

**EXPEDITED CONSIDERATION REQUESTED**

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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
DOCKET NO. FD 36496

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

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**NATIONAL RAILROAD PASSENGER CORPORATION'S RESPONSE**  
**IN OPPOSITION TO THE MOTION TO DISMISS**

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  
Kali N. Bracey  
Caroline C. Cease  
Jenner & Block LLP  
1099 New York Ave., NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000  
jamunson@jenner.com

*Counsel for National Railroad  
Passenger Corporation*

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## I. INTRODUCTION

CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway Company (“NS”)<sup>1</sup> have filed a motion to dismiss the National Railroad Passenger Corp.’s (“Amtrak’s”) application for an order under 49 U.S.C. § 24308(e) that entirely ignores the actual language of the statute. CSX and NS improperly attempt to shift the burden that Section 24308(e) places squarely on them by insisting that Amtrak cannot even file an application with the Board until Amtrak jumps through various hoops of CSX’s and NS’s own invention that the statute nowhere requires. The motion to dismiss illustrates precisely why Congress enacted Section 24308(e). Congress was so “concerned about the lack of cooperation private freight railroads have demonstrated toward Amtrak,” and believed it was so “important that Amtrak have available to it an expedited procedure for making necessary modifications or additions to its operations,” that it enacted Section 24308(e) for Amtrak to “secure expeditious relief from such intransigence.”<sup>2</sup>

As Amtrak explained in its application, the restoration of passenger service between New Orleans, LA and Mobile, AL is an important piece of a national vision to make intercity passenger rail service a more vital part of the nation’s transportation system, offering connections between communities in heavily populated corridors across America; alleviating worsening congestion on highways and service reductions in the aviation system; and encouraging use of a more sustainable, energy efficient, and environmentally friendly means of travel than other modes. Unfortunately, for the residents of the Gulf Coast, this vision has not yet become a reality. They have had to wait *fifteen years* for the restoration of passenger rail service as CSX and NS continually move the

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<sup>1</sup> Although Amtrak’s application named Norfolk Southern Corporation, Amtrak agrees that Norfolk Southern Railway Company is the proper party in interest.

<sup>2</sup> H.R. Rep. No. 96-1041, at 42 (1980) (Conf. Rep.); H.R. Rep. No. 96-839, at 20-21 (1980).

goalposts, imposing ever-higher burdens they claim Amtrak must meet before they will agree to allow even a single passenger train to run between New Orleans and Mobile. It is time to move forward and Section 24308(e) gives the Board both the directive and the power to remedy the current situation.

CSX's and NS's motion to dismiss Amtrak's application should be denied. First, under the plain language of Section 24308(e), Amtrak's application is ripe. As the long history of this dispute demonstrates, the parties have failed to agree regarding reinstatement of the Gulf Coast Service and this failure to "agree" is all that the statute requires.<sup>3</sup> While CSX and NS disingenuously claim they "have not said no to Amtrak's request" to restore service, Mot. at 2 (emphasis removed), they certainly have not said "yes" over the fifteen years that Amtrak has been asking. Amtrak need not wait forever for CSX and NS to outright refuse. Nor is there any statutory—or common sense—reason why Amtrak should be barred from seeking relief from the Board until Amtrak completes a study, particularly here where (1) the parties' agreement to undertake the study expired without any conclusion, and (2) all parties involved except CSX and NS agree the results would be useless in any event due to the lack of cooperation and transparency from CSX and NS.

Second, Amtrak need not have commissioned any environmental and historic reports prior to filing an application with the Board. As CSX and NS recognize, the Board's Part 1105 rules are "designed to help the Board fulfill its obligations under the National Environmental Policy Act ('NEPA') and other environmental, energy, and historical preservation laws." Mot. at 5. But these

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<sup>3</sup> See 49 U.S.C. § 24308(e)(1) ("When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Board for an order . . . ." (emphasis added)).

laws are not implicated by Amtrak's application, which does not request the Board order any infrastructure projects be undertaken. Indeed, Amtrak's position is the opposite—that service can be restored without the extensive infrastructure projects that CSX and NS have insisted must be completed before even a single train can run.

