

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

**ALABAMA STATE PORT AUTHORITY AND TERMINAL RAILWAY ALABAMA
STATE DOCKS' REPLY TO AMTRAK'S MOTION TO STRIKE
AND
REBUTTAL COMMENTS AND EVIDENCE**

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Dated: December 23, 2021

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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 rebuttal comments and evidence in the above-referenced proceeding in response to the Reply Argument and Evidence (the "Reply Argument") filed on December 3, 2021 by the National Railroad Passenger Corp. ("Amtrak") in support of its access application (the "Application") filed on March 16, 2021. The Port also responds to Amtrak's procedurally defective December 6, 2021 Motion to Strike ("Motion to Strike") the Port's opening and reply evidence filings.

As discussed herein, the November 3, 2021 opening evidence supplied jointly by CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR")¹ and by the Port clearly shows that Amtrak's proposed intercity passenger service operations between New Orleans, LA, and Mobile, AL (the "Gulf Coast Service"), including operations over and

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

across CSXT's single-track main line in the Mobile terminal area where TASD operates regularly (TASD's "cross-corridor" operations), would unreasonably impair TASD operations between TASD-operated railroad facilities on either side of the CSXT main line. Rather than respond substantively to TASD's detailed evidence of unreasonable impairment, Amtrak has pressed the Board to ignore the Port and its concerns. The preponderance of the evidence – and the only truly expert evidence on operations and the scope impact – concerning the Gulf Coast Service's unreasonable impairment of freight transportation in the Mobile terminal has come from the Port and CSXT/NSR. Accordingly, Amtrak's Application must be denied.

REPLY TO AMTRAK'S MOTION TO STRIKE

Amtrak's Motion to Strike is procedurally defective, and for that and other reasons, it must be denied.

The Port responds first to Amtrak's December 6, 2021 Motion to Strike the Port's Opening Evidence and Argument filed on November 3, 2021, and the Port's Reply Comments and Evidence of December 3, 2021. Amtrak's Motion to Strike is an astonishing display of Amtrak's sense of entitlement and its disregard for a Class III carrier. Moreover, the Motion to Strike is false and erroneous, and procedurally defective. The Motion to Strike must be denied, but Amtrak's underlying message must not be forgotten in the greater context of this proceeding.

It bears recalling that the Port indicated on October 8, 2021, that it intended to participate in the various phases of the evidentiary proceeding established under the Board's order served August 6, 2021 (the "August 6 Order") as its interests may appear. At the time, the Port supplied its bases for offering evidence relevant to the Application review standards under 49 U.S.C. § 24308(e). Amtrak promptly sought to block the Port's participation by way of a "Motion for Clarification" filed on October 20, 2021, insisting that the Port was not a party of record, had not filed for leave to intervene in the evidentiary proceeding, and, in any event, could

only hope to obtain leave to file “comments” (but not evidence) as an *amicus curiae*. On November 3, 2021, the Port timely responded to the Motion for Clarification (the “Port Reply”).

The December 6th Motion to Strike twice asserts that the Port has not sought to intervene in this proceeding, adding to one such assertion that the Port never “attempted to make the required showing for intervention under either 49 C.F.R. § 1113.7 or 49 C.F.R. § 1112.4.” Motion to Strike, 2, 3 n. 3. The record, of course, reflects otherwise, decisively.² Specifically, in the November 3 Port Reply, the Port stated as follows: “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*.” Port Reply, 3 (emphasis added). Immediately following the above-quoted passage, the Port proceeded to show how its intervention is warranted under the standards at 49 C.F.R. § 1112.4(a). *Id.*

The foregoing passages from the record clearly undercut the main tenet of the Motion to Strike that, “Because the Port has failed to seek proper leave of the Board to participate as a party, the Port’s purported ‘Reply Comments and Evidence’ (as well as its ‘Opening Evidence’) should be stricken from the official evidentiary record of this proceeding and disregarded by the Board.” Motion to Strike, 1. Aside Amtrak’s dubious credibility in its zealous pursuit of scorched-earth tactics against the Port, Amtrak’s asserted bases for striking the Port’s evidence is lacking, and the Motion to Strike must be denied.

² Amtrak’s inconsistent arguments on this point show that Amtrak has shed any pretense of credibility. While Amtrak argues in its Motion to Strike that the Port did *not* seek leave to intervene in this proceeding (which is incorrect), Amtrak’s Reply Argument (arguing that the Port has failed to satisfy the standards for intervention) tacitly acknowledges (at page 41, footnote 138) that the Port *actually did* make such a request.

