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SERVICE DATE – FEBRUARY 8, 2022

SURFACE TRANSPORTATION BOARD

DECISION

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

Decided: February 8, 2022

By decision served February 1, 2022, the Board, among other things, provided notice that a public hearing in this docket will commence on February 15, 2022, in which members of the public who file timely notices of intent to participate will have an opportunity to provide comments to the Board. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. (February 1 Order), FD 36496 (STB served Feb. 1, 2022). The Board also directed counsel for the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (collectively, the Port),¹ to appear at a prehearing conference following the conclusion of the public hearing, to discuss issues and procedures related to the evidentiary hearing beginning on March 9, 2022. This decision provides further information on the evidentiary hearing and the prehearing conference and directs the Parties to provide certain information in advance of the prehearing conference.

The evidentiary hearing beginning on March 9, 2022, will be entirely virtual. It will be held online via Zoom and will be available for concurrent viewing on YouTube. In the February 1 Order, the Board accepted all previously filed evidence into the record. For the evidentiary hearing, the Board's rules of evidence at 49 C.F.R. part 1114 subpart A will apply, and the Federal Rules of Evidence may be consulted for guidance, where appropriate.

The Parties will be directed to meet and confer in advance of the prehearing conference on procedures for (1) providing the Board an electronic set of the exhibits, which are sequentially numbered and labeled, that the Parties have previously submitted to the Board in their filings, and (2) using any evidence designated as confidential or highly confidential pursuant to the protective order. The procedures should be tailored to the online format of the hearing. The Parties will be directed to file with the Board a summary report by February 14, 2022, briefly describing the procedures to which they have agreed concerning the topics listed above.

¹ Amtrak, CSXT, NSR, and the Port will be referred to herein individually as a Party and collectively as the Parties.

Also by February 14, 2022, each Party will be directed to file with the Board and serve on all other Parties a list of witnesses (1) whom they intend to call for direct examination at the evidentiary hearing, along with an estimate of the expected duration of each witness's direct examination, and (2) whom they request an opportunity to cross-examine. Because the Board has previously accepted into the record all previously filed evidence, the Parties must make available for cross-examination at the evidentiary hearing any person who provided a verified statement as part of the evidence that has already been submitted and accepted into the record, whether or not that person was called for direct examination, if another Party requests an opportunity to cross-examine that person.

The Parties will also be directed to meet and confer in order to narrow the issues to be heard at the evidentiary hearing and to stipulate to any facts that are not contested. By March 2, 2022, the Parties shall file with the Board a joint stipulation of uncontested facts and a joint list of issues to be decided.

It is ordered:

1. The Parties shall meet and confer on the issues discussed above and are directed to file with the Board a summary report by February 14, 2022, briefly describing the procedures they have agreed upon, as described above.

2. Each Party is directed to file with the Board and serve on all other Parties, by February 14, 2022, a list of witnesses (1) whom they intend to call for direct examination at the evidentiary hearing, along with an estimate of the expected duration of each witness's direct examination, and (2) whom they request an opportunity to cross-examine at the evidentiary hearing, as described above.

3. The Parties are directed to file with the Board a joint stipulation of uncontested facts and a joint list of issues to be decided, by March 2, 2022, as described above.

4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings