
BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36695

ENTERED
Office of Proceedings
June 6, 2023
Part of
Public Record

PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF – RAIL SERVICE
TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES

**AMTRAK’S REPLY TO RESPONDENT NORFOLK SOUTHERN RAILWAY
CORPORATION’S SUBMISSION OF SUPPLEMENTAL INFORMATION**

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

Jessica Ring Amunson
Alex Trepp
Jenner & Block LLP
Suite 900
1099 New York Avenue, NW
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com
atrepp@jenner.com

Kelsey Stimple
Michael Kang
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654
(312) 222-9350
kstimple@jenner.com
mkang@jenner.com

Counsel for National Railroad Passenger Corporation

TABLE OF CONTENTS

INTRODUCTION	2
ARGUMENT	4
I. NS'S SUPPLEMENTAL INFORMATION IS NOT RELEVANT TO THE LEGAL ISSUES BEFORE THE BOARD	4
II. AMTRAK DEVELOPED A REASONABLE APPROACH TO PERFORMING A TOTAL TRACK RENEWAL ON THE SUBJECT LINE	6
III. AMTRAK MADE A REASONABLE DETERMINATION TO PROCEED UNDER ITS EXISTING WORKPLAN	12
A. AMTRAK'S EXISTING WORKPLAN RIGHTLY REFLECTS THAT MECHANIZED PRODUCTION GANGS ARE NOT SUITABLE FOR TOTAL TRACK RENEWAL ON THE SUBJECT LINE	13
B. AMTRAK'S EXISTING WORKPLAN RIGHTLY REFLECTS KEY CONSTRAINTS THAT ARE NOT ADDRESSED IN NS'S PROPOSED ALTERNATIVES	16
C. NS FAILS TO ACCOUNT FOR KEY CONSTRAINTS IN EVALUATING THE COST AND PACE OF EFFORTS TO RENEW THE SUBJECT LINE	19
CONCLUSION	23

INTRODUCTION

Pursuant to the Surface Transportation Board’s (“Board”) decision of June 2, 2023, the National Railroad Passenger Corporation (“Amtrak”) files this reply to the Supplemental Information submitted by Norfolk Southern Railway Company (“NS”) on May 23, 2023 (“NS Supplement”). Amtrak remains committed to addressing the concerns of freight customers along the Harrisburg line (“Subject Line”) who will be impacted by Amtrak’s total track renewal project. This project is well underway and essential to maintaining the continued safety and reliability of Amtrak’s rail infrastructure. The project will also deliver important benefits for freight and passenger rail service on the line, including by reducing future outages due to planned and unplanned maintenance requirements, reducing the need for speed restrictions, improving customer satisfaction, and enhancing ride quality for passengers.

The total track renewal is an extensive project. It was planned and programmed over the course of more than a year, based on careful study of infrastructure on the Subject Line and related data. It is not confined to ordinary tie replacement, which involves renewing a non-contiguous subset (typically one third) of ties along a segment. Instead, the project involves replacing 100% of wood ties with concrete ones, replacing 100% of the rail, and completely overhauling the roadbed, which is severely fouled in most areas and must be rehabilitated without elevating the track because the Subject Line is one of few territories in the U.S. rail network with overhead catenary structure. To accomplish this project, Amtrak chose to implement a comprehensive renewal program that requires use of a Head End Gang, Track Laying Machine, Clipping Gang, Undercutter, and Surfacing Gang,¹ all working in tandem. Based on the complexity and magnitude of the task, that choice was reasonable.

¹ The Head End Gang, Track Laying Machine, and Clipping Gang are part of Amtrak’s Track Laying System (“TLS”) and will be used to replace 100% of the ties and rail. The Undercutter and Surfacing Gang will follow.

During the nearly nine months between when Amtrak informed NS about the project in September 2022 and when NS filed its supplemental information on May 23, 2023, NS did not propose any alternative method of accomplishing this project. There were plenty of opportunities to do so. Amtrak engaged in regular communication with NS about its workplan, offered to speak to shippers and freight customers, designated an individual in Amtrak's Host Railroads Group to speak to shippers and freight customers, and engaged promptly and in good faith with the Board's Office of Public Assistance, Government Affairs, and Compliance ("OPAGAC").

It was not until more than a month after this proceeding began that NS first offered its views on purported "alternatives" to Amtrak's existing workplan. To be clear, if NS had presented this information to Amtrak nine months ago, the parties might at that time have discussed whether the suggested alternatives were viable (and for the reasons set forth below, would have concluded they were not). However, at this point in time, Amtrak's \$167 million taxpayer-funded project is well underway along the Subject Line. The only question before the Board is whether to issue an immediate stop-work order that would require Amtrak to idle the large crew and massive pieces of machinery that are already in place and working along the Subject Line, pursuant to the exact schedule that Amtrak provided to NS in January 2023. For the reasons that Amtrak has previously explained, the Board does not have jurisdiction to issue such an order, and it would be unwarranted in any event.

Should the Board nonetheless determine that it has jurisdiction over Amtrak's maintenance and infrastructure work under 49 U.S.C. § 11101 (and NS offers no legal authority in support of this proposition), the only question presented in the proceeding will be whether Amtrak's renewal project is reasonable under the totality of the circumstances. Careful review and analysis of NS's proposed "alternatives" only confirms that Amtrak acted reasonably in planning and undertaking

this project. The “alternatives” that NS presents fail to account for the unique set of constraints that Amtrak faces in renewing the Subject Line, such as the need to maintain overhead catenary clearance, the lack of nearby locations to store equipment, challenges in placing materials along the route, limitations in applicable collective bargaining agreements, and the fact that Track Two remains open for both freight and passenger service while the work continues on Track One. NS’s “alternatives” also rest on misplaced claims about the prevailing use case for mechanized production gangs and evince a lack of familiarity with the facts and circumstances of this project, relying instead on inapt references to prior projects that bear no resemblance to renewal of the Subject Line. Put simply, the proposed “alternatives” demonstrate that Amtrak engineers acted reasonably in choosing the means and method to complete renewal of the Subject Line, a renewal that stands to benefit all stakeholders that use the tracks.

For these reasons, and as explained in Amtrak’s prior filings and more fully below, the Board should conclude that it lacks jurisdiction over this matter, and that in all events, the relief that Kellogg requests against Amtrak should be denied.

ARGUMENT

I. NS’S SUPPLEMENTAL INFORMATION IS NOT RELEVANT TO THE LEGAL ISSUES BEFORE THE BOARD

NS claims that “[b]ecause reasonable alternatives exist for Amtrak to perform its maintenance, Amtrak’s threat to continue with a plan that would cut off freight service constitutes unreasonable interference with freight rail service.” NS Supplement at 3. As Amtrak has previously explained, if NS believes that Amtrak is “unreasonably interfering” with NS’s rail service, the Board is not the proper venue for such a claim. {{

}} The Board has no jurisdiction over NS's claim of unreasonableness. {{

}}

In its role as a respondent in this Board proceeding, rather than attempting to facilitate a resolution of this matter, NS has sought to transform this proceeding into an adjudication of different approaches to performing track renewal. However, the Board is not charged with deciding between different approaches to renewal, or otherwise directing how Amtrak rehabilitates its rail infrastructure. The eleventh-hour submission of purported “alternatives” to Amtrak’s workplan does not change that.² The only legal issues currently before the Board are those in the petition from NS’s customer, Kellogg. For the reasons that Amtrak previously explained, Amtrak Reply at 6-13, the Board does not have jurisdiction to order the relief that Kellogg seeks and that relief is also unwarranted. Amtrak Reply at 14-30.