But even if read in the most generous of contexts as a reply in opposition to the Port's November 3rd intervention request, Amtrak's Motion to Strike fails as a matter of Board procedure. Such a reply in opposition would have been due on November 23, 2021, in keeping with the deadlines set forth in 49 C.F.R. § 1104.13(a), roughly two weeks before Amtrak filed its Motion to Strike.³ Thus, even if considered as an attack on the merits of the Port's intervention request, the Motion to Strike is untimely and therefore must be rejected.

Similarly, Amtrak's call to strike the Port's Opening Evidence and Argument (which the Port filed on November 3, 2021, more than 20 days before Amtrak filed its Motion to Strike on December 6, 2021) is untimely under Section 1104.13(a), and thus must be rejected.

Finally, Amtrak's Motion to Strike the Port's Reply Comments and Evidence is either abusive or unnecessary, and thus must not, or need not, be considered. To reiterate, on November 3rd, the Port re-asserted its right to participate without the need for formal intervention, and, in the alternative, formally sought Board leave to intervene. Amtrak failed timely to oppose the Port's intervention request.⁴ To date, the Board has not "clarified" (to use Amtrak's word) whether or not the Port is a party already, and the Port's alternative, unopposed request for leave to intervene remains pending. So, if the Board were to acknowledge the Port's party status or were to grant the pending request for leave to intervene, then Amtrak's Motion to Strike is nothing more than an abusive and unwarranted tactic, consistent with the character of

³ Similarly, Amtrak offers an extensive footnote in its Reply Argument to a backdoor response to the Port's intervention request (Reply Argument, 41 n. 138), pretending that the Port's November 3rd request wasn't a proper intervention petition (mixing its own nomenclature between "petition for intervention" in the Reply Argument and "move to intervene" in its Motion to Strike), and providing no procedural justification for yet another 13th hour effort to exclude the Port. Regardless, Amtrak's December 3rd footnote challenge of the Port's intervention request isn't proper, since it, too, is clearly untimely under Section 1104.13(a).

⁴ In fact, no party to this proceeding has registered opposition to the Port's intervention request.

Amtrak's stance toward the Port and any other interested party other than CSXT and NSR. And if the Board were to side against the Port, declaring the Port to be ineligible to submit evidence of freight service harm, then Amtrak's Motion to Strike would prove entirely superfluous.

For all of the above reasons, Amtrak's Motion to Strike must be denied.

ARGUMENT AND EVIDENCE

Amtrak wants to avoid the Port's extensive evidence of unreasonable impairment of freight transportation within the Mobile terminal, and it urges the Board to ignore all of that evidence in acting on Amtrak's Application.

Under 49 U.S.C. § 24308(e), the Board has been entrusted to apply its unique expertise on railroad operations (free from the bias of Executive Branch preference for Amtrak)⁵ to weigh the competing interests of Amtrak and freight carriers in deciding whether a particular Amtrak proposal to operate "additional trains" (that the proposed host carrier has objected to) should be permitted in view of the evidence that each side may supply to demonstrate the presence or absence of unreasonable freight traffic impairment. And, while the freight carrier interests here – CSXT, NSR and T ASD – acknowledge that they bear the burden of proof on this issue, the question that Amtrak has presented with respect to T ASD is whether T ASD freight traffic impacts matter at all. As discussed below, T ASD's freight traffic impacts evidence is

⁵ The Port does not object to the motion of the U.S. Department of Transportation and the Federal Railroad Administration ("DOT/FRA") to participate in this proceeding as *amicus curiae*, although the Port believes that DOT/FRA could have participated as a party of record in keeping with the FRA's past regulations governing a proceeding under Section 24308(e). It is just as well, however, that Congress wisely re-delegated Section 24308(e)'s adjudicatory functions to the Board in 2008, given DOT/FRA's dangerously one-sided support of Amtrak, its complete disregard for T ASD freight service (FRA never bothered to consult with T ASD, and fails anywhere to mention T ASD or Mobile terminal impacts), and unsupported and destructive position that, as a general matter, Amtrak *service* (as opposed to established Amtrak *trains*) must be given preference over freight traffic, even where that preference would hurt freight traffic efficiency and reliability.

thoroughly relevant to the Board's analysis, and the Board should consider that evidence in accordance with the Board's statutory mandate, and in keeping with the Board's recent commitment in this proceeding, simple logic and past administrative practice.

Amtrak's Reply Argument and its subsequently-filed Motion to Strike reveal astonishing contempt for the Port, and (along with DOT/FRA) dismissal of the serious threat that Amtrak's proposed Gulf Coast Service presents to T ASD's Mobile terminal operations. At no point in this proceeding, or before, has Amtrak or DOT/FRA shown any interest in the Port's concerns. Amtrak tacitly has conceded that it had rejected the Port's invitation to discuss the Port's railroad freight service concerns in Amtrak's non-response to the Port's verified evidence on the subject.⁶ As surprising as it may seem, Amtrak does not care about T ASD traffic flows over and across CSXT that would be affected by the proposed (and unmitigated) Gulf Coast Service, or the many shippers who depend upon T ASD service. As Amtrak would have it, even if T ASD were to be harmed substantially, those harms are irrelevant for purposes of Section 24308(e) because T ASD is not a host railroad. Evidently, DOT/FRA are of the same view.

Amtrak's interpretation of Section 24308(e)'s freight service protections as extending only to host railroads is legally unsupported, and is inconsistent with recent Board statements about the appropriate scope of this proceeding.

Amtrak maintains that, in enacting Section 24308(e), Congress intended that the Board should narrowly limit its freight service analysis to impact upon host freight rail carriers. The statutory language does not compel such an interpretation. The statute does not articulate such a restricted impact analysis that would mute the concerns of, or overlook the harms to, anyone but the host railroad; there is no such clear exclusionary language in the statute. Amtrak's position is contrary to law (the Port would consider the Board's acceptance of

⁶ Port Opening Evidence, 14 and Exhibit C (Verified Statement of John C. Driscoll).

Amtrak's interpretation as appealable error), is inconsistent with the Board's statements in this proceeding, illogical, and inconsistent with past administrative practice under the FRA.

The Board repeatedly has stated, under various phrasings, that it is required under the statute "to assess whether the proposed additional train service can proceed without impairing unreasonably freight transportation." August 6 Order, 7, and see also August 6 Order, 4, 5, 6 (in each case where the Board refers to its assessment of impact to "freight transportation;" it consistently stops short of using any qualifying or limiting language signaling an intent to consider impacts to CSXT and NSR freight service only). Rather, the Board has already committed to a broader analysis of freight impact, stating as follows:

The Board recognizes the concerns expressed by . . . *some railroad and port entities, among others*, regarding the potential impacts of passenger service on freight service in the New Orleans-Mobile corridor and the need for a study to assess those impacts and identify mitigation measures. However . . . 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.* Therefore, far from preventing the Board from considering the freight service issues associated with Amtrak's application, the current lack of unanimous state support for the service indicates a need for the Board to do so under the terms specified in 49 U.S.C. § 24308(e).

Id., 7. In light of the foregoing Board statement, Amtrak may stubbornly ignore the Board's promise of an inclusive forum, but the Board cannot, inexplicably (and arbitrarily and capriciously), commit an about-face. The Port is confident that the Board can and will undertake a full, fair, and inclusive balancing of the evidence in keeping with its "forum" commitment, consistent, incidentally, with the FRA's own inclusive procedures put in place when Congress had entrusted Section 24308(e) adjudication to the Executive Branch.⁷

⁷ See 49 C.F.R. § 201 (2008) (which entitled any interested party, and not just rail carriers, to weigh in on the merits of an application brought under Section 24308(e)).

Limiting Section 24308(e) freight traffic impacts analysis to host railroads alone is illogical as a matter of practical freight railroading experience.

As the Board's own experience would indicate, Amtrak's insistence upon ignoring all but the nominal host carrier makes no sense. Such an interpretation of the statute would deprive the Board of thoroughly balancing the asserted passenger service benefits against the potential freight service harms by purposely turning a blind eye to freight service impacts that clearly could extend beyond a host freight carrier, as they do here. For example, suppose for the sake of discussion that CSXT – the owner of the line through Mobile – was not the predominant user of its railroad line, but, rather, that NSR (a longstanding trackage rights “tenant” under this hypothetical) historically had operated, and was operating, a far higher number of daily trains over the line. Under Amtrak's forced perspective, only the impacts to CSXT (the host carrier) could be considered; NSR service impacts would have to be disregarded. As the hypothetical shows, a host-only freight impacts analysis would serve little purpose. Finally, Amtrak's position, if embraced by the Board, would appear to mean that portions of the jointly-presented CSXT/NSR Opening Evidence showing that TASD would suffer substantial deterioration in cross-corridor service reliability should, if Amtrak's Application were to be granted, also be stricken as outside of the scope of appropriate Board consideration.

