

**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
CORPORATION**

JOINT SUMMARY REPORT

Pursuant to the Board’s February 8, 2022 Decision,¹ 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 (together, the “Port”) submit this Joint Summary Report (collectively, the “Parties”).

The Parties conferred on February 10, 2022, to consider the two specific issues identified in the Board’s February 8 Decision as well as certain other procedural matters pertaining to the evidentiary hearing scheduled to begin on March 9, 2022. This Joint Summary Report offers joint recommendations for the handling of exhibits, the treatment of confidential or highly confidential information, and certain other hearing procedures.

¹ Decision at 2, *Application of the Nat’l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. and Norfolk S. Ry. Co.*, STB Docket No. FD 36496 (served Feb. 8, 2022) (“February 8 Decision”).

I. Exhibits.

The Parties have agreed that each Party will develop its own exhibit list. That list shall include all of that Party's narrative evidence,² including verified statements and exhibits. Each Party's list may also include workpapers previously produced in this proceeding. At the hearing, Parties may introduce any exhibits on their list or another Party's list. Parties may use other documents for impeachment of a witness, regardless of whether the documents are included on an exhibit list. Exhibit lists, as well as any proposed demonstrative or visual aid exhibits, will be exchanged by the Parties on March 2, 2022. Each Party will have two days to raise an objection to another Party's exhibit, including proposed demonstrative exhibits. If the Parties are unable to reach agreement, the Parties will present their dispute to the Board for resolution. The Parties will then submit their exhibits to the Board on March 7, 2022.

At the pre-hearing conference the parties plan to inquire about the Board's preferred mechanism for the provision of electronic exhibits, and whether it would also be useful for the parties to provide paper copies of the exhibits.

² The narrative evidence shall include Amtrak's proposed Surrebuttal if the Board grants the Motion for Leave to File the Surrebuttal. If the Board accepts the Surrebuttal, then the narrative evidence shall also include any response by CSXT, NSR, or the Port that the Board may permit.

II. Treatment of Information Designated Confidential or Highly Confidential Under the Protective Order.

In its February 8 Decision, the Board confirmed that the evidentiary hearing scheduled to begin on March 9 will be “entirely virtual” with the Parties participating via Zoom and concurrent viewing available for the public on YouTube.

Whenever counsel intends to discuss or display material designated Confidential or Highly Confidential under the protective order, the Parties recommend that the Board turn off the camera and audio for the YouTube live feed and display text informing the public that the live feed will return when the nonpublic portion of the hearing concludes.

If Highly Confidential material is presented, the Parties recommend that any individual not permitted to see or hear the Highly Confidential information be required to leave the Zoom room(s). This will not be necessary for any discussions of Confidential material, because the Parties have agreed that any individual associated with a Party who will be participating in or viewing the hearing via Zoom will have signed the Confidential Undertaking of the protective order in advance of the hearing.

The Parties agree that it shall be incumbent on the lawyer engaged in examination of a witness to alert the Board prior to presenting Confidential or Highly Confidential information so that the appropriate measures and instructions may be taken or given to protect the confidentiality of that information. The Parties also agree to organize their examinations so as to minimize the number and duration of instances where the public live feed must be turned off.

III. Witness Examination.

Witness Examination: The Parties propose that one witness be presented for examination at a time and that the presentation of witnesses proceed as follows:

- Direct Examination of Witness by Party or Parties Presenting
- Cross Examination of Witness by Opposing Party or Parties
- Redirect Examination of Witness by Party or Parties Presenting
- Any Additional Questions for Witness by Board Members

At the conclusion of each witness's testimony and any additional questions from the Board, the witness will be excused.

The Parties are still conferring about issues related to potential rebuttal evidence at the hearing, and they expect to address that issue with the Board at the prehearing conference on February 16.

IV. Opening Statements and Closing Arguments.

The Parties view opening statements as an opportunity to preview the evidence that they expect to present at the hearing. The Parties have agreed that CSXT and NSR will have a joint opening statement of 20 minutes and that Amtrak will have an opening statement of 20 minutes. The Port has requested 10 minutes for its opening statement, and CSXT and NSR support that request. Amtrak has proposed that the Port's opening statement should be 5 minutes.

The Parties have agreed that CSXT and NSR will have a joint closing argument of 30 minutes and that Amtrak will have a closing argument of 30 minutes. The Port has requested 15 minutes for its closing argument, and CSXT

and NSR support that request. Amtrak has proposed that the Port's closing argument should be 7 minutes.

After closing arguments, the attorneys who presented the closing arguments for each Party will be available simultaneously to answer any questions from Board members.

As support for their positions on the Port's time for an opening statement and closing argument, the Parties state as follows:

CSXT/NSR/Port Position: The Port submits that 10 minutes is both an adequate and reasonable allotment time for it to preview the evidence that it plans to present at the hearing, and that 15 minutes is a similarly-appropriate period of time for the Port to present its closing argument. CSXT and NSR agree. As the Port views it, the Board, in its order served on January 28, 2022, recognized that the Port has a distinct, and important, interest in this case. Moreover, the Port's role here may inform other, similarly-situated interested parties in future cases that Amtrak may choose in the future to initiate under 49 U.S.C. § 24308(e). For those reasons, the Port cannot agree to Amtrak's continued efforts to stifle the Port's involvement and to diminish the Port's interests in this proceeding, as the Port believes that Amtrak's competing time allotment proposal is intended to do.

Amtrak Position: Because the Port is an intervenor in this case, Amtrak is not opposed to the Port having limited opening statement and closing argument time. But the Port's interests are substantially aligned with CSXT and NSR's. Amtrak does not object to having the side opposite have slightly more argument

time but what the Port proposes is neither fair nor reasonable. Under the Port's proposal, as supported by CSXT and NSR, the Port, CSX, and NSR would have 30 minutes of opening statement time to Amtrak's 20 and 45 minutes of closing argument time to Amtrak's 30. That is a third more opening statement and closing argument time than Amtrak would receive. Amtrak's proposal of 5 minutes for opening statement and 7 minutes of closing argument for the Port is more than reasonable. Amtrak requests that the Surface Transportation Board deny the Port's request and allot time as Amtrak has outlined.

V. Transcripts.

The Parties request that the Board provide real-time transcripts of the evidentiary hearing by a court reporter. Access to a real-time transcript each day of the evidentiary hearing will facilitate a more robust examination of witnesses and enable witness testimony to be read back if necessary. The Parties stand ready to discuss options for real-time transcripts with Board staff and the Board's chosen court reporter.

Respectfully submitted,

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*Counsel for Norfolk Southern Railway
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Dated: February 14, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2022, a copy of the foregoing Joint Summary Report was served by email or first class mail on the service list to Finance Docket No. 36496.

/s/ Raymond A. Atkins

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