Even if the Board had jurisdiction here, the suggestion from NS that the Board at this point could order Amtrak to accomplish its important track renewal work through alternative means is

² If NS had promptly and accurately conveyed information about Amtrak’s track renewal project to its customers, this entire litigation might have been avoided. Moreover, had NS permitted Amtrak to work directly with NS’s freight customers, *see* Second Verified Statement of Jim Blair (“Blair S.V.S.”) ¶ 3, their concerns could have been addressed in a timely and efficient fashion, as demonstrated by the prompt settlement executed by Amtrak and the Petitioners who initiated this proceeding. *See* Petitioners’ Motion to Dismiss (May 30, 2023).

untenable. The project is already underway, Second Verified Statement of Ray Verrelle Jr., Amtrak Vice President Engineering Services (“Verrelle S.V.S.”) ¶ 3, and the relief that Kellogg requests would require the Board to stop the project entirely. *See* Amtrak Reply at 25-26. That would mean idling the large crew that has been working on the Subject Line since April 28, 2023,³ in accordance with the exact schedule provided to NS in January 2023. Verrelle S.V.S. ¶ 3. Moreover, if the renewal does not go forward, Amtrak will lose the season’s use of the massive machinery that is already cut in to the Subject Line and completing the total track renewal,⁴ again according to the exact schedule provided to NS in January 2023. *Id.* That would have cascading effects for Amtrak’s capital projects for the next several years.

The issue before the Board is not whether NS has proposed a superior “alternative” to the existing workplan. The only issue now is whether Amtrak will be ordered to stop work on this \$167 million project, even while Amtrak continues to attempt to address Kellogg’s concerns with the project. For the reasons explained here and in Amtrak’s prior submissions, the Board should not order the stoppage of this important track renewal work.

II. AMTRAK DEVELOPED A REASONABLE APPROACH TO PERFORMING A TOTAL TRACK RENEWAL ON THE SUBJECT LINE

If the Board concludes that 49 U.S.C. § 11101 provides the Board with jurisdiction to consider whether Amtrak’s workplan is reasonable, the Board should conclude that it is. As Amtrak has previously explained, the common carrier provision is not absolute, but rather fact-specific. *Groome & Assocs., Inc. & Lee K. Groome v. Greenville Cnty. Econ. Dev. Corp.*, NOR

³ In its initial filing, Amtrak referred to a 120-person crew, but inadvertently omitted from its estimation of crew size individuals working on the undercutting effort. Amtrak currently expects 175 individuals to work on the total track renewal, and it has authorized up to 18 additional crew members. Verified Statement of Ray Verrelle Jr., Amtrak Vice President Engineering Services (“Verrelle V.S.”) ¶ 3 n.2.

⁴ The operation of these machines requires significant advance placement of materials that are kept in place for the project. There is no other place where such materials are pre-staged such that the equipment could be redeployed during the current work season. Verrelle S.V.S. ¶ 3.

42087, slip op. at 12 (S.T.B. served July 27, 2005) (rejecting “a standard approaching strict liability for failing to provide service,” and instead “conduct[ing] a fact-specific balancing test to determine whether the actions of the carrier were reasonable”); *see also Bolen-Brunson-Bell Lumber Co. v. CSX Transp., Inc.*, FD 34236, slip op. at 8 (STB served May 15, 2003) (concluding that suspension of service was reasonable, and that there was “no evidence that this embargo was designed to effect an unauthorized, de facto abandonment, or to drive traffic off of the line to support a discontinuance application”); *see also Bar Ale, Inc. v. Cal. N. R.R. Co. & S. Pac. Transp. Co.*, FD 32821, slip op. at 7 (S.T.B. served July 20, 2001); *Decatur Cnty. Comm’rs v. Surface Transp. Bd.*, 308 F.3d 710, 715 (7th Cir. 2002).

The workplan that Amtrak developed to complete its important rehabilitation of the Subject Line was more than reasonable, and therefore sufficient to satisfy any alleged common carrier obligation under 49 U.S.C. § 11101, even assuming that the provision applies to Amtrak (which it does not, for the reasons set forth in Amtrak’s prior filings). Amtrak regularly assesses the need to renew its infrastructure. *Verrelle V.S.* ¶ 2. The assessment is data driven and predicated on reviewing the life cycles of pertinent infrastructure, daily inspections, regular testing, and ground-penetrating radar (“GPR”). *Verrelle V.S.* ¶ 3. Based on careful review of that information, Amtrak’s engineering team determined that the Subject Line required renewal.⁵ *Verrelle V.S.* ¶ 2. More specifically, the team determined that the Subject Line required a total track renewal. *Id.* A total track renewal involves refreshing every major component of the rail infrastructure, rail, ties, and ballast.⁶ *Verrelle S.V.S.* ¶ 2. In the case of the Subject Line, it involves replacing 100% of

⁵ For reasons Amtrak has previously explained, the track rehabilitation work that has prompted this proceeding is about safety, quality, and reliability. *See Verrelle V.S.* ¶¶ 3-4.

⁶ Ballast is a permeable layer of crushed rock meant to support the track, hold it in place, spread out the load, and facilitate drainage. *Verrelle V.S.* ¶ 9 n.2.

existing rail, replacing 100% of existing ties, converting 100% of ties to concrete, and overhauling roadbed that is dirt fouled (such that it is not draining effectively) and has reached the end of its useful life, among other things. *Id.* In most areas, ballast on the Subject Line is so fouled that a full-depth replacement is required. Verrelle S.V.S. ¶ 5. This process requires that Amtrak remove ballast to a depth of 14 inches below each railroad tie, clean it, and replenish it. *Id.*; *see also* Verrelle V.S. ¶ 10.

In studying how to accomplish this track renewal program, Amtrak engineers identified several important constraints. For example, unlike most freight track, the Subject Line is electrified. Verrelle V.S. ¶ 10 n.4. That means that any rehabilitation work needs to maintain clearance between railcars and the overhead catenary structure that powers the locomotive. Verrelle V.S. ¶ 10. Maintaining that clearance imposes significant limitations on the means and methods available to overhaul roadbed. Verrelle S.V.S. ¶ 6; *see also* Verrelle V.S. ¶ 10 n.4. While railroads outside of electrified territory can build up, replacing fouled ballast by using machines that layer fresh ballast over the existing roadbed, Amtrak engineers determined that taking that approach would compromise the catenary clearances. Verrelle S.V.S. ¶ 6. Thus, after careful consideration, Amtrak engineers determined that the best approach to renewing ballast on the Subject Line involved undercutting the roadbed. Verrelle S.V.S. ¶ 7; Verrelle V.S. ¶¶ 8, 10.

Overhead catenary structure was not the only constraint that Amtrak engineers identified in evaluating how to conduct a total track renewal of the Subject Line. The line itself imposed another. The Subject Line is double tracked with narrow track centers and narrow shoulders. Verrelle S.V.S. ¶ 11. Moreover, this stretch of the route does not contain long sidings that would allow engineering teams to easily store the massive machinery, nor the supply materials, overnight. *Id.* Amtrak did not, in evaluating how to accomplish the renewal project, identify any other nearby

storage options sufficient to house the volume of machinery ultimately required to complete the project.⁷ *Id.*

In all, the total track renewal will involve pulling more than 45,540 wooden ties; placing more than 37,000 concrete ties; installing and de-stressing more than 149,600 linear feet of rail; surfacing more than 261,800 feet of track; undercutting more than 74,800 feet of track; and unloading more than 21,000 tons of stone. Verrelle S.V.S. ¶ 17. The sheer volume of material involved in the total track renewal presents a significant logistical complication. Verrelle S.V.S. ¶ 18. That is because certain methods and means of conducting renewal require laying out materials in the right of way, and also require space to drop old ties and other material. *Id.* The Subject Line does not have sufficient space to accommodate that volume of material, and attempting to lay out materials in the right of way on the Subject Line could introduce additional safety concerns for Amtrak personnel conducting the work, or inspecting adjacent tracks. *Id.*

Although the total track renewal will involve considerably more than replacing ties, the conversion of wooden to concrete ties creates yet another complication. The number of wooden ties that Amtrak will remove significantly exceeds the number of concrete ties that Amtrak will place. See Verrelle S.V.S. ¶ 17. That is because the distance that must be maintained between wooden and concrete ties is different. Verrelle S.V.S. ¶ 13. The difference makes conversion more complex, in that it requires more precision, particularly when replacing 100% of ties on the line. See *id.*

Based on all of these factors, and bearing in mind Amtrak's firm commitment to the responsible use of taxpayer dollars, Amtrak determined that the best way to accomplish a project of this magnitude and type was to use its Track Laying System ("TLS"), along with an Undercutter

⁷ As further explained below, the lack of nearby equipment and material storage areas means that equipment cannot be removed from the track each night as NS suggests.

and the wide array of related equipment required to complete the renewal. Verrelle S.V.S. ¶ 4. Amtrak determined that for the Subject Track, using the TLS would be the best way to replace ties, install track, and align track, for several reasons. Among them, Amtrak determined that the TLS would ensure precision in converting all wood ties to concrete; would allow Amtrak to overcome the logistical complications associated with laying out all materials in this particular right of way; would allow Amtrak to avoid the safety concerns associated with laying out all materials in this particular right of way (while attempting to leave room for storage of removed materials); would significantly reduce incidental damage to concrete ties during installation; and would allow the project to proceed much more efficiently, to the benefit of NS, shippers, freight customers, taxpayers, and Amtrak, which has a robust plan for restoring other rail infrastructure on its network. *Id.*

Amtrak further determined that use of an Undercutter would be the best way to address fouled ballast on the Subject Line under the circumstances,⁸ including because ground-penetrating radar data indicated that ballast was in such poor condition that it could not be cleaned in place, and because the Undercutter would avoid elevating tracks during the rehabilitation process, and therefore maintain clearance of the overhead catenary structure. Verrelle S.V.S. ¶¶ 5, 7.

Based on its assessment of the Subject Line, Amtrak further concluded that using the TLS, Undercutter, and related equipment in tandem was the most appropriate and efficient way to complete a total track renewal for the Subject Line. When NS asked that Amtrak consider whether Amtrak could do the work in a manner that would limit any disruption in freight service to ten

⁸ The Undercutter removes, cleans, and, when feasible, returns ballast to the roadbed. Verrelle V.S. ¶ 9. Although a TLM can clean and push some ballast, its ability to do so is limited. Verrelle V.S. ¶ 8 n.1. Amtrak engineers determined that the TLM was insufficient to address subgrade faults on the Subject Line, including because it cannot undercut to the necessary depth. *See id.*

days, Amtrak evaluated other methods and means to accomplish the renewal.⁹ Verrelle V.S. ¶¶ 16-17. The primary alternative that Amtrak identified would have involved initially running the TLS and coming back to undercut the ballast at a later date. Verrelle S.V.S. ¶ 14. That approach, however, presented several significant concerns. *First*, the ballast on large portions of the Subject Line is severely fouled and requires prompt attention. *Id.* *Second*, running the TLS and Undercutter at separate times would have required that Amtrak run surfacing and quality assurance operations twice, introducing needless safety risks for personnel and severely compounding the burden on taxpayers.¹⁰ *Id.* *Third*, and relatedly, running the TLS and Undercutter at separate times would have resulted in greater overall disruptions to the freight service because of the need to duplicate surfacing and quality assurance operations. *Id.* *Fourth*, running these important components of the project separately still would not have allowed Amtrak to accommodate NS's request that service disruptions be limited to no more than ten days. *Id.* For these and other reasons, Amtrak determined that the most reasonable way to accomplish its important renewal of the Subject Line remained through use of the TLS, Undercutter, and related equipment, in tandem.

In sum, Amtrak made a data-driven determination that the Subject Line requires a total track renewal, not only to ensure the continued safety and reliability of Amtrak's high-speed rail infrastructure, but also to deliver important benefits to passenger and freight rail customers.

Verrelle V.S. ¶¶ 2-4. Amtrak's workplan was developed to minimize overall impact to all

⁹ NS tries to recharacterize this alternative service plan as an "alternative maintenance plan." Verified Statement of Randall Hunt ("Hunt V.S.") at 4. But the only thing that NS proposed was reducing the length of service disruptions. *Id.* At no point before May 23, 2023 did NS offer a single suggestion for how to adjust the existing workplan to achieve the reduction, Verrelle V.S. ¶ 13; *see also* Verified Statement of Jim Blair ("Blair V.S.") ¶ 7, and nothing in Mr. Hunt's declaration establishes otherwise. Hunt V.S. at 6 (asserting that NS was "actively trying to find an alternative solution that would allow freight service to continue in some fashion," but declining to offer any evidence that those efforts or alternatives were shared with Amtrak before May 23, 2023).

¹⁰ As Amtrak has previously indicated, this approach was expected to increase project costs by up to \$30 million because (among other reasons) it would have required duplicating certain operations, and would have required unnecessarily demobilizing and re-mobilizing personnel and machinery. Verrelle S.V.S. ¶ 14 n.4.

constituencies, to make efficient use of existing resources, and to address several technical challenges, including those associated with executing a complete replacement of wood with concrete ties, maintaining overhead catenary for the existing passenger rail line, dealing with limitations on space in this particular right of way, and performing work on a track segment that lacks adequate nearby track space to store work equipment. See Verrelle S.V.S. ¶¶ 6, 11, 13, 18.

