operationally or statistically significant. A small change from a small base value may show as a large percentage change, even though the actual significance may be small or negligible. Furthermore, the absence of stringline diagrams depicting how trains were simulated to move over the territory covered by the model is particularly notable.⁸ Stringline diagrams provide a concise

⁸ The use of stringline diagrams (as a document) as an output of other operations analysis tools (such as simulation) is distinct from the use of "string models" as a primary analytical tool. The use of stringline diagrams as a means for interpreting the results of railroad operations analyses is an established and accepted industry practice.

and rich approach to depicting the train operations within a railroad simulation model, and provide insight into where train delays occur, the cause of those delays, and what measures may be taken to reduce delays. The inability to interpret the model results with stringline diagrams makes it impossible to determine confidently whether the model plausibly reflects real-world railroad operations, or to determine whether the identified capital improvements address identifiable operational needs.

FRA supports the use of simulation and other operations analysis tools to identify capital investments or other operational measures needed to support a proposed change in railroad operations.⁹ However, to be useful to the Board and to other stakeholders, an operations analysis requires an appropriate degree of transparency. Operations analysis is highly complex,¹⁰ particularly when using simulation tools like the RTC software package used by CSX and NS here. Thus, the parties should be able to work from the same data set and to replicate the results, as well as to demonstrate how different inputs or parameters may lead to different results. Transparency ensures that all parties are confident in the conclusions. This can also facilitate audits and other retrospective analyses to identify inadvertent errors.

Furthermore, in FRA's decades of experience funding, participating in, and overseeing railroad operations analysis, FRA has seen the positive effects of transparent operations analysis for stakeholders, as it helps to promote consensus on the scope of necessary capital improvements or other measures needed to support the passenger service. With the analysis

⁹ FRA developed one of the world's first railroad operations simulations software packages in the 1970s to support its implementation of the Northeast Corridor Improvement Project.

¹⁰ This complexity is magnified in cases evaluating many individual capital improvements or combinations of improvements, as is the case here.

open to close scrutiny, stakeholders may gain greater confidence in the integrity of the process and may be further encouraged to reach mutually agreeable solutions.¹¹

In DOT's experience, in the course of performing railroad operations analysis, concerns often arise about the use and exchange of confidential and commercially sensitive information. Of course, the Department recognizes the importance of protecting information that legitimately falls into these categories; in some cases, this concern may counsel in favor of an appropriately tailored nondisclosure agreement or protective order. However, DOT recommends that the Board use caution in its review of the analyses submitted here, particularly in light of the precedential impact of this case. Host railroads should not find encouragement in future disputes to unduly withhold any important, non-sensitive details bearing upon the provision of passenger service. Specifically, the analysis should typically depend on information that is directly relevant to operations; it does not generally require sensitive commercial information, such as waybills, train manifests, or rates charged to shippers. Sharing directly relevant operational information with another party in connection with an operations analysis does not place a railroad at a competitive disadvantage. On the contrary, in many instances, sharing operational details may be necessary to the safe and efficient coordination of service across multiple host railroad lines, as is the case here with CSX and NS in hosting Amtrak along the Gulf Coast route.

ii. The Host Railroads Fail to Fully Consider Non-Construction Solutions.

The host railroads' analysis also does not sufficiently account for solutions that would allow for these additional trains to be quickly put into operation. DOT agrees with Amtrak that host railroads should not, in this or other instances, be permitted under section 24308(e) to insist

¹¹ FRA has found that transparency helps to foster a collaborative process rather than an adversarial one. A collaborative process contributes to the technical veracity of the analysis and allows for the evaluation of promising alternatives. In the best examples, the parties can build off of each other's work, resulting in the identification of superior solutions.

upon the completion of a “wish list” of projects as a prerequisite to adding Amtrak trains where no unreasonable impairment to freight traffic has been shown. Amtrak Reply at 33. Amtrak argues that service can be restored to the Gulf Coast region quite soon, within existing line capacity constraints, without “gold plating.” *Id.* at 39-40.¹²