Third, Amtrak's requested interim order and proposed briefing schedule are well-founded and in line with Congress's intention that the statute provide Amtrak with an efficient way to modify service when host railroads are uncooperative. Amtrak's proposed briefing schedule is not, despite CSX's and NS's claims, "absurdly unfair." Mot. at 26. To the contrary, it is fully grounded in the plain text of Section 24308(e), which places the burden of proving unreasonable interference squarely on the host railroads. As any such showing necessarily would be based on information that is uniquely within the possession of CSX and NS, their plea for discovery of Amtrak is simply another tactic to delay implementation of passenger service.

Finally, as a procedural matter, the Board can summarily deny the motion to dismiss as moot given that the statutorily-mandated time for the Board to decline to hear Amtrak's application on the merits has passed. In addition, the motion goes well beyond the four corners of Amtrak's application and asks the Board to rule on issues not properly before the Board at this stage in the proceedings.

The Board should deny CSX's and NS's motion to dismiss, grant Amtrak's application, institute proceedings, and enter the proposed procedural schedule and interim order that Amtrak has requested.<sup>4</sup>

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<sup>4</sup> CSX and NS include a puzzling footnote in their motion stating that while they have supposedly "waive[d]" arbitration before the National Arbitration Panel for this matter, they nonetheless "reserve the right to enforce" standards in their operating agreements that "govern passenger

## II. DISCUSSION

CSX and NS claim that Amtrak's application should be dismissed because it is supposedly not "ripe" unless Amtrak first completes a joint Rail Traffic Controller ("RTC") modeling study; secures unanimous political support for restoration of the service; and submits environmental and historic reports for construction that Amtrak's application does not even seek. CSX and NS also claim that Amtrak's request for an interim order is improper. None of these reasons warrants dismissal, and in any event the time for dismissal has already passed.

### A. Amtrak's Application Is Ripe For The Board's Review.

#### i. This Section 24308(e) Action Is Ripe Because CSX And NS Have Not Agreed To Allow Amtrak To Operate The Gulf Coast Service.

For Amtrak's application to be ripe, all that is required is that "a rail carrier . . . not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier." 49 U.S.C. § 24308(e). This language reflects the reason Congress enacted the provision, which was to "enable[e] Amtrak to secure expeditious relief from [the] intransigence" of host railroads when "*voluntary agreement* cannot be reached" regarding the running of additional trains.<sup>5</sup>

CSX and NS have consistently failed to agree to the Gulf Coast Service despite Amtrak's repeated requests to reinstate service and Amtrak's repeated attempts to reach voluntary agreement. Instead of agreeing to Amtrak's proposed schedule for the Gulf Coast Service, CSX

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service modifications and their impact on freight service" in "binding arbitration." Mot. at 1 n.2. This reservation of rights is meaningless. The entire point of Congress's enacting Section 24308(e) was to provide the *Board* as a forum for Amtrak to receive expedited relief when requesting passenger service modifications given Congress's concern that "in the past Amtrak's efforts to add or modify services have involved protracted arbitration proceedings." H.R. Rep. 96-1041, at 42.

<sup>5</sup> H.R. Rep. 96-839, at 20-21 (emphasis added).

and NS have set various and changing “preconditions” they demand Amtrak must meet before service can begin. *See, e.g.*, Mot. at 6, 14. CSX in particular has put roadblocks in the way of the restoration of Gulf Coast Service, none of which is reasonable and, more importantly, none of which is required by the statute.

Amtrak has been attempting to bring intercity passenger service back to the citizens of the Gulf Coast ever since Hurricane Katrina wiped out service in 2005. Amtrak first wrote to CSX on March 2, 2006, requesting to meet to “discuss the resumption of passenger train service east of New Orleans.”<sup>6</sup> CSX managed to put Amtrak off until Congress finally got involved. In both the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. No. 110-432, tit. II, § 226, 122 Stat. 4907, 4934) (“PRIIA”) and the Fixing America’s Surface Transportation Act of 2015 (Pub. L. No. 114-94, § 11304, 129 Stat. 1312, 1655) (the “FAST Act”), Congress demanded a plan to restore Gulf Coast Service. In the FAST Act, Congress directed the creation of the Gulf Coast Working Group, to be chaired by the Federal Railroad Administration (“FRA”), and to include Amtrak, the States along the proposed route, the regional transportation planning organizations and metropolitan planning organizations, municipalities, and communities along the proposed route, the Southern Rail Commission (the “SRC,” comprised of Alabama, Louisiana, and Mississippi), and the host railroads, including CSX and NS.<sup>7</sup>

Although CSX was a member of the Gulf Coast Working Group, CSX refused to participate jointly in the feasibility study with Amtrak and the FRA to determine what was necessary to restore service. Instead, CSX performed its own study and then asserted that the

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<sup>6</sup> Exhibit A, Amtrak Letter to CSX (Mar. 2, 2006).