III. AMTRAK MADE A REASONABLE DETERMINATION TO PROCEED UNDER ITS EXISTING WORKPLAN

Amtrak appreciates that in attending to the continued safety of its infrastructure, it is important to plan for any disruptions in access to freight service. When it first engaged NS back in September 2022 to discuss this project, Amtrak expected that NS would promptly inform its customers and assist them with such planning. Moreover, during subsequent discussions about the project, Amtrak provided NS with additional information about the nature of the renewal work, anticipated disruptions to freight service, and the scheduling details that NS and its shippers would require to make alternative arrangements (as needed) and to ensure the continuity of their operations. Verrelle V.S. ¶ 14; Blair V.S. ¶¶ 4-14. At no point during discussions between Amtrak and NS did NS propose the workplan alternatives set out in its May 23, 2023 filing.¹¹

The fact that NS did not offer a single alternative workplan until *after* Amtrak’s important track renewal project had already commenced—and is proceeding on precisely the schedule that Amtrak previously provided to NS—belies NS’s assertion that obvious reasonable alternatives exist. Personnel in Amtrak’s Infrastructure Maintenance and Construction Services (“IMCS”) and Capital Delivery (“CAPD”) groups have nevertheless completed a careful review of the proposals

¹¹ Mr. Hunt suggests that Amtrak personnel did not express a willingness to consider any alternative to their preferred workplan. Hunt V.S. at 4. That statement is belied by his later admission that Amtrak proposed a method to serve freight customers from Track Two (which NS rejected) and by his acknowledgement that, at NS’s request, Amtrak identified and then considered an alternative means to do the work. *Id.* at 5.

NS submitted on May 23, 2023. Based on that review, Amtrak has concluded that its initial workplan remains reasonable and that the NS “alternatives” do not present a viable approach to total track renewal on the Subject Line.

A. AMTRAK’S EXISTING WORKPLAN RIGHTLY REFLECTS THAT MECHANIZED PRODUCTION GANGS ARE NOT SUITABLE FOR TOTAL TRACK RENEWAL ON THE SUBJECT LINE

NS’s primary contention is that Amtrak should use mechanized production gangs rather than a TLM. Amtrak is familiar with the use of mechanized production gangs in certain infrastructure projects and uses them when appropriate. *Verrelle S.V.S.* ¶ 15. While the use of mechanized production gangs for total track renewal is unusual, Amtrak conducted a careful and good faith review of the recent NS proposal to use them here. For reasons set out below, that review confirmed that Amtrak’s existing workplan is reasonable.

In Amtrak’s experience, mechanized production gangs are ordinarily deployed for projects that focus primarily on just one of the elements involved in Amtrak’s total track renewal of the Subject Line, such as replacing railroad ties, replacing rail, or undercutting roadbed. *Id.* Moreover, in the instance of tie replacement, mechanized production gangs are typically deployed for projects that involve replacing a non-contiguous subset of the railroad ties on a particular segment. *Id.* Mechanized production gangs focused on tie replacement can be well suited for this type of maintenance and repair, which usually involves replacing ties individually marked during inspections and amounting to no more than thirty to forty percent of ties on the line. *Id.* Indeed, Amtrak deploys mechanized production gangs in precisely these circumstances.

Unfortunately, the benefits of mechanized production gangs do not translate to the total track renewal underway on the Subject Line. That project necessarily requires accommodating conditions on the Subject Line, and involves replacing every single railroad tie on the line,

converting wood ties to concrete, replacing the rail, and overhauling the entire roadbed. Verrelle S.V.S. ¶ 16. Under the circumstances, relying on a TLM, rather than a series of one-function maintenance-of-way machines, is consistent with industry convention, for several reasons.¹² *First*, the TLM can install railroad ties much more efficiently than a mechanized production gang, which is critical when performing a 100% tie replacement.¹³ Verrelle S.V.S. ¶ 19. *Second*, the TLM can install ties more precisely, which is critical when converting wood to concrete ties, including because the appropriate spacing between wood ties and concrete ties is different. *Id.* *Third*, the TLM can accomplish this volume of tie conversion without causing as much incidental damage to concrete ties. *Id.* *Fourth*, the TLM can accomplish both tie and rail replacement simultaneously, therefore reducing track outages and mitigating at least some safety risk to personnel. *Id.* *Fifth*, the TLM can mitigate or eliminate the logistical and safety-related challenges associated with material distribution on the Subject Line, and that mechanized production gangs would rely on for total track renewal. *Id.* Indeed, the use of mechanized production gangs requires ordinarily laying out all materials in the right of way, something that would be challenging along the Subject Line, and would in this context introduce hazards to Amtrak personnel.¹⁴ *Id.*

NS disregards these limitations, and provides no basis to conclude that using the TLM to complete a total track renewal is unreasonable under the circumstances. In fact, the considerations

¹² A consultant that NS puts forward to support its proposed “alternatives” asserts that 95% of wood and concrete tie installations are completed with mechanized gangs, and that those methods are industry standard for installing both wood and concrete ties. Verified Statement of David J. Hughes (“Hughes V.S.”) at 4-5. This misses the point. As Mr. Hughes ultimately acknowledges, mechanized production gangs are used to lay better than 95% of wood ties, but only “some” concrete ties. *Id.* at 21. Moreover, in Amtrak’s experience, most wood ties are laid as part of maintenance work involving the replacement of thirty to forty percent of the railroad ties on a segment of track. Verrelle S.V.S. ¶ 15. While mechanized production gangs may be industry standard for that type of work, Mr. Hughes provides no basis to conclude that they are industry standard for the conversion of wood to concrete ties or for total track renewal.

¹³ See *infra* Part III.C (explaining that NS estimates about mechanized gang productivity on the Subject Line are incorrect, and the TLM is far more efficient for the purpose of replacing 100% of ties).

¹⁴ Other methods and means that mechanized production gangs might rely on for material distribution appear foreclosed by the overhead catenary structure.

outlined by Montie Chapman, an NS consultant put forward to support its proposed alternatives, only confirm that Amtrak reasonably chose to use the TLM. Mr. Chapman indicates that many factors must be considered before deciding whether to opt for a TLM or a mechanized production gang. Those factors include, among others, whether the track can be removed from service for temporary periods, how many days it can be closed without impacting service to customers, whether customers must be served and how that can be done while accomplishing the work, whether material can be placed along the right of way prior to installation, whether there will be other infrastructure replacement or repair groups working within the work block, whether there is track availability to clear the machinery.¹⁵ Verified Statement of Montie D. Chapman (“Chapman V.S.”) at 4.

The answer to each of those questions illustrates why relying on the TLM is a reasonable approach here. As NS has acknowledged, each of its customers can go without freight service for at least ten days, and some can go without service for longer. NS Supplement at 5. Moreover, longer disruptions in freight service can be addressed through alternative transportation options. *Id.* (acknowledging that NS service proposal reflected length of time that freight customers could maintain sufficient inventories “before an alternative transportation option would need to be found”). But even if the parties were unable to mitigate all alleged effects of the service disruptions, proceeding with the TLM still would be appropriate. As Amtrak has explained, placing all materials required for the total track renewal along the right of way (on this Subject Line) prior to installation would be challenging and would introduce significant hazards for Amtrak personnel. Verelle S.V.S. ¶ 19. Moreover, the total track renewal will involve

¹⁵ To avoid any confusion, Amtrak does not endorse this list of factors as complete or dispositive, and takes issue with many components of Mr. Chapman’s analysis, as set out in other portions of this Reply.

undercutting the roadbed, which means that Amtrak cannot limit the replacement or repair groups working within the block to groups focused on replacing wood ties and converting them to concrete. *Verrelle S.V.S.* ¶ 9. Finally, there is no nearby place where Amtrak could clear machinery. *Verrelle S.V.S.* ¶ 11.