DOT agrees with Amtrak that the host railroads’ analysis depends too heavily upon extraordinary measures without adequate account of more modest solutions, like improved use of existing infrastructure and better dispatching. *Id.* at 34. The host railroads’ analysis relies significantly upon the construction of new track to accommodate the additional Amtrak trains. However, new track construction is one of the costliest ways of adding operational capacity to a rail line, and in the Department’s view, there are often other, more efficient measures available to provide the necessary capacity.¹³ For example, in this case, the host railroads’ operational analysis does not address the existing permanent speed restrictions on the line (such as those caused by the use of butt joints between the movable and fixed spans of the line’s many movable bridges). These speed restrictions significantly constrain track capacity by forcing trains to first slow into and then accelerate out of the stretch of track subject to the speed restriction.¹⁴ Similarly, the operational analysis does not investigate the constraints imposed by the operation of the moveable bridges, and whether capacity gains could be achieved through improving the speed of operations through these bottlenecks. The host railroads’ operational analysis also does

¹² DOT agrees with Amtrak that the parties’ continuing dispute about arrangements for layover track in the Mobile region appears to be a solvable one, and in all events, should not foreclose the restoration of Gulf Coast service. Amtrak Reply at 39-40.

¹³ It is not always possible to avoid the construction of additional track entirely, but it is best considered a “last resort” rather than the first, or indeed only, approach.

¹⁴ Speed restrictions will further constrain capacity in operations with very long trains (which CSX and NS indicate are prevalent on the territory subject to their analysis), due both to the fact that long trains must maintain the speed of the restriction during the entire period any part of the train is occupying the stretch of track subject to the restriction, and because long trains generally require far more time and distance than shorter trains to decelerate into and accelerate out of a speed restriction.

not fully investigate increasing the regularity of opening the movable bridges, which the Coast Guard has accommodated elsewhere, particularly for scheduled passenger rail service.¹⁵

The host railroads' operational analysis does not appear to investigate other potential changes to the assumed freight and passenger rail operations that might address capacity constraints without the need for costly capital improvements. For example, the host railroads indicate that the precise details of the passenger train schedules that Amtrak proposed in its application are the source of many of the capacity constraints that their analysis identified, but they appear not to have investigated options for reasonable adjustments to those timetables that may alleviate some of those constraints. Likewise, the operational analysis does not sufficiently address opportunities for minor alterations to freight operations, which may also be capable of addressing capacity constraints without affecting service quality. In other contexts, rail carriers have shown creativity in exploring and implementing innovative ways to improve and accommodate changes to their own freight rail operations.¹⁶

II. Any Examination of Capital Investments or Other Measures Should be Expeditious, Transparent, and Subject to the Board's Continuing Oversight.

The Department recognizes that the parties have continuing disagreements about appropriate capital investments and operational measures to accommodate additional Amtrak trains. Such disagreements persisted throughout the course of the Gulf Coast Working Group's efforts, with vastly different estimates presented on both sides. DOT appreciates the Board's careful consideration of these issues, and also supports the Board's preliminary determination to permit some flexibility regarding the evidence and analysis that the parties may offer. Decision

¹⁵ See Amtrak's Reply at Attach. M (addressing the Coast Guard process for considering movable bridge operations).

¹⁶ See Amtrak's Reply at 34 (noting CSX statement that operational efficiencies and other changes would be sufficient to address the needs of passenger service that might otherwise be negatively affected by CSX's proposed acquisition of Pan Am Railways).

at 6-7 (Aug. 5, 2021). In the event the Board determines that there is a need to identify further capital investments or other measures for the Gulf Coast service, the Department suggests some general principles that would be appropriate for the Board to consider in its review of the parties' data and analyses. As described above, DOT has concerns about the analysis that the host railroads have presented here and about the additional delays that would result from what the host railroads have proposed.

In particular, DOT recommends that the following general principles guide any evaluation of proposed capital investments or other measures in connection with the Gulf Coast service:

Transparency. Any capital investments or other measures that the Board orders to support additional trains should be determined through a data-driven process that is objective and transparent, and that provides a clear basis for public investment. Capital investments should be tailored to fit operational requirements without “gold plating.”

Advancement. The governing statute, as the Department explained above, does not contemplate a protracted process for additional trains, and further delay in this instance is particularly unwarranted.

Oversight. The Board should retain jurisdiction over this case to ensure that its order is carried out expeditiously for the prompt restoration of Gulf Coast service.

DOT appreciates the Board's consideration of the views expressed here and of the other evidence that has been submitted by the parties in this proceeding. The Department remains ready to work with the Board, Amtrak, CSX, NS, and other stakeholders to restore passenger service to the Gulf Coast region.

December 14, 2021

Respectfully submitted,

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