The FRA did not interpret Section 24308(e) as Amtrak does.

Finally, as the FRA surely would acknowledge (and, frankly, should have acknowledged as an *amicus curiae* participant in this proceeding), that the modal administration itself did not accept Amtrak's artificially-restricted interpretation of Section 24308(e)'s scope of freight traffic impact analysis. That is reflected in the rules FRA had promulgated in anticipation of a proceeding under the statute when adjudication of such disputes was entrusted to the Executive Branch. *See* 49 C.F.R. § 201 (2008). Those regulations – repealed following a

prescient delegation of Section 24308(e) adjudication to the Board in 2008 – envisioned a robust forum in which the Port *and other interested parties* clearly would have been permitted to offer evidence and argument. The FRA clearly did not share Amtrak’s host-only view of freight service impacts analysis under Section 24308(e), and it would be incongruous for the Board to depart from the FRA’s interpretation and anticipated application of the statute.

Amtrak has not countered TASD’s (and CSXT/NSR’s) evidence of unreasonable impact on TASD freight operations with any meaningful evidence of its own, and, in some cases, Amtrak has mischaracterized elements of the Port’s evidence.

The cornerstone of Amtrak’s approach to the Port’s Opening Evidence and Comments (and its Reply Comments and Evidence for that matter) is that they should be ignored (stricken from the record) – an unavailing argument. But the passenger carrier still takes a few unsupported and inaccurate swipes at TASD’s detailed evidence showing that Amtrak’s Gulf Coast Service will unreasonably impair TASD cross-corridor freight service. Amtrak dedicates a whole paragraph of its Reply Argument to the Port’s impacts evidence. Its response is unpersuasive, insubstantial, and wrong.

Once again, TASD was not alone in providing evidence showing that TASD’s cross-corridor freight service would be unreasonably impaired by Amtrak’s proposal. As it noted in TASD’s Reply Comments and Evidence, CSXT/NSR accounted for TASD traffic movements in their traffic modeling, the results of which (although perhaps understated) proved that Amtrak’s proposal would seriously impair TASD service.

Also, TASD, through its General Manager, Robert M. Golden, offered extensive expert testimony describing TASD’s operations within the Mobile terminal area, detailing the challenges TASD faces in effectuating cross-corridor traffic movements under current circumstances, and explaining why and how Amtrak’s no-mitigation service proposal could

result in TASD trains finding it impossible to find operating slots across the CSXT corridor. Amtrak does not offer anyone with operating expertise in response.

Instead, Amtrak first opts to question Mr. Golden's veracity by criticizing TASD for not supplying specific documents (such as "train records or dispatching sheets" – Reply Argument, 41) to corroborate Mr. Golden's testimony. Amtrak then delegates the task of critiquing TASD's railroad operations evidence to two economists, Thomas D. Crowley and Daniel L. Fapp ("Crowley/Fapp") – both of whom appear to have no experience operating a railroad, unlike Mr. Golden. Under the applicable evidentiary standard, because TASD has offered detailed, expert evidence of its operational impairment, and Amtrak has chosen to offer none to disprove TASD's contentions, TASD's evidence is the better (and the only) evidence on the subject, and, thus, the Port has met its burden of proof.⁸

Of particular note, while Crowley/Fapp attempt to diminish the complexity of TASD's terminal operations, they mistake evidence of TASD's importance as a terminal operator supporting freight traffic of eight different railroads for evidence of cross-corridor operational complexity,⁹ perhaps purposely. It is true that TASD only physically interchanges with four carriers, not eight (TASD engages in virtual interchanges with other carriers through the four with which it directly connects). Crowley/Fapp overlook that TASD's evidence showed

⁸ Cf. *The Kansas City Southern Railway Company – Abandonment Exemption Line in Warren County, MS, In the Matter of a Request to Set Terms and Conditions*, AB-103 (Sub-No. 21X) (STB served Feb. 22, 2008), slip op. at 5, 9 (even under an evidentiary standard that places the burden of proof on a given party, the agency must, in any event, base its decision on the best evidence of record, particularly where one party has offered detailed, expert evidence, and the other party has not); *Norfolk Southern Railway Company – Abandonment Exemption – Between Red Bay and Haleyville, AL in Franklin, Marion, and Winston Counties, AL, In the Matter of a Request to Set Terms and Conditions*, AB-290 (Sub-No. 123X) (ICC served Oct. 8, 1993), 1993 WL 405276, *3-*4 (same).

⁹ See Opening Evidence, Exhibit B (Verified Statement of Robert M. Golden – "Opening V.S. Golden"), 8.

that its *cross-corridor movements between its various terminal facilities* are complex, given the location of TASD yard facilities and limited geographic scope of the Mobile terminal area. But TASD did not argue that its interchange operations with other carriers were complex (or that they were relevant to the operational impact analysis), and that is because TASD interchange operations typically do not entail cross-corridor train movements, except for interchange between CG Railway, LLC, and TASD at TASD's Riverfront Yard facilities. As such, TASD interchange operations have little bearing, upon the operational complexities described in the Port's Opening Evidence, and those operational complexities would be the same regardless of whether the car volumes TASD handles were in support of two interchanging carriers or eight, and, as such, the Crowley/Fapp testimony on the subject inaccurate and misleading.

Amtrak's criticism of the Port's evidence also devolves into false accusation. For example, in assailing TASD's cross-corridor traffic carload figures (Opening Evidence and Comments, 5-6), Amtrak incorrectly claims that TASD's "car count does not reflect only those operations touching CSX[T]'s lines." Reply Argument, 42. To the contrary, TASD's opening evidence, through Mr. Golden, offered extensive data on its cross-corridor traffic flows, explaining, for example, that, "On a typical day, TASD's traffic includes a variety of unit trains and mixed freight trains. These include, on average, two or three daily cross-corridor switching movements, or up to twenty movements per week, between Interchange Yard and Riverfront Yard. There is considerable bulk and manifest freight traffic for customers along the Mobile River. On top of that, an average of one intermodal container train and four coal trains per day travel along the CSXT main line and the Virginia Street Lead or through CP IC Interlocking to and from McDuffie Island." Opening V.S. Golden, 5-6.

Although not necessary to carry its burden, the following rebuttal evidence addresses Amtrak's criticisms and further reinforces the Port's demonstration that TASD freight traffic will suffer unreasonable impairment.

In response to Amtrak's off-the-cuff criticisms, TASD offers as an Appendix the Rebuttal Verified Statement of Robert M. Golden ("Rebuttal V.S. Golden") to address, among other things, the following:

- Amtrak incorrectly takes issue with the Port for questioning Amtrak's claim that Amtrak trains will block Mobile terminal main line trackage, and occupy critical control points, for only 15 minutes per Amtrak train movement. Mr. Golden admittedly does not agree with CSXT/NSR's acceptance of Amtrak's baseless track occupancy assumption, but that was explained in Mr. Golden's Reply Verified Statement (at 2-3). In fact, as Mr. Golden points out in his Rebuttal Verified Statement, Amtrak's operating assumption reflects a critical lack of knowledge about control points in the Mobile terminal, the scope of trackage that they control, and why Amtrak's self-serving and incorrect assumption badly understates Amtrak's consumption of Mobile terminal capacity. Amtrak may claim that it will "hold the main for only two hours a day" (Reply Argument, 42), and CSXT/NSR may have accepted that for purposes of its modeling, but TASD need not also accept the assumption when its own knowledge of the Mobile terminal facilities and interlockings prove it to be inaccurate. See Rebuttal V.S. Golden, 4-5.
- Aside from taking issue with how TASD presented its cross-corridor traffic volumes, Amtrak's efforts to diminish the significance of those affected traffic volumes actually warrants pointing out that, if anything, TASD has understated the threat to cross-corridor traffic flows in its opening evidence by relying upon carload figures. In fact, the total number of cars TASD handles in cross-corridor service is much larger (roughly twice the carload figures), because virtually every carload that TASD handles over the CSXT main line has a corresponding empty cross-corridor movement that also depends upon an operating window of its own. Id, 1, 3.
- Amtrak seems to argue that the Port's evidence is deficient because TASD has not provided train counts and train schedules to indicate which TASD trains could be affected by train schedules/number of trains potentially affected. Reply Argument, 41, and V.S. Crowley/Fapp, 57. Mr. Golden responds that TASD trains do not operate on definitive schedules, and that, given the vagaries of CSXT cross-corridor operating windows, a TASD train schedule, even if one existed, would be of little use here for purposes of impact analysis. Rebuttal V.S. Golden, 2-3. Here, also, Amtrak's criticism bespeaks a fundamental lack of understanding of (or interest in) Mobile terminal operations, and TASD's operations in particular. Beyond that, the CSXT/NSR modeling supplied to the Board purports to account accurately for historic TASD cross-corridor train movements, so Amtrak (and the Board) already have evidence of TASD freight

service impacts from CSXT/NSR. From that data, Amtrak should be familiar with TASD operations, including time frames for TASD train movements, which, presumably would have been accounted for in Amtrak's own traffic impacts modeling.