<sup>7</sup> Section 11304, Fixing America’s Surface Transportation Act (“FAST Act”), Pub. L. No. 114-94, 129 Stat. 1312, 1655 (2015)).

“necessary improvements for *any* Gulf Coast passenger restoration” would “cost, at a minimum, at least \$2 billion.”<sup>8</sup> The SRC described CSX’s demand for \$2 billion as a “veto [of] a passenger rail service supported by the people and leadership of the coastal south.”<sup>9</sup> The SRC noted that throughout the Gulf Coast Working Group’s process, CSX evinced “a commitment to obfuscation and deceit” and “demonstrate[d] what can only be understood as an unwillingness to negotiate in good faith and an opposition to bringing back passenger rail service to communities along the Gulf Coast.”<sup>10</sup> Indeed, when CSX was asked “if they would be willing to continue to work with the stakeholders of the GCWG to collaborate towards a mutually agreed on determination of cost,” CSX’s representative “replied no, CSX would not continue to work with the group.”<sup>11</sup> CSX instead insisted that “*all* infrastructure improvements, based on 20-year growth projections, must be completed before they will start the *first day of service*.”<sup>12</sup> Unsurprisingly, when the Gulf Coast Working Group report recommended reinstating service to Congress, CSX ultimately refused to support the report, calling it “irresponsible.”<sup>13</sup>

Since that Gulf Coast Working Group Report was issued to Congress in 2017, CSX has become no less entrenched both in its position that Amtrak must first build an infrastructure for 2042 before running even a single train in 2022, and in its position that the bases for those

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<sup>8</sup> Exhibit B, Gulf Coast Working Group Appendix A (CSX Letter to FRA (Aug. 15, 2016)) (emphasis added).

<sup>9</sup> Exhibit C, Gulf Coast Working Group Appendix A (SRC Letter to FRA (May 25, 2017)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> Exhibit D, Gulf Coast Working Group Appendix A (CSX Letter to FRA (Apr. 18, 2017)).

infrastructure demands could not possibly be shared with Amtrak, or others, to validate independently. Amtrak nonetheless has continued to attempt to engage with CSX in good faith. In April 2018, Amtrak again asked CSX to engage in finalizing plans to restore the service.<sup>14</sup> CSX responded by continuing to raise “very serious concerns” about the service’s reinstatement.<sup>15</sup>

Amtrak ultimately agreed to participate in a one-year RTC modeling study with CSX and NS. Contrary to CSX’s and NS’s claims, the parties did not agree that completion of such a study was a prerequisite to reinstatement of the Gulf Coast Service. *See, e.g.*, Mot. at 7. Rather, the one-year study on its face explicitly states that it was meant merely to “provide useful input for the reintroduction” of the Gulf Coast Service.<sup>16</sup> Unfortunately—as further described below—because CSX and NS refused to provide even the most basic information to Amtrak throughout the course of the study, it ultimately did not provide *any* useful input for the reintroduction of Gulf Coast Service. Thus, when the one-year study agreement expired in January 2021, with the study still incomplete and no guaranteed completion date, Amtrak elected not to renew it. As Amtrak explained to CSX and NS, “given the parties’ significant disagreement on the proper conduct of the study, the unwillingness of NS and CSX to permit a collaborative, open, and transparent study, and the length of time that would be needed to complete a proper study, Amtrak does not believe

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<sup>14</sup> *See* Exhibit E, Amtrak Letter to CSX (Apr. 10, 2018).

<sup>15</sup> *See* Exhibit F, CSX Letter to Amtrak (Apr. 17, 2018).

<sup>16</sup> Exhibit G, RTC Study Agreement at 1. The RTC Study Agreement is designated “Confidential” and is provided to the Board in accordance with the Protective Order entered by the Board on April 14, 2021.

it would be useful to reengage [the consultant] to complete what is already a deeply flawed study or to share the results of such a flawed study with the Surface Transportation Board.”<sup>17</sup>

Following the expiration of the one-year RTC Study Agreement, Amtrak then sent letters to both CSX and NS requesting that they each provide their written agreement by no later than March 15, 2021 for operation of the Gulf Coast Service to start on or about January 1, 2022 in accordance with the schedule proposed by Amtrak.<sup>18</sup> As of March 15, 2021, CSX and NS had “not agree[d] to provide, or allow Amtrak to provide, for the operation of [the requested Gulf Coast Service].” 49 U.S.C. § 24308(e). Thus, Amtrak filed its application with the Board on March 16, 2021.

The above is only a very brief summary of CSX’s and NS’s failures to agree to resumption of the Gulf Coast Service. Given the lengthy history of CSX’s and NS’s respective refusals to engage with Amtrak except on their own terms—which is clear even from the face of their own motion discussing the “preconditions” they believe Amtrak must meet before they will even consider reinstating service, *see* Mot. at 6—there can be no question that CSX and NS have “not agreed” to Amtrak’s request to restore the Gulf Coast Service. Unless the Board agrees to hear Amtrak’s application, the citizens of the Gulf Coast may never see their passenger service restored. This matter is ripe for the Board’s attention.

**ii. Amtrak Is Not Required To Complete Any RTC Study For This Dispute To Be Ripe.**

CSX and NS insist that completion of the RTC study is not only a “reasonable and fair ... condition” for CSX and NS to impose prior to restoration of the Gulf Coast service, Mot. at 14,

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<sup>17</sup> Exhibit H, Jenner & Block Letter to Sidley Austin and Baker & Miller (Mar. 26, 2021).

<sup>18</sup> Exhibits I & J, Amtrak Letters to CSX and NS (Jan. 27, 2021).

but that this matter is not even ripe for the Board’s consideration unless and until the RTC study is complete. There is no basis in the statute for this demand. Nowhere in Section 24308(e) is Amtrak required to complete *any* study prior to bringing its claim to this Board. And there was certainly no point in completing *this* study given that—as the FRA concluded—the lack of cooperation and transparency from CSX and NS had rendered the study completely incapable of fulfilling its intended purpose. *See infra* at 11. In any event, the burden is on CSX and NS—not Amtrak—in this proceeding. If CSX and NS believe that an RTC study would be useful to meet their burden of demonstrating that resumption of the Gulf Coast Service would unreasonably impair their freight transportation, they can present such a study to the Board in this proceeding. Indeed, CSX already conducted an RTC study in 2016, as noted in the Gulf Coast Working Group Report. That CSX and NS now demand *another* study be completed before Amtrak can even bring this dispute to the Board demonstrates their unwillingness to engage meaningfully with Amtrak to reinstate the Gulf Coast Service.

As an initial matter, CSX and NS are simply wrong that the 2020 RTC study—which the parties agreed would take no more than a year—was “close to completion” when it expired in January 2021. Mot. at 10-11. As Amtrak previously explained to CSX and NS, based on the consultant’s estimates of the remaining work, as well as Amtrak’s experience with the pace of work during the year the study was being conducted, completion of the study would have taken a minimum of 28 to 36 additional weeks.<sup>19</sup> Moreover, much of the work done before the RTC Study Agreement expired was severely flawed. Indeed, less than two weeks before the expiration date, the consultant notified Amtrak, CSX, and NS that due to a software error, a significant portion of

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<sup>19</sup> Exhibit H, Jenner & Block Letter.

the work to date was incorrect and would need to be redone, further delaying the completion of the study.<sup>20</sup> With significant work to be done (or redone), and no guaranteed end date, the study could hardly be called “close to completion.”

