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

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

Dear Ms. Brown:

Please find attached Norfolk Southern Railway Company's ("NSR") Reply To Amtrak's Renewed Request for an Interim Access Order Directed to Norfolk Southern Railway Company, which was filed on February 10, 2022. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: wmullins@bakerandmiller.com. If I am unavailable, you may contact Crystal M. Zorbaugh, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com.

Sincerely,

/s/ *William A. Mullins*

William A. Mullins
Attorney for Norfolk Southern Railway Company

Enclosures

cc: Thomas E. Zoeller, Elaina L. Blanks-Green
Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
FD 36496**

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

**NORFOLK SOUTHERN RAILWAY COMPANY'S REPLY TO AMTRAK'S RENEWED
REQUEST FOR AN INTERIM ACCESS ORDER DIRECTED TO NORFOLK
SOUTHERN RAILWAY COMPANY**

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**Attorneys for Norfolk Southern Railway
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Dated: February 28, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD
FD 36496**

**APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION
UNDER 49 U.S.C. § 24308(e) – CSX TRANSPORTATION, INC. AND NORFOLK
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REQUEST FOR AN INTERIM ACCESS ORDER DIRECTED TO NORFOLK
SOUTHERN RAILWAY COMPANY**

BACKGROUND

On February 10, 2022, the National Passenger Railroad Corporation (“Amtrak”) filed Amtrak’s Renewed Request for an Interim Access Order (“Renewed Request”) Directed to Norfolk Southern Railway Company (“NSR”) to allow Amtrak to begin scheduling crew qualifications trains over NSR’s portion of the Gulf Coast Corridor in connection with the service Amtrak seeks to introduce over the Gulf Coast Corridor. Related to its current request, on November 2, 2021, Amtrak previously submitted a formal request to operate crew qualification trains on NSR’s line between East City Junction and Elysian Fields, for the purpose of qualifying Amtrak crews on the rail lines of both NSR and CSXT.¹ Amtrak expects qualification trains to operate up to six days per week for a period of several months and promises to coordinate with designated NSR operating personnel on the exact dates, times, and details of these qualifying runs. Id.²

¹ Given the NSR portion of the Gulf Coast Corridor is only three miles and the CSXT portion of the Gulf Coast Corridor is much larger and subject to its own operating protocols, Amtrak would need to coordinate with CSXT to qualify its operations over the CSXT portion of the Gulf Coast Corridor.

² CSXT too has asked Amtrak to provide more definite information concerning its specific qualification plans. CSXT has asked Amtrak to specify “the number of crews that will need to be

NSR responded to Mr. Jim Blair's November 2nd request on November 30, 2021. NSR did not "refuse" Amtrak's request, and has not stated that it was "unwilling to allow Amtrak access to its rail lines to perform qualification runs".³ Instead, NSR explained that Amtrak's proposed prolonged qualification operation, "significantly beyond any reasonable timeframe during which a certified conductor or engineer would be expected to become qualified on the physical characteristics of a new operating territory," would be premature given the current status of a potential implementation of that service, and the very likely probability that the physical characteristics of that new operating territory would change. See Attachment A. NSR explained that initiating train qualifications prematurely would not be beneficial for either party as Amtrak would inevitably need to repeat said qualifications following the installation of the required infrastructure. Id. Regardless, NSR confirmed that it remained committed to working with Amtrak to implement the proposed Gulf Coast Service, including accommodating the necessary crew qualification operations when the time is appropriate to do so. Id. On December 20, 2021, Mr. Blair sent a follow-up letter to NSR in which Amtrak took exception to NSR's position that qualification runs are premature, purported that the access being sought is similar to what Amtrak and NSR agreed to for the Roanoke service extension a few years back, and asked NSR to reconsider its position. On January 20, 2022, NSR advised Amtrak that NSR's position remains as stated in its November 30, 2021, response. As a result, on February 10, 2022, Amtrak filed its Renewed Request. NSR

qualified to support the proposed new Gulf Coast service" and the "precise dates when those crews will be ready to begin such qualifications." (*See* Ex. E, Letter from A. Daly to J. Blair, June 30, 2021.)

³ Renewed Request at 5.

hereby responds to Amtrak's Renewed Request and explains to the Board why Amtrak's Renewed Request is premature at this time.

I. NSR Is More Than Willing To Accommodate Amtrak's Train Qualification Runs At The Appropriate Time.

As explained in the public hearing on February 15th and 16th, NSR has always worked amicably and cooperatively with Amtrak to accommodate additional passenger trains. That process has consistently involved engaging Amtrak cooperatively to look at present conditions, reviewing operational realities, making the most scientific evaluation possible of what the future might hold, identifying and building the infrastructure needed to protect both freight and passenger customers, and ultimately NSR hosting Amtrak qualification trains necessary to implement the service. Agreeing on specifics and parameters for crew qualifications is generally the last step in the process after all other considerations have been resolved.