Put simply, careful study of the proposal to use mechanized production gangs to rehabilitate the Subject Line confirms that Amtrak reasonably chose to utilize its TLM. While mechanized production gangs are suited to replacing a subset of non-contiguous ties, they are not well suited for total track renewal on the Subject Line.

B. AMTRAK’S EXISTING WORKPLAN RIGHTLY REFLECTS KEY CONSTRAINTS THAT ARE NOT ADDRESSED IN NS’S PROPOSED ALTERNATIVES

Amtrak developed the existing workplan based on careful analysis of project requirements and the Subject Line. *See supra* Part II. As set forth below, NS fails to address important aspects of the project and several key constraints in proposing alternatives. Moreover, the declarations offered in support of NS’s proposed alternatives either fail to address or misunderstand certain components of Amtrak’s workplan. For those reasons, the proposed alternatives only underscore that Amtrak’s workplan is reasonable.

NS and one of its consulting experts assert that “Amtrak’s planned infrastructure renewal project on the Harrisburg line is nothing new or unique in the industry.” NS Supplement at 11; *Hughes V.S.* at 15. But if that is so, it is surprising that NS and its experts cannot and do not draw on any NS data or NS experience to support their claims about the productivity or cost of this project. *See generally* NS Supplement; *Hughes V.S.*; *Chapman V.S.* NS acknowledges that it has little experience using concrete ties, which are key to the Amtrak project. *See* NS Supplement at 6. And NS’s experts fail to acknowledge that a very limited portion of nationwide track is

electrified and supported by overhead catenary structure, and so by definition, this project is not “common” in the industry. Moreover, Mr. Hughes ignores the complications presented by the Subject Line, and makes not one mention of the project logistics required to implement his “alternative” proposals.

Inability to Clear Lines. Mr. Hughes focuses on Amtrak’s decision to complete discrete portions of the total track renewal using a TLM. But Amtrak’s renewal of the Subject Line is more complicated than Mr. Hughes acknowledges. For example, the renewal involves use of an Undercutter to overhaul the entire roadbed, which is severely fouled and cannot be elevated because the Subject Line is one of few territories in the U.S. rail network with overhead catenary structure. See Verrelle S.V.S. ¶ 6; see also Verrelle V.S. ¶ 10 n.4. Because the project involves use of both a TLM and an Undercutter, it ultimately requires the use of five separate gangs. Each of those gangs has its own complement of equipment.¹⁶ Together, they consume approximately three miles of track to operate in safe working distance. Verrelle S.V.S. ¶ 10. Amtrak cannot simply clear the lines of that equipment, even on days when the TLM is not working. Verrelle S.V.S. ¶ 10. Indeed, the Subject Line has limited sidings and also lacks nearby locations to store equipment. Verrelle S.V.S. ¶ 11. To clear the lines, Amtrak would need to store equipment in multiple locations, some up to 74 miles away. Verrelle S.V.S. ¶ 12. Attempting to accomplish that would have serious adverse effects for several key stakeholders. Passenger and freight customers would suffer more delays and lengthier combined delays. *Id.* In addition, taxpayers would bear significant additional costs. *Id.* And resulting delays to the rehabilitation project would

¹⁶ Just by way of example, the head-end gang requires use of a spike puller, anchor remover, cribber, regulator, rail positioner, tie remover/insertor (TRIPP), and speed swing. The clipping gang requires use of a junior tamper, crane, rail saw, Holland welder, rail heater, speed swing, tamper, and tie hander. And the surfacing gang requires use of a KBR regulator, Mark IV tamper, stabilizer, and double broom. Verrelle S.V.S. ¶ 10 n.3.

have cascading effects on Amtrak's five-year plan, likely forcing it to defer other critical infrastructure projects. *Id.*

Materials Logistics. Completing a total track renewal of the Subject Line also presents very complicated logistical issues. As an example, the Subject Line lacks room to lay all materials in the right of way, all but precluding Amtrak from completing this track renewal project using mechanized production gangs, let alone using them safely. *See Verrelle S.V.S. ¶ 18.* As another example, the existence of overhead catenary on the line precludes Amtrak from using ordinary methods and means to distribute material to a TLM. *Verrelle S.V.S. ¶ 6.* More specifically, the existence of overhead catenary means that Amtrak cannot use car top excavators on gondolas to distribute and remove material the way that Amtrak or freight railroads might in territory that is not electrified.¹⁷ *Id.* NS and its consulting experts make no mention of how materials logistics affect their alternative proposals, and Amtrak's review suggests that those logistics make the "alternatives" unworkable. *See Verrelle S.V.S. ¶ 18.*

In addition to making mistaken assumptions about whether Amtrak can clear the line every four days, and ignoring the logistics of handling material, the consulting experts put forward by NS appear to misunderstand fundamental aspects of the total track renewal. For example, Mr. Hughes wrongly suggests that the work involves a complete cessation of freight service on the Harrisburg Line. *Hughes V.S. at 6.* In fact, freight service will be permitted on the line, but for the temporary service disruptions that occur when specific switches are inaccessible. *Verrelle S.V.S. ¶ 21.* Indeed, Amtrak is applying operating speeds and rules to all portions of the track, *see Hughes V.S. at 10,* but for those that are impassable. *Verrelle S.V.S. ¶ 21.* Put differently, Amtrak is permitting train movements on the Subject Line segment being renewed up to the machine's

¹⁷ This is just one of the reasons why Mr. Hughes is wrong to suggest that the presence of catenary line does not significantly impact productivity. *Hughes V.S. at 19.*

work limits, precisely as Mr. Hughes suggests. Hughes V.S. at 13. Moreover, Track Two remains open for both passenger and freight movements while Track One is being renewed.

C. NS FAILS TO ACCOUNT FOR KEY CONSTRAINTS IN EVALUATING THE COST AND PACE OF EFFORTS TO RENEW THE SUBJECT LINE

NS's submission is also fatally deficient with respect to the cost and productivity estimates of alternate proposals. This further demonstrates why Amtrak chose a reasonable approach to completing total track renewal on the Subject Line.

Cost Estimates. There are a considerable number of factors that bear on the cost and productivity of any significant engineering project. With respect to renewing of the Subject Line, some of the key drivers of both cost and productivity include, among many other items:

- The need to run both the TLM and Undercutter, in tandem;
- Efforts to avoid impacting Track Two;
- Efforts to perform work in a manner that minimizes overall disruptions to industry;
- Efforts to perform work in a manner that contains the burden on taxpayers;
- Limitations imposed by applicable collective bargaining agreements; and,
- The implementation of strict safety protocols that meaningfully reduce the productive working day.

Verrelle S.V.S. ¶ 23.

Based on its effort to balance these factors, which are frequently in tension with one another, Amtrak devised the existing workplan. That workplan allows Amtrak to complete this portion of its renewal project without disrupting service to *any* industry served by Track Two; minimizes the number of service disruptions that each industry served by Track One will experience;¹⁸ and, minimizes the combined length of outages to industry on Track One. The workplan accomplishes

¹⁸ Ensuring that industry experiences one rather than two or more service disruptions should make it easier for freight customers to make alternative arrangements, to the extent any are needed. For example, Amtrak presently estimates that Kellogg will experience an outage from July 25, 2023-September 1, 2023. The primary alternative that Amtrak explored would have required two separate disruptions, resulted in combined disruptions longer than the one presently anticipated, and imposed other important costs. *Supra* at 11.

all of these results while containing cost for taxpayers, achieving a safe working environment for Amtrak personnel, and comporting with applicable collective bargaining agreements.¹⁹ See Verrelle S.V.S. ¶ 23.

Without meaningfully analyzing several of these key issues, NS asserts that its proposed alternatives would likely make “very little difference in Amtrak’s stated project scheduling, labor requirements, or cost.” NS Supplement at 2. That claim is based on analysis submitted by Mr. Hughes and Mr. Chapman and has no merit, for several reasons.

First, in questioning the efficiency of Amtrak’s project, Messrs. Hughes and Chapman fail to account for the role that undercutting plays in driving the time and money required to renew the Subject Line. That oversight is a critical one. As Amtrak has previously explained, it determined that an Undercutter was necessary to address fouled ballast, including because ground-penetrating radar data indicated that ballast was in such poor condition that it could not be cleaned in place, and because using the Undercutter would allow Amtrak to maintain clearance to the overhead catenary structure. Verrelle S.V.S. ¶ 7. But for the need to overhaul the entire roadbed, the total track renewal could be conducted much more quickly.²⁰ Verrelle S.V.S. ¶ 8. In this respect, Mr. Hughes is simply wrong when he suggests that the pace of undercutting is locked into place by the TLM. Hughes V.S. at 20. During the project, Amtrak anticipates that the TLM will progress more quickly than the Undercutter, and has scheduled at least one overtime shift on the Undercutter each week just to minimize separation between the TLM, Clipping Gang, and Undercutter. Verrelle S.V.S. ¶ 8. As a result, in order to minimize the disruption to industry, Amtrak intends to implement a short pause on tie replacement, tie conversion, and rail replacement before the TLM

¹⁹ Mr. Chapman suggests that Amtrak consider requiring that gangs work 12 hour shifts, Chapman V.S. at 22, {{

²⁰ Amtrak carefully considered adjusting its workplan to service industry between passes by the TLM and Undercutter, but determined it could not reasonably do so for reasons described above. See *supra* at 11.

overtakes each individual switch to industry, redirecting personnel to other productive aspects of the renewal work while the Undercutter catches up.²¹ *Id.* Doing so will ensure that Amtrak maintains the minimum safe working distance between units on the gang, and minimize disruptions to industry, albeit with some adverse effects on average “per-day” tie installation. *Id.*

Second, and relatedly, Messrs Hughes and Chapman appear to assume that Amtrak is running the TLM for the length of the rehabilitation project. It is not. As discussed above, Amtrak will pause the TLM before overtaking each individual switch to industry, to minimize disruptions to industry. *Id.* Likewise, the TLM will necessarily complete its work several weeks in advance of the undercutter. These are just some of the many project-specific factors that affect the rate at which ties are installed.

Third, Messrs. Hughes and Chapman make no effort to account for project-specific factors that affect the efficiency and cost of rehabilitating the Subject Line.²² For example, in response to a request from NS, Amtrak structured its workplan to require that all work occur during the day.²³ Verrelle S.V.S. ¶ 20. Amtrak also structured its project to implement robust safety protocols that are intended to protect personnel working adjacent to a track in service. Verrelle S.V.S. ¶ 20. Both of those factors diminish the amount of working hours available to Amtrak personnel each day, *id.*, and are completely unaccounted for in Messrs. Hughes and Chapman’s analyses of the efficiency and cost of Amtrak’s workplan.

²¹ The Undercutter will operate more slowly than the TLM because the condition of the roadbed is so poor and because of complications created by material logistics, addressed above. The scheduled short pauses are designed to minimize the duration of siding outages. *See supra* at 20-21.

²² Because production rates for conversion accomplished by TLMs will necessarily vary based on line characteristics and project-specific issues, reference to the production range provided in the 1980 FRA report is also uninformative. *Contra* Hughes V.S. at 19-20.

²³ Because the right of way on the Subject Line is constrained, working at night would have required that Amtrak occupy Track 2 with lighting and therefore disrupted operations on that line.

Fourth, Messrs. Hughes and Chapman base their analyses on a single renewal effort that was conducted by Canadian National (“CN”) and involved converting wood ties to concrete ties.²⁴ That project, conducted on the McComb subdivision, is inapposite. It did not involve replacing 100% of the rail; did not involve the use of an undercutter to conduct full depth replacement of the roadbed; did not involve double-tracked territory; did not involve overhead catenary; and, did not involve the need to implement safety procedures to account for an open adjacent track that reduces available working hours. The differences do not stop there. Unlike the Subject Line, the McComb subdivision appears to have passing sidings within the confines of the work area, or nearby, at MPs 887.3 and 877.2. As a result, CN had available to it nearby locations to store equipment involved in the project, with associated efficiency gains.

For these reasons, concrete tie conversion conducted on the McComb subdivision bears no resemblance to the total track renewal being completed on the Subject Line, and provides no basis to conclude that Amtrak’s existing workplan is unreasonable. Indeed, the McComb work provides no useful information at all.²⁵ NS and its consulting experts make much of what CN accomplished with a smaller crew. *See, e.g.*, NS Supplement at 9; Hughes V.S. at 9; Chapman V.S. at 9. But CN used a smaller crew because they completed a smaller and less complicated project, one that did not involve replacing rail and did not involve an Undercutter. For that reason, these comparisons have no merit.

²⁴ As previously noted, it is telling that Messrs. Hughes and Chapman do not cite any data from NS maintenance or renewal projects, nor do they cite any data from industry maintenance or renewal projects, in assessing expectations about productivity and scheduling.

²⁵ References to work performed following Hurricane Katrina are also inapt. That project concerned just five miles of track and did not require undercutting to maintain overhead clearances. *See* NS Reply at 11. Work under those circumstances is unlikely to be constrained by the need to accommodate service on an adjacent track, as lines are likely to be completely out of service. Verrelle S.V.S. ¶ 22. This factor and others can allow crews to work more productively.

In sum, NS's proposed "alternatives" are not relevant to any legal issue before the Board and in any event, do not demonstrate that Amtrak was unreasonable in structuring its track renewal project as it did.

CONCLUSION

The Board lacks jurisdiction over this dispute. However, even if the Board had jurisdiction, the issue before the Board is not whether the alternatives that NS proposed are in some respect superior to the workplan that Amtrak adopted. Amtrak rightly concluded that its existing workplan is reasonable and appropriate for completing a total track renewal on the Subject Line, and nothing in the NS supplemental submission establishes otherwise. Although Amtrak remains committed to reaching a negotiated resolution with Kellogg, Amtrak respectfully renews its request that Kellogg's request for injunctive relief, declaratory relief, and a directed services order be denied.