More importantly, however, the study process itself was deeply flawed because CSX and NS refused to share with Amtrak the most basic information necessary to validate the study. The FRA, which funded the study through a grant agreement with Amtrak, specified that Amtrak was required to coordinate with CSX and NS to provide information in order to meet FRA’s “minimum data requirements” for the grant. Those “minimum data requirements” included things such as CSX’s and NS’s basic track configuration drawn at a linear scale, indication of which of their tracks were equipped with track circuits, the size and type of all turnouts, and simulation stringlines (also known as time-distance diagrams). Explaining why such information was necessary, the FRA noted:

[S]tated in the most simple way, railroad operations simulation represents a means of estimating the operational performance of a given territory based two primary inputs – 1) the traffic (i.e. the characteristics of the trains that operate over the territory), and the infrastructure (i.e. the characteristics of the track, signal systems, operating rules, etc. that govern how the traffic operates within the territory). If one is unable to gain a fairly detailed understanding of either one of these inputs, it is nearly impossible to come to an independent conclusion regarding the reasonableness of the outputs, or to understand why the specific outputs are resulting from the simulation. Put another way, *without a thorough understanding of all the operationally relevant inputs, the simulation becomes a completely opaque black box, and the outputs become meaningless.*<sup>21</sup>

In accordance with the “minimum data requirements” of its grant agreement with FRA, Amtrak requested that CSX and NS provide information on the operationally relevant inputs for

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<sup>20</sup> *Id.*

<sup>21</sup> Exhibit K, FRA Email to Amtrak (Apr. 1, 2020) (emphasis added).

the RTC study. In August 2020, Amtrak sent a detailed letter to CSX and NS specifying all of the data and information that would be necessary to actually verify the study's results, including basic data regarding freight traffic, infrastructure, equipment, and systems.<sup>22</sup> CSX and NS responded by claiming that the information was confidential and that CSX and NS “d[id] not see the relevance or need for such data,” and therefore refused to provide it to Amtrak.<sup>23</sup>

In their motion to dismiss, CSX and NS concede that they refused to share data with Amtrak, claiming it was “confidential business information.” Mot. at 14. As CSX and NS admit, what they offered Amtrak instead were “heatmaps of train movements to help Amtrak schedule its passenger trains.” *Id.* But upon learning about CSX's offer of heatmaps rather than stringline and other critical data, the FRA informed Amtrak that those heatmaps would not have “any analytical[ ] value whatsoever” and that they were not acceptable substitutions for the data specified by FRA in the grant agreement.<sup>24</sup> Indeed, the FRA told Amtrak that it did “not see what value there is to continuing to have [the consultant] work on” a model based only on heatmaps.<sup>25</sup>

CSX's and NS's stubborn refusal throughout the course of the study to provide Amtrak with even the most basic information required by Amtrak's FRA grant agreement ultimately led the FRA to conclude that the “level of opacity that has come to define the Gulf Coast Study has rendered [that study] *incapable of fulfilling its intended purpose.*”<sup>26</sup> While CSX and NS now feign surprise that Amtrak believes the study was deeply flawed, throughout the course of the one-

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<sup>22</sup> See Exhibit L, Amtrak Letter to CSX and NS (Aug. 3, 2020).

<sup>23</sup> See Exhibit M, CSX Letter to Amtrak (Aug. 4, 2020).

<sup>24</sup> See Exhibit N, FRA Email to Amtrak (Sept. 2, 2020).

<sup>25</sup> *Id.*

<sup>26</sup> See *id.* (emphasis added).

year study, Amtrak made no secret of the fact that unless CSX and NS were willing to share all the operationally relevant inputs, the outputs of the study would be meaningless.

Given the above, it is not “fundamentally unreasonable and unfair” (Mot. at 14) for Amtrak to have chosen not to renew an RTC study that was, as the FRA concluded, “incapable of fulfilling its intended purpose.”<sup>27</sup> The only thing that is “fundamentally unreasonable and unfair” here is that the people of the Gulf Coast have been waiting *fifteen years* for passenger service to be restored while CSX and NS continue to invent new preconditions they claim Amtrak must meet before they will consider allowing even a single train to run.

**iii. Amtrak Need Not Garner Unanimous Political Support For This Dispute To Be Ripe.**

CSX and NS also claim—again without any statutory or regulatory basis—that Amtrak is required to “obtain Alabama’s support for the proposed Gulf Coast service” prior to filing an application with the Board under Section 24308(e). Mot. at 17. The statute plainly does not require Amtrak to secure unanimous political support before coming to the Board. And CSX and NS are simply wrong that it would be “in accordance with Congress’s wishes” to require Amtrak to “secure[ ] support from all critical stakeholders” before asking the Board for relief. *Id.* Congress’s “wishes” are expressed in the text and legislative history of Section 24308(e), which is about providing expedited relief to Amtrak to overcome intransigent behavior by host railroads. CSX’s and NS’s argument regarding Alabama’s support for the service simply is irrelevant to the issue before the Board.

Even if there were some relevance, the motion to dismiss argues simply that “the State of Alabama has serious reservations about implementation of the proposed Gulf Coast service

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<sup>27</sup> See Exhibit N, FRA Email to Amtrak (Sept. 2, 2020).

because of the potential impacts on freight rail transportation in the region.” Mot. at 16. But the “potential impacts on freight transportation” are precisely the issues that Congress entrusted the Board to determine under Section 24308(e). The Board is charged with deciding whether Amtrak’s proposed Gulf Coast Service “would impair unreasonably freight transportation of [CSX and NS], with [CSX and NS] having the burden of demonstrating that the additional trains will impair the freight transportation.” 49 U.S.C. § 24308(e)(2)(A). It is unclear why CSX and NS apparently believe the Board is not well-equipped to undertake this analysis.

In any event, the Gulf Coast Service does enjoy strong political and financial support. As CSX and NS note, funding for the Gulf Coast Service comes from the SRC through federal grants and “Alabama is a constituent member” of the SRC, along with Louisiana and Mississippi. Mot. at 16. CSX and NS further note that “\$33 million of federal funds and \$33 million in matched funds from the States of Louisiana and Mississippi and the County of Mobile” are already dedicated to the restoration of the Gulf Coast Service. Mot. at 16 n.46 (quoting Exhibit N to Mot.). The SRC has enthusiastically supported restoration of the service, noting that it will “provide a much-needed shot in the arm for local economies.”<sup>28</sup> Indeed, the SRC has filed comments with the Board in this proceeding, “ask[ing] the STB to accept Amtrak’s application to be heard” and “set an expedited hearing schedule to bring resolution to a dispute that has denied the people of the Gulf economically important connections to six cities in Mississippi, Louisiana and Alabama.”<sup>29</sup> Thus, while it is clearly not necessary under Section 24308(e) that Amtrak

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<sup>28</sup> See Press Release, Southern Rail Commission, *Gulf Coast Passenger Rail Service to Launch in 2022* (Feb. 25, 2021), <https://www.southernrailcommission.org/press-releases/2021/2/25/gulf-coast-passenger-rail-service-to-launch-in-2022>.

<sup>29</sup> Letter from Southern Rail Commission, Doc. No. 302138 (filed April 23, 2021).

demonstrate political or financial support for the service it is requesting prior to filing an application with the Board, Amtrak can certainly do so.

**B. No Environmental Or Historic Report Is Required.**

CSX and NS next claim that Amtrak's application must be dismissed because Amtrak did not file environmental and historic reports along with its application. But under the plain terms of the statute and the Board's regulations, Amtrak need not provide any environmental or historic reports at this stage of the proceedings. CSX's and NS's arguments at best misunderstand (and at worst misconstrue) Amtrak's requested relief. Amtrak is not requesting that the Board order Amtrak to engage in additional infrastructure projects, which might implicate the need for environmental and historic reports. Quite the opposite. Amtrak is requesting simply that the Board order CSX and NS to permit Amtrak to run additional trains over CSX and NS lines starting on or about January 1, 2022. CSX's and NS's arguments that Amtrak was required to submit environmental and historic reports along with its initial application asking the Board to open a proceeding make no sense.

Section 24308(e) requires no environmental or historic reports as a precondition to filing an application, and demanding that Amtrak commission those reports prior to bringing a claim would contravene congressional intent. Congress enacted Section 24308(e) to ensure that Amtrak had an expedited procedure to achieve prompt resolution of disputes where host railroads refuse to agree to permit Amtrak to run additional trains, particularly in light of the host railroads' historical penchant for requiring high-dollar capital improvements as a condition for allowing

additional trains.<sup>30</sup> Congress clearly did not expect Amtrak to commission and complete reports prior to even instituting a proceeding, particularly given that Amtrak has no burden to prove infrastructure improvements are needed at all (indeed, that burden falls to CSX and NS). Congress was far more concerned with continued delays to Amtrak's efforts to modify services, a concern that both has borne out here and would be further implicated by requiring Amtrak to wait for CSX and NS to agree to provide the information Amtrak would need to commission these reports.

By their plain terms, at this stage of the proceedings, the Board's regulations on environmental and historic reports do not even apply. Those regulations state that both the environmental and historic report requirements "are designed to assure adequate consideration of environmental and energy factors in the Board's decisionmaking process pursuant to the National Environmental Policy Act . . . and related laws, including the National Historic Preservation Act." 49 C.F.R. § 1105.1. But the only decision the Board is faced with at this point is whether to open a proceeding and set a briefing schedule. No one has made any determination that the National Environmental Policy Act, the National Historic Preservation Act, or any other federal environmental laws are even implicated at this point in the proceedings. *See, e.g., Borough of Riverdale Petition for Declaratory Order the N.Y. Susquehanna & W. Ry. Corp.*, 4 S.T.B. 380, 1999 WL 715272, at \*5 n.12 (1999) (describing how the environmental and historic reports are to ensure the Board fulfills "the Board's own obligation to follow the requirements of the National Environmental Policy Act, . . . and related federal environmental laws in contexts *where they are applicable*" (emphasis added)).

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<sup>30</sup> *See* H.R. Rep. 96-1041, at 42 (describing that § 24308(e) was enacted precisely because "Congress [was] concerned that in the past Amtrak's efforts to add or modify services . . . have often prompted requests by the railroads for inordinate capital improvements").

Amtrak’s application does not request that the Board order *any* construction projects that would implicate the Board’s obligations to ensure compliance with federal environmental or historic preservation law.<sup>31</sup> Indeed, beyond the improvements recommended in the Gulf Coast Working Group Report as the “Minimum Needed for Passenger Rail Service,” Amtrak does not believe any construction or other infrastructure projects are required to get the Gulf Coast Service up and running by on or about January 1, 2022. *See* Amtrak Application at 6 (referencing and attaching Gulf Coast Working Group Report, Table 5). And those improvements will occur without any Board order. As a result, Amtrak’s application does not implicate the Board’s obligations to follow the requirements of the federal environmental or historic preservation laws, and no environmental or historic reports are needed.

Board precedent likewise makes clear that Amtrak was not required to file environmental and historic reports with its application. For example, in *Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24309(a)—Springfield Terminal Railway, Boston & Maine Corp., & Portland Terminal Co.*, 3 S.T.B. 157, 1998 WL 1799020 (1998) (hereinafter “*Springfield Terminal*”), *petition for review denied, Boston & Maine Corp. v. Surface Transp. Bd.*, 364 F.3d 318 (D.C. Cir. 2004), despite the fact that Amtrak was asking the Board to order certain construction in order to begin service, the Board determined that its decision would “not significantly affect either the quality of the human environment or the conservation of energy resources” and therefore that no environmental or historic report was needed. *Id.* at \*11. CSX and NS attempt to distinguish *Springfield Terminal* by claiming that no environmental or historic

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<sup>31</sup> CSX and NS anchor their arguments that Amtrak must file these reports based only on concerns surrounding construction, as opposed to any other activity that the regulations note might impact the environment.

reports were required because the “Board was only tasked with ‘setting the terms and conditions and, in particular, the price of the service,’” Mot. at 20, but that is not true. In *Springfield Terminal*, the Board adjudicated, among other issues, a dispute regarding the costs of and extent to which bridge rehabilitation work was required before Amtrak could reinstate passenger service over a freight carrier’s line. *Springfield Terminal*, 1998 WL 1799020, at \*6 (noting that, for two infrastructure projects, the parties did not “agree on the scope of the rehabilitation work”). Another issue in that proceeding was whether the Board had the “authority . . . to require rehabilitation of the line.” *Id.* at \*9-10 (rejecting the freight carriers argument that the Board did “not have the authority to require [it] to upgrade or maintain its line” and concluding that “we have the authority under the circumstances of this case to require rehabilitation”). Nonetheless, the Board easily concluded that no environmental or historic reports were necessary.

