

SERVICE DATE – MAY 26, 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: May 26, 2022

At the conclusion of the May 12, 2022 session of the evidentiary hearing in this case, the Chairman and other Board members discussed a number of evidentiary issues, invited the Parties¹ to submit additional evidence on those issues, and indicated that the hearing record would remain open until June 13, 2022, for that purpose. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496 (STB served May 17, 2022). The Board further indicated that, after any such evidence is submitted, it will communicate with the Parties regarding next steps as to the evidentiary hearing. (Id.)

On May 19, 2022, Amtrak filed a motion requesting that the Board order CSXT and NSR to redesignate all the materials produced in connection with the 2020 and 2021 Rail Traffic Controller (RTC) studies from “highly confidential” to “confidential,” so that Amtrak personnel can work with Amtrak’s outside consultants to submit additional RTC modeling. (Amtrak Mot. 1, May 19, 2022.) In the alternative, Amtrak requests that the Board modify the protective order served on April 14, 2021 in order to allow certain Amtrak personnel² to access this highly confidential material after they sign the highly confidential undertaking pursuant to the protective order.³ (Id. at 1.)

¹ The Parties are 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).

² The seven individuals for whom Amtrak seeks access to the highly confidential materials are: Jim Blair (Host Railroads), Kyle Montgomery (Host Railroads), Doug Reisner (Transportation), Jeff Gerlach (Planning), Davis Dure (Planning), John Rhodes (Planning), and Tim Wells (Planning). (Id. at 6 n.2.)

³ Amtrak also requests that the Board order CSXT and NSR to produce the additional RTC analyses that Mark Dingler testified he performed during the hearing on the record, as well as all supporting workpapers. (Id. at 1.)

Additionally, on May 19, 2022, CSXT, NSR, and the Port filed a renewed motion for Board-sponsored mediation, to which Amtrak replied on May 20, 2022, and Amtrak filed a motion on May 23, 2022, to compel CSXT and NSR to produce information requested in Amtrak's supplemental interrogatories, to which motion CSXT and NSR have not yet replied.

Replies to Amtrak's May 19 motion would normally be due by June 8, 2022, and replies to its May 23 motion to compel would be due by June 13. But Amtrak, like the freight railroads involved in this matter and the Port, has been given the opportunity to prepare and submit, by June 13, additional evidence that is responsive to the evidentiary issues raised by the Board. In light of that deadline, replies to Amtrak's May 19 and May 23 motions will be due no later than 10:00 a.m. EDT on Tuesday, May 31, 2022.

It is ordered:

1. Replies to Amtrak's May 19 and May 23 motions will be due no later than 10:00 a.m. EDT on Tuesday, May 31, 2022.
2. This decision is effective on its service date.

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