Respectfully submitted,

Eleanor D. Acheson
Chief Legal Officer, General Counsel
& Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
(202) 906-3971

/s/ Jessica Ring Amunson
Jessica Ring Amunson
Alex Trepp
Jenner & Block LLP
Suite 900
1099 New York Avenue, NW
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com
atrepp@jenner.com

Kelsey Stimple
Michael Kang
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654
(312) 222-9350
kstimple@jenner.com
mkang@jenner.com

Counsel for National Railroad Passenger Corporation

CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that I have this day served copies of this document upon all parties of record in this proceeding, by email on the service list to Finance Docket No. 36695.

June 6, 2023

/s/ Jessica Ring Amunson
Jessica Ring Amunson

**BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36695**

**PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF – RAIL
SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES**

**AMTRAK’S REPLY TO RESPONDENT NORFOLK SOUTHERN RAILWAY
CORPORATION’S SUBMISSION OF SUPPLEMENTAL INFORMATION**

**SECOND VERIFIED STATEMENT OF
AMTRAK VICE PRESIDENT ENGINEERING SERVICES
RAY VERRELLE, JR.**

1. My name is Ray Verrelle Jr. I am the Vice President Engineering Services at the National Railroad Passenger Corporation (“Amtrak”). This declaration incorporates and supplements the Verified Statement that I submitted on May 1, 2023, regarding this matter, Docket No. FD 36695.

2. As described in my first Verified Statement, Amtrak’s engineering team determined that a segment of track along its Harrisburg line (the “Subject Line”) required a total track renewal. A “total track renewal” requires refreshing every major component of the rail infrastructure from the subgrade up, including rail, ties, and ballast. In the case of the Subject Line, it involves replacing 100% of existing rail, replacing 100% of existing ties, converting 100% of ties from wood to concrete, and overhauling roadbed.¹ Furthermore, the roadbed on the Subject Line is dirt fouled, such that it is not draining effectively, and has reached the end of its useful life.

3. A large crew began working on renewal of the Subject Line on April 28, 2023,² in accordance with the schedule provided to NS in January 2023. If renewal of the Subject Line does not go forward, Amtrak will lose this season’s use of the massive machinery that is already cut into the Subject Line and completing the project, as the operation of these machines requires significant advance placement of materials and there is no other place where such materials are pre-staged, such that the equipment could be redeployed during the current work season.

4. The Amtrak engineering team determined that the best way to accomplish the total track renewal of the Subject Line was to use our Track Laying System (“TLS”), along with an Undercutter and related equipment. The Amtrak engineering team reached that conclusion for

¹ During renewal of the Subject Line, Amtrak will also perform thermal adjustment of the rail, surfacing of the track, and a review for quality control and assurance.

² In my first Verified Statement, I referenced a 120-person crew. That reference inadvertently omitted individuals working on efforts to undercut the Subject Line. Amtrak currently expects 175 individuals to work on the total track renewal, and it has authorized up to 18 additional crew members.

many reasons including: the TLS would ensure precision in converting all wood ties to concrete; would allow Amtrak to overcome the logistical complications associated with laying out all materials in the right of way; would allow Amtrak to avoid the safety concerns associated with laying out all materials in the right of way (while leaving room for storage of removed materials); would significantly reduce incidental damage to concrete ties during installation; and, would allow the project to proceed much more efficiently.

5. Part of the total track renewal of the Subject Line will include replenishing the ballast. Ground-penetrating radar data and inspection of the line indicated that ballast on the Subject Line was in such poor condition that it could not be cleaned in place. As a result, Amtrak's engineering team determined that the Subject Line requires a full-depth replacement. This process requires that Amtrak remove ballast to a depth of 14 inches below each railroad tie, clean it, and replenish it.

6. The Subject Line is electrified, with an overhead catenary structure that powers the locomotive. Any renewal work must maintain clearance between railcars and the overhead catenary structure. The need to maintain those clearances imposes significant limitations on the methods and means available to overhaul roadbed on the Subject Line. For example, railroads outside of electrified territory can build "up," replacing fouled ballast by using machines that layer fresh ballast over the existing roadbed. However, Amtrak cannot take that approach on the Subject Line because it would compromise clearance of the catenary structure. Moreover, the existence of overhead catenary on the Subject Line precludes Amtrak from using ordinary methods and means to service a Track Laying Machine ("TLM"), because Amtrak cannot use car top excavators on gondolas to distribute and remove material the way that Amtrak or freight railroads might in territory that is not electrified.

7. Under these circumstances, Amtrak engineers determined that the Undercutter was the best way to address the Subject Line's fouled ballast, for example because using the Undercutter would avoid elevating tracks during the renewal process, and therefore maintain clearance of the overhead catenary structure.

8. If not for the need to overhaul the entire roadbed, using the Undercutter, the total track renewal could be conducted much more quickly. During the project, Amtrak anticipates that the TLM will progress much more quickly than the Undercutter and will complete its work several weeks earlier. Amtrak has scheduled at least one overtime shift on the Undercutter each week just to maintain steady separation between the TLM, Clipping Gang, and Undercutter. Furthermore, Amtrak intends to pause work on tie replacement, tie conversion, and rail replacement before the TLM overtakes each individual switch to industry, redirecting personnel to other productive aspects of the renewal work, if the Undercutter needs to catch up. Doing so will ensure that Amtrak maintains the minimum safe working distance between units on the gang, and minimize disruptions to industry, albeit with some adverse effects on "per-day" tie installation.

9. Because renewing the Subject Line will involve undercutting the roadbed, Amtrak cannot limit the replacement or repair groups working within the block to groups focused on replacing wood ties and converting them to concrete.

10. Because the project must make use of both a TLM and an Undercutter, it ultimately involves the use of five separate gangs, each with its own complement of equipment, that together run approximately three miles in safe working distance. In addition to the Undercutter, Amtrak needs to use a head-end gang, a clipping gang, and a surfacing gang. Moreover, the Amtrak engineering team concluded that Amtrak cannot simply clear the lines of that equipment, even on

days when the TLM is not working. Each of those units relies on several individual pieces of equipment,³ and would need to be separately stored if Amtrak attempted to clear the lines.

11. This presents a problem because of the layout of the Subject Line, which is double tracked with narrow track centers and narrow shoulders. Moreover, the Subject Line does not contain long sidings that would allow engineering teams to easily store the massive machinery involved in renewing the Subject Line, nor the supply materials, overnight. Amtrak did not, in evaluating how to accomplish the renewal project, identify any other nearby storage options sufficient to house the volume of machinery ultimately required to complete the project.

12. Because the Subject Line lacks nearby storage options sufficient to house all equipment involved in renewing the Subject Line, the Amtrak engineering team has not identified an effective way to clear the track each night. To clear the lines, it is my understanding that Amtrak would need to store equipment in multiple locations, some up to 74 miles away. Attempting to store equipment this way would, in Amtrak's estimation, result in more delays, which would be lengthier when combined, and pose significant additional costs. The resulting delays would also have cascading effects on Amtrak's five-year plan, likely forcing it to defer other critical infrastructure projects.

13. The conversion of wooden to concrete ties creates yet another complication. The distance that must be maintained between wooden and concrete ties is different, which makes conversion more complex, in that it requires more precision, particularly when replacing 100% of ties on the line.

³ Just by way of example, the head-end gang requires use of a spike puller, anchor remover, cribber, regulator, rail positioner, TRIPP, and speed swing. The clipping gang requires use of a junior tamper, crane, rail saw, holland welder, rail heater, speed swing, tamper, and tie hander. And the surfacing gang requires use of a KBR regulator, Mark IV tamper, stabilizer, and double broom.

14. As discussed in my first verified statement, Amtrak evaluated alternative plans to renew the Subject Line. See Verified Statement at ¶ 17. The primary operational alternative that Amtrak identified involved running the TLS and coming back to undercut the ballast at a later date. In evaluating that approach, Amtrak identified several significant concerns. First, the ballast on large portions of the Subject Line is severely fouled and requires prompt attention. Second, running the TLS and Undercutter at separate times would have required that Amtrak run surfacing and quality assurance operations twice, introducing additional safety risks for personnel.⁴ Third, running the TLS and Undercutter at separate times would have resulted in greater *overall* disruptions to the freight service because of the need to duplicate certain operations. Fourth, Amtrak engineers determined that, even if these important components of the project were run separately, Amtrak still would not have been able to reduce any disruption in freight service to ten days.

15. I understand that NS has now suggested that Amtrak use mechanized production gangs to renew the Subject Line. Amtrak is familiar with the use of mechanized production gangs in certain infrastructure projects and deploys them when appropriate. However, in Amtrak's experience, mechanized production gangs are ordinarily deployed for projects that focus primarily on just one of the elements involved in Amtrak's total track renewal of the Subject Line, such as replacing railroad ties, replacing rail, or undercutting roadbed. Again in Amtrak's experience, and with respect to tie replacement, mechanized production gangs are typically deployed for projects that involve replacing a non-contiguous subset of the railroad ties on a particular segment. Mechanized production tie gangs can be well-suited for this type of maintenance and repair, which

⁴ As mentioned in my previous verified statement, this approach was also estimated to increase project costs by up to \$30 million, for example because it would have required duplicating certain operations, and would have required unnecessarily demobilizing and re-mobilizing personnel and machinery

usually involves replacing ties individually marked during inspections and amounting to no more than thirty to forty percent of ties on the line.

16. However, based on Amtrak's experience, the benefits of mechanized production gangs do not translate to projects like the total track renewal currently being completed on the Subject Line, which requires replacing every single railroad tie on the line, converting wood ties to concrete, replacing the rail, and overhauling the entire roadbed.

17. The total track renewal of the Subject Line will involve pulling more than 45,540 wooden ties; placing more than 37,000 concrete ties; installing and de-stressing more than 149,600 linear feet of rail; surfacing more than 261,800 feet of track; undercutting more than 74,800 feet of track; and unloading more than 21,000 tons of stone.

18. In Amtrak's experience, this volume of material presents a significant logistical complication because certain methods and means of conducting renewal, including mechanized production gangs, require laying out materials in the right of way, and also require space to drop old ties and other material. The Subject Line does not have sufficient space to accommodate that volume of material, and laying it out in the right of way could present safety concerns for Amtrak personnel working on the renewal, or inspecting adjacent tracks.

19. In Amtrak's estimation, the TLM is better suited to renewing the Subject Line than a mechanized production gang for several reasons. First, the TLM can install railroad ties much more efficiently than a mechanized production gang, which is critical when performing a 100% tie replacement. Second, the TLM can install ties more precisely, which is critical when converting wood to concrete ties, including because the appropriate spacing between wood ties and concrete ties is different. Third, the TLM can accomplish this volume of tie conversion without causing as much incidental damage to concrete ties. Fourth, the TLM can accomplish both tie and rail

replacement, therefore reducing track outages, ensuring rail is laid at a consistent neutral temperature, and mitigating at least some safety risk to personnel. Fifth, the TLM can mitigate or eliminate the logistical and safety-related challenges associated with material distribution that mechanized production gangs would in Amtrak's experience rely on for total track renewal. In that respect, the use of mechanized production gangs ordinarily requires laying out all materials in the right of way. On the Subject line, laying out all materials in the right of way would be challenging. It would also introduce hazards to personnel.

20. Consistent with a request from NS, Amtrak structured its workplan to require that all work occur during the day.⁵ Amtrak also structured its project to implement robust safety protocols that are intended to protect personnel working adjacent to a track in service. Both factors diminish the number of working hours available to Amtrak personnel each day.

21. Freight service is being and will be permitted on the Subject Line, except for temporary service disruptions that occur when specific switches are inaccessible. Amtrak is permitting train movements on the line segment being renewed up to the work limits of the machinery involved. Track Two remains open for both passenger and freight movements while Track One is being renewed.

22. I understand that the NS submission also makes reference to work performed after Hurricane Katrina. In Amtrak's experience, work under those circumstances is typically unconstrained by the need to run service in the area, which can allow crews to work more productively.

⁵ Because the right of way on the Subject Line is constrained, working at night would have required that Amtrak occupy Track 2 with lighting and therefore disrupted operations on that line.

23. Overall, Amtrak developed this existing workplan for the renewal of the Subject Line in an effort to balance several factors, including, among many others: the need to run both the TLM and Undercutter in tandem; efforts to avoid impacting Track Two; efforts to perform work in a manner that minimizes overall disruptions to industry; efforts to perform work in a manner that contains the burden on taxpayers; limitations imposed by applicable collective bargaining agreements; and the implementation of strict safety protocols that meaningfully reduce the productive working day.

VERIFICATION

I, Ray Verrelle, declare under penalty of perjury that the foregoing information regarding Amtrak is true and correct. Further, I certify that I am qualified and authorized to file this statement on behalf of Amtrak.

Executed on this 6th day of June, 2023.



Ray Verrelle

**BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36695**

**PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF – RAIL
SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES**

**AMTRAK’S REPLY TO RESPONDENT NORFOLK SOUTHERN RAILWAY
CORPORATION’S SUBMISSION OF SUPPLEMENTAL INFORMATION**

**SECOND VERIFIED STATEMENT OF
AMTRAK ASSISTANT VICE PRESIDENT HOST RAILROADS
JIM BLAIR**

1. My name is Jim Blair. I am the Assistant Vice President Host Railroads at the National Railroad Passenger Corporation (“Amtrak”). This declaration incorporates and supplements the Verified Statement that I submitted on May 1, 2023, regarding this matter, Docket No. FD 36695.

2. As stated in my first Verified Statement, I have been directly involved with Amtrak’s efforts to engage with Norfolk Southern (“NS”) and the Surface Transportation Board’s Office of Public Assistance, Government Affairs, and Compliance (“OPAGAC”) regarding Amtrak’s renewal of a segment of track along its Harrisburg line (the “Subject Line”).

3. During conversations with NS about renewal of the Subject Line, Amtrak asked NS for the information needed to communicate directly with freight customers that might be impacted by the project, but was denied that information.

VERIFICATION

I, Jim Blair, declare under penalty of perjury that the foregoing information regarding Amtrak is true and correct. Further, I certify that I am qualified and authorized to file this statement on behalf of Amtrak.

Executed on this 6th day of June, 2023.



Jim Blair