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Jessica Ring Amunson
Tel +1 202 639 6023
Fax +1 202 661 4993
JAmunson@jenner.com

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, SW
Washington, D.C. 20423

Re: *Docket No. FD 36695, Petition for Declaratory Order and Injunctive Relief – Rail Service to Pennsylvania Feed Mills and Other Facilities*

Dear Ms. Brown:

This letter is filed on behalf of the National Railroad Passenger Corporation (“Amtrak”) in opposition to the letter request from Norfolk Southern Railway Corporation (“NS”) to expedite Amtrak’s response to NS’s supplemental information, which NS submitted on May 23, 2023.¹ NS’s request to expedite Amtrak’s filing deadline should be denied. Indeed, Amtrak is continuing its efforts to reach a resolution to this case, and granting NS’s request would merely divert resources away from those ongoing efforts.

NS’s request to expedite Amtrak’s response does not serve the interests of any party or the Board. Amtrak personnel with applicable expertise, including personnel in Infrastructure Maintenance and Construction Services (“IMCS”) and Capital Delivery (“CAPD”), are carefully evaluating the proposed alternatives and supporting testimony. Amtrak anticipates providing its complete response by June 12, 2023,² well in advance of the July 25, 2023 date when Kellogg will be affected by the total track renewal. For that reason, a June 12, 2023 submission will provide more than sufficient time for the Board to evaluate a complete record if Amtrak is not able to reach a resolution of this matter prior to June 12, 2023.³

¹ See NS Letter, *Petition for Declaratory Order and Injunctive Relief- Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695 (filed June 1, 2023).

² See 49 C.F.R. § 1104.13(a).

³ See Amtrak Reply, *Petition for Declaratory Order and Injunctive Relief- Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695 (filed May 30, 2023).

NS's letter merely highlights NS's role in creating the "emergency" giving rise to this case. Amtrak and NS opened discussions about the total track replacement on the Subject Line nearly nine months ago. At no point during those discussions did NS propose the alternatives set out in its supplemental filing on May 23, 2023. After NS disclosed in its May 1, 2023 filing that it was studying "alternative" arrangements, counsel for Amtrak asked that NS share its proposed alternatives and supporting declarations to facilitate the parties' discussions about the matter. NS declined to do so. Rather than collaborating with Amtrak to find productive solutions, NS pursued a litigation strategy, waiting to submit its proposed alternatives and the accompanying testimony until more than four weeks (29 days) after Petitioners commenced this case. Indeed, NS did not submit its proposed alternatives and accompanying testimony "early," as it claims in its letter request today. It submitted that information on May 23, 2023, in response to a Board order that expressly required NS to provide the information on that date.⁴ Whether or not NS's potential solutions may have been viable had NS proposed them when the parties began discussing this project nine months ago, at this point the track renewal project is already well underway, along precisely the schedule that Amtrak provided to NS.

In all events, NS's request to expedite Amtrak's deadline should be denied because it merely distracts from Amtrak's efforts to reach a practical solution to the issues in this case. As Amtrak has repeatedly stated, Amtrak believes the parties should be focused on cooperation rather than litigation. Amtrak has already reached a settlement with the original two petitioners that filed this action, and they have therefore filed a motion to dismiss. Amtrak is also committed to continuing to work with Kellogg—NS's own freight customer—to attempt to address Kellogg's concerns. It is counterproductive to require Amtrak to divert resources away from those efforts to file an expedited brief in response to NS, who created the very emergency it now claims requires expedited filings.

For the foregoing reasons, Amtrak respectfully requests that the NS request to expedite Amtrak's response to its supplemental information be denied.

Sincerely,

/s/ Jessica Ring Amunson

Jessica Ring Amunson

⁴ See Decision, *Petition for Declaratory Order and Injunctive Relief- Rail service to Pennsylvania Feed mills and Other Facilities*, Docket No. FD 36695 (STB served May 18, 2023) ("May 18 Decision") (requiring that NS "submit its recommendations regarding feasible alternatives to Amtrak's approach to the track work that would allow for continued freight rail service, as noted in NSR's May 1, 2023 Reply, by May 23, 2023"). Amtrak's response is meant to address this supplemental information.

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cc: All counsel of record