For instance, in 2017, when NSR and Amtrak expanded passenger service from Washington, D.C. to Roanoke, VA, NSR and Amtrak followed the exact process set forth above, and once all other considerations were resolved the parties agreed upon the parameters for Amtrak's crew qualification trains. Specifically for the Roanoke service, NSR agreed to Amtrak running multiple roundtrips per day (not every day, but several times per week) consistently from June through October as they qualified employees to operate that service. While NSR agreed to allow multiple months to complete the qualification, such a prolonged qualification period was not necessary to qualify Amtrak's employee crews.⁴

NSR internal records confirm that Amtrak qualified its first crew on the 52-mile territory,

⁴ Amtrak qualified a significant number of employees in connection with Roanoke service. One possible reason is that Amtrak wanted to give itself the flexibility to utilize such employees on neighboring territories that were operated in a similar manner.

which is far more expansive than NSR 3-mile on the Gulf Coast, in a mere ten days, and thereafter qualified an additional crew every two weeks. Amtrak has simply given no justification for why a more prolonged period is warranted here given NSR's portion of the Gulf Coast Corridor involves a significantly smaller corridor.⁵ More importantly, Amtrak's expansion of Roanoke service demonstrates that Amtrak can qualify employees in a much shorter period. Amtrak has provided no explanation whatsoever why such an extended period (up to six days per week for several months) is warranted here given these circumstances.

To be clear, NSR's primary concern is the safety of its railroad employees and the employees of the interchange railroads operating over the Gulf Coast Corridor. Because the Board has yet to grant Amtrak's application, establish any infrastructure necessary to accommodate passenger service, or set operating parameters for Amtrak's proposed service, Amtrak's proposal unnecessarily comprises safety. While Amtrak has repeatedly taken the position that no infrastructure projects are needed for it to start service, this position is completely at odds with not only the 2021 Gulf Coast Rail Traffic Controller ("RTC") model but also the Gulf Coast Working Group Report, which identified approximately \$100 million in necessary improvements. Even the STB commissioners have questioned what specific infrastructure Amtrak believes is necessary to accommodate its proposed passenger service. During the February 16, 2022, pre-trial hearing Amtrak was directed to be prepared to state at the March 9-10 hearing whether it believes that a lesser number of the 14 improvements could be funded or agreed to by Amtrak to remedy any unreasonable impairment the Board determines exists. Until Amtrak's operating parameters and infrastructure needs are established, it would be

⁵ Moreover, just because NSR agreed to a particular qualification plan in the past doesn't mean it is the only way to qualify a crew base or that a different situation requires warrants the same amount of time.

impossible for Amtrak to qualify employees on service parameters that remain uncertain. Particularly when doing so compromises the safety of others operating over the NSR portion of the Gulf Coast Corridor.

Amtrak's desire to rush crew qualifications fails to acknowledge that such crew qualifications lapse.⁶ Put simply, once a crewmember is qualified, they must operate over the territory periodically to maintain qualifications. With no date certain to begin Gulf Coast operations, it would be unsafe and inefficient to qualify employees now who may then not operate for an extended period and lose their qualifications. Amtrak's desire to engage in premature crew qualification simply does not outweigh the safety concerns of allowing Amtrak to do so prematurely creates. The safest course is qualifying employees as close to the date of service initiation as possible to ensure maximum familiarity with the route. NSR will absolutely qualify employees for as long as reasonably necessary when service is certain to begin.

Moreover, Amtrak's self-created sense of urgency to undertake crew qualifications is not supported by its filings to date, the documents it produced in discovery, or press stories indicating its proposed stations including Bay St. Louis, Gulfport, Biloxi, and Pascagoula, need substantial repairs and improvements, including federally-required improvements to ensure ADA compliance.⁷ Realistically, any start of service cannot begin for several months after the date upon which service is ordered to begin. When it becomes certain that service will begin, some number of months will pass before freight and passenger infrastructure is constructed to permit

⁶ Indeed, Amtrak crews that would have been qualified back in June and July of last year, when Amtrak first requested access, would now need to be requalified due to the lapse of a significant amount of time, validating NSR's argument that Amtrak's requests have been premature.

⁷ 3 MS Coast train stations get \$700,000 for makeovers ahead of Amtrak return in 2022, nola.com, available at https://www.nola.com/news/article_031258f4-2062-11ec-9f6b-47494da9de95.html

commencement of the new service. While Amtrak received \$700,000 funding in September to assist with the above station improvements, as of January 2022 that station work appeared yet to commence. Thus, contrary to Amtrak's claims, there will be plenty of time for crew qualifications once Amtrak's proposed service parameters and infrastructure needs are determined and its required stations' improvements are made.

Should Amtrak want to begin qualification of employees earlier on operating in the Gulf Coast, generally, Amtrak already has access to a neighboring route. Amtrak employees can be qualified over the NSR portion of the Gulf Coast route on the existing Crescent trains that traverse an identical footprint as the proposed Gulf Coast service on NSR. In fact, Amtrak can qualify employees on Crescent service trains any time they want without getting NSR's permission.

CONCLUSION

NSR is happy to discuss a qualification plan with Amtrak if they want to propose one that outlines their needs, but NSR is not willing to just agree to let Amtrak do anything they want. To date, Amtrak has not proposed any specific qualification plans, identified precise infrastructure needs and operating plans, or explained why crew qualification in advance of the Board's decision on its application is warranted given that service could not begin right away. Once Amtrak details its qualification plan and explains what infrastructure is necessary for its service, NSR (and presumably CSXT) can review Amtrak's operating parameters and work with Amtrak to qualify employees if/when the time is appropriate. For the reasons explained herein, NSR respectfully requests that the Board deny Amtrak's Renewed Request.

Respectfully submitted

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***Counsel for Norfolk Southern Railway
Company***

Dated: February 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2022, a copy of the foregoing Reply To Amtrak's Renewed Request for an Interim Access Order was served by email or first-class mail on the service list to Docket No. FD 36496.

/s/ William A. Mullins
William A. Mullins