Amtrak and FRA/DOT seem to contemplate the possibility that the Board could grant the Application subject to a limited set of infrastructure mitigation preconditions – but it would be legal error for the Board to so condition approval of the Application.

Amtrak's Application asks the Board to order CSXT and NSR to grant Amtrak access to the lines of both carriers for purposes of operating Amtrak's four Gulf Coast Service trains without preconditioning that order on the implementation of any new infrastructure intended to prevent harm to CSXT's or NSR's railroad freight service (or TASD's for that matter). However, Amtrak seems to hedge on the issue, qualifying its position at one point by explaining that the Gulf Coast service could be initiated without the need for any *immediate* infrastructure improvements (Reply Argument, 39, quoting DB Engineering and Consulting),¹⁰ and remarking elsewhere that "constrained capacity" (affecting freight service) "can be addressed by operations *or other mitigations* that are orders of magnitude lower than the \$440 million in new infrastructure demanded by CSX[T] and NS[R]" (id., emphasis added). The recent *amicus* filing suggests that FRA/DOT, also, contemplate a Board order predicated upon some amount of ordered "capital investment" as a precondition to Amtrak access. See FRA/DOT *amicus*, 15-16 (even though DOT/FRA probably should have acknowledged that FRA did not presume to have authority to prescribe such terms and conditions when Section 24308(e) adjudications had been entrusted to the modal administration).

It appears that, like CSXT/NSR, Amtrak and DOT/FRA contemplate circumstances under which the Board might order Amtrak to have access to CSXT and NSR facilities subject to certain infrastructure mitigation preconditions, and that this proceeding may

¹⁰ Amtrak seems to maintain that this passage pertains only to the need for an Amtrak train layover track in Mobile that does not now exist. Id.

extend to such mitigation. As the Port has maintained throughout this proceeding, Amtrak's Application seeks access without offering any infrastructure mitigation, and the Application must therefore be considered based upon Amtrak's proposal. CSXT/NSR are wrong to assume (as Amtrak and DOT/FRA may, also) that Section 24308(e) empowers the Board to condition approval of Amtrak's Application upon Board-prescribed infrastructure mitigation preconditions, as such a step would clearly be beyond the scope of the statute. As such, the Port wishes to stress again, not only its strenuous opposition to the proposition that the Board could impose infrastructure mitigation under the limited scope of a Section 24308(e) proceeding, but also its position that any such prescription of such mitigation preconditions to a grant of Amtrak's Application would be contrary to law and in excess of statutory authority, and thus would be reversible legal error.¹¹

CONCLUSION

The record evidence overwhelmingly demonstrates that Amtrak's Gulf Coast Service (as proposed) would unreasonably impair railroad freight transportation along the proposed passenger service corridor, and, as such, the Board must, under its limited authority under Section 24308(e), deny the Application.

¹¹ As it has stated previously, TASD maintains that Section 24308(e) requires denial of the Application if the Board were to find that Amtrak's proposal would result in unreasonable freight traffic impairment. TASD acknowledges CSXT/NSR's alternative argument that the Board could modify or condition Amtrak's proposal to attempt to address such impairment. TASD has a different view of the agency's statutory discretion, but under any interpretation there would be no legal basis for an agency decision permitting Amtrak access in the face of unaddressed adverse freight service impacts.

Respectfully submitted,

/s/ *R. A. Wimbish*

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REBUTTAL 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 my verified statement, tendered with the opening evidence of the Alabama State Port Authority (“ASPA”) and TASD (collectively, “the Port”), which is incorporated herein by reference. See Opening Evidence and Comments, Exhibit B, Verified Statement of Robert M. Golden (filed November 3, 2021) (“Opening V.S. Golden”), 1. The purpose of this verified statement is to respond to, and to submit evidence to rebut, certain criticisms registered against my opening verified statement by the National Railroad Passenger Corporation (“Amtrak”) and its expert economists, Thomas D. Crowley and Daniel L. Fapp of L. E. Peabody & Associates. See Amtrak, Reply Argument and Evidence (“Reply Argument”), Exhibit 3, Reply Verified Statement of Thomas D. Crowley and Daniel L. Fapp (filed December 3, 2021) (“Reply V.S. Crowley/Fapp”), 2, 56–61.

The first criticism Amtrak directed at my opening verified statement is that “TASD at most offers broad statements about its operations but fails to offer any detail about the specific number of trains that resumption of the *Gulf Coast* service would impact.” Reply Argument, 41. This statement is incorrect. As I was careful to point out in my earlier statement, TASD moves, on a typical day, two or three daily cross-corridor switching movements, or up to twenty trains per week, between Interchange Yard and Riverfront Yard, as well as an intermodal container train and four coal trains per day to and from the Intermodal Container Transfer Facility and the coal terminal at McDuffie Island, respectively. Opening V.S. Golden, 5–6. Twenty trains per week is 1,040 trains per year. These are fairly specific numbers. Further, they are accurate numbers based on my day-to-day operations experience in the Mobile terminal. In the event

further clarification is needed, every train T ASD needs to move is at risk of adverse impact because, in order to move its trains, T ASD requires access to CSXT's track, and under the proposed scheme, that track will be held clear for and/or occupied by Amtrak's proposed trains, followed by CSXT's own trains, moving through the Mobile terminal area, ahead of T ASD's traffic.

Amtrak also contends that I "failed to provide train records or dispatching sheets offering detail regarding the precise number of trains that operate over CSX's lines, the dates those trains operate, or the time those trains operate." Reply Argument, 41. This criticism is beside the point because, as I pointed out in my earlier verified statement, T ASD does not dispatch its own trains. Opening V.S. Golden, 3. CSXT does that. Id. Further, the only dispatching information T ASD receives from CSXT is the daily operating bulletins issued to the train crews for their operation on CSXT's property, and those bulletins do not record the number of trains that operate, the dates those trains operate, or the time those trains operate. Since T ASD does not dispatch its trains, it cannot provide train records or dispatching sheets offering the "precise detail" Amtrak claims that T ASD should have submitted (and which Amtrak should have obtained from CSXT). This also misses the point that most of the trains described in my earlier statement move across CSXT's lines, particularly through CP Alabama State Docks, CP Choctaw, or downtown Mobile. See Opening V.S. Golden, 3–5. As I have stressed before, T ASD relies on access to CSXT's track to move its traffic, and that access is at risk in the event CSXT is required to make its track accessible to new Amtrak service. See Opening V.S. Golden, 3–5, 9–14.

Further, as a terminal railroad, T ASD does not operate trains on a fixed schedule. Rather, T ASD maintains a pool of fifty train and enginemen who are assigned to work various shifts and to move trains as assigned during those shifts. When extra traffic requires, extra crews may be

called. The point is that T ASD is not a scheduled railroad, and Amtrak's tacit assumption to the contrary reflects its fundamental lack of understanding of, and disinterest in, the details of T ASD operations. Further, T ASD cross-corridor trains move at the discretion of CSXT's dispatchers, and since CSXT has not committed guaranteed operating windows to T ASD, T ASD trains could sit for hours waiting for clearance to move over and across CSXT's lines.

The next unsupported criticism of my earlier verified statement is that the Port allegedly overstated the complexity of its operations in the Mobile terminal area, particularly with respect to T ASD's railroad operations. In making that criticism, Amtrak has suggested T ASD "implies" the scope of its operations Mobile terminal compares with the scope of major east-west railroad gateways like Chicago, or Memphis, or St. Louis. See, e.g., Reply Argument, 42; Reply V.S. Crowley/Fapp, 59–60. However, the Port never compared T ASD operations to those terminals, or to operations at any other terminal in the United States, save New Orleans—and, in that case, did so only to distinguish T ASD interchange operations from those at the Port of New Orleans. See Opening V.S. Golden, 8 (detailing T ASD's inter-carrier relationships, incidentally, and not terminal complexity).

Related to this is Amtrak's assertion that T ASD "only" interchanges traffic with four railroads because it only has track connecting with four railroads. Reply Argument, 42; Reply V.S. Crowley/Fapp, 60. T ASD does in fact interchange traffic with eight different railroads, and the simplicity or complexity of its physical plant is irrelevant to the fact that T ASD must handle traffic for every single one of those eight different railroads. Opening V.S. Golden, 5–9. For every single carload T ASD gets from these railroads in one direction, there is an empty car moving in the other direction, and all of that traffic must be interchanged as well.

Amtrak further criticizes my estimate that TASD could lose up to six hours every day while CSXT dispatchers are holding their lines clear for Amtrak trains. Opening V.S. Golden, 13. In criticizing my estimate, Messrs. Crowley and Fapp state that “TASD claims CSX will be required to hold its main line clear for six hours per day to allow for Amtrak train movements. However, in its (incorrect) RTC analysis, CSXT indicates it would hold the main line for Amtrak movements for only two hours.” Reply V.S. Crowley/Fapp, 61. The difference between the two hours put forward by Amtrak and the six hours I put forward may seem to be “unsupported” and “contradictory.” See Reply V.S. Crowley/Fapp, 56. It should be realized the two-hour estimate accounts for the time Amtrak trains would spend in actual movement into and out of downtown Mobile, and at the station entraining and detraining passengers, that is, when the wheels on its trains are actually turning, or people are getting on and off those trains.

However, this two-hour time estimate is only one factor in a longer equation. Messrs. Crowley and Fapp have not accounted for the time necessary for CSXT dispatchers to clear lines of opposing traffic in advance of these movements, or for the time necessary for opposing traffic to resume movement once Amtrak is out of the way. In other words, Amtrak movements would require more track and time than the simple two-hour estimate would at first glance require. To this two-hour estimate must be added time sufficient for CSXT dispatchers to receive their data about Amtrak movements before they arrive on the property, siding opposing movements, and aligning routes for Amtrak movements, all of which must be done well in advance of Amtrak’s physical occupation of the blocks or interlockings it wants to occupy. And even more time must be added after Amtrak leaves, and CSXT and then TASD trains resume movement. It should be clear from this that Amtrak would consume more track and time—or corridor capacity, if that is the preferred term—than it would like to assert.

Among other things in my career, I used to dispatch Amtrak trains over CSXT lines, and later supervised others in doing the same. For this reason, I know that, because of Amtrak's statutory priority over freight trains, CSXT's train dispatchers customarily will align main train movements for Amtrak trains before they even arrive on the property of a host railroad line overseen by the train dispatcher—in some cases, up to 100 miles in advance. Applied to Mobile, this means CSXT's dispatchers will be aligning CP Choctaw for Amtrak movement while those Amtrak trains are miles away from the city, and with the interlocking plant thus aligned against opposing movements, CSXT and, in turn, T ASD trains will sit and wait. It should not be hard to see how this will account for the additional four hours which will be lost each day as a result of Amtrak's new trains into Mobile. I stand by my assertion that T ASD could lose up to six hours every day waiting for Amtrak and CSXT traffic, and by the reasons I gave for that assertion. See Opening V.S. Golden, 11–14.

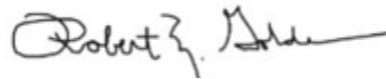
At this point, a few words need to be written about interlocking plants, such as those controlling CP Alabama State Docks and CP Choctaw. Track is only one part of an interlocking plant. Another, and equally critical, part is the electrical circuit which controls the signal aspects and indications for that interlocking. At their heart, interlockings are safety devices designed to prevent trains on different tracks from colliding. They are designed to display favorable signals to trains moving in one direction through the interlocking while displaying unfavorable signals to opposing train movements. It is by aligning track, and thus the electrical circuit, that dispatchers control the signal aspects displayed to the trains at the interlocking. So, a dispatcher will align a movement through an interlocking in one direction, and as a result of that alignment, a favorable signal aspect will be displayed to that train, while all other trains facing that same interlocking will receive signals commanding them to stop and wait for that train to clear.

This brings us to the last criticism Amtrak directed at my verified statement, in that Amtrak claims track charts and other evidence they reviewed prove there are sufficient crossovers and headroom to permit T ASD movements to continue while Amtrak trains are moving into and out of downtown Mobile. See, e.g., Reply V.S. Crowley/Fapp, 60–61. This ignores the fact that, in the case of CP Alabama State Docks and CP Choctaw, T ASD trains could not receive favorable signals permitting them to cross from Interchange Yard to Riverfront Yard, or pass CP Choctaw toward the Virginia Street Lead and McDuffie Island, while opposing movements—meaning specifically Amtrak and/or CSXT trains—occupy the circuits in those interlockings, regardless of the amount of physical space available.

This means, for example, that no southbound T ASD train moving from Interchange Yard or Riverfront Yard could take headroom toward downtown Mobile while Amtrak is sitting downtown, occupying an interlocking circuit. A *northbound* movement would be able to receive a restricting signal (that means to proceed through the signal at a speed sufficient to stop short of a train or other obstruction on the track ahead, but no more than twenty miles per hour) to *follow* Amtrak northward through CP Choctaw, but that would not change the fact that all opposing *southbound* movements would still not be able to receive a favorable signal at all, and would have to wait until the opposing movement cleared the interlocking before they could proceed.

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", is written over a horizontal line.

Robert M. Golden

Executed on December 22, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd 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