Amtrak is not requesting that the Board order that it, CSX, or NS undertake any capital infrastructure projects. Should these proceedings clarify that additional infrastructure projects are needed to reinstate the Gulf Coast Service, Amtrak will of course meet any obligations the Board imposes regarding environmental and historic reports. However, under the statute, regulations, and precedent, Amtrak was not required to commission and provide these reports prior to filing its application under Section 24308(e). To require Amtrak to commission these reports—which would depend on the voluntary sharing of data by CSX and NS (something they for years have been unwilling to do)—would be contrary to Congress’s intent in passing the statute to ensure new passenger service can be initiated without unreasonable delays and onerous demands.

### **C. An Interim Order Is Entirely Appropriate And Necessary In This Case.**

An interim order is entirely appropriate and necessary in this proceeding, so that Amtrak may perform the necessary safety, training, and other functions critical to commencing the Gulf

Coast Service. The Board has the inherent authority to issue interim orders and has exercised that authority in cases arising under Section 24308. For example, in both *Amtrak and Kansas City Southern Railway and Louisiana & Arkansas Railway—Use of Tracks and Facilities and Establishing Just Compensation*, FD 29890 (I.C.C. served Apr. 9, 1982), and *Amtrak and Louisiana & Arkansas Railway—Use of Tracks and Facilities Establishing Just Compensation*, FD 30557 (I.C.C. served Oct. 1, 1984), the Board entered interim orders requiring the freight railroads to allow Amtrak to operate inspection trains to assess rail lines on which Amtrak was considering initiating service. More recently, the Board entered an interim order under Section 24308(a) requiring a host railroad to continue to provide tracks and facilities for Amtrak’s use, having found that such order was necessary under the circumstances. *See Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)—Canadian Nat’l R.R. Co.*, FD 35743, 2013 WL 4067714 (S.T.B. served Aug. 9, 2013). The Board’s authority is not as narrowly circumscribed as CSX and NS suggest.<sup>32</sup>

CSX’s and NS’s other arguments as to why an interim order is inappropriate likewise fail. Amtrak is not seeking an interim order to “alter infrastructure” or “physically alter another rail carrier’s property.” Mot. at 23. Rather, Amtrak simply needs access to CSX’s and NS’s facilities to perform tasks without which an order to permit service would be meaningless. Those tasks include, among other things, a comprehensive safety assessment including evaluating signal systems, track conditions, station facilities, signage and visibility, crossing protections, etc.; running track geometry cars; training relevant Amtrak employees; and testing the operation of Amtrak equipment on the route. Of course, if CSX and NS are willing to stipulate that they will

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<sup>32</sup> Congress has also expressly given the Board the authority in emergencies to issue interim orders to ensure the operation of passenger service. *See* 49 U.S.C. § 24308(b).

agree voluntarily to provide such access, then an interim order may not be necessary. But because CSX and NS have given no indication that they will provide such agreement, Amtrak requires an interim order to ensure that CSX and NS permit Amtrak the access it needs to begin preparing for restoration of the Gulf Coast Service. Entry of the requested interim order in this case is appropriate, necessary, and well within the Board's authority.

**D. The Board Should Enter Amtrak's Proposed Schedule.**

CSX and NS fail to meaningfully address Amtrak's proposed schedule, arguing only that it is "absurdly unfair." Mot. at 26. While Amtrak's proposed schedule may not look like the typical Board schedule, it best reflects the nature of the case and the burden of proof required by the statute. Congress enacted Section 24308(e) to provide Amtrak with an expedited process to overcome host railroad intransigence and allow expanded passenger service as soon as possible. Amtrak's proposed procedural schedule is in line with that goal, and is fair and reasonable in both timing and sequence. The Board should decline to adopt any schedule that permits CSX and NS to draw out this proceeding in the same way they have drawn out the last several years of negotiation to reinstate the Gulf Coast Service.

The issue Amtrak has petitioned the Board to resolve is a narrow one. Congress has required that the Board order the reinstatement of the Gulf Coast Service unless CSX and NS meet their burden of demonstrating that the service would unreasonably impair their freight traffic. *See* 49 U.S.C. § 24308(e). CSX and NS should be responsible for first coming forward to offer their evidence in an attempt to meet that burden. Amtrak then should have the opportunity to engage in brief discovery to test those assertions and respond to CSX's and NS's arguments on this narrow question. If the host railroads wish to then test Amtrak's assertions, they will be free to conduct their own discovery and reply to those arguments. Nothing about the proposed procedural

schedule is “absurdly unfair,” and certainly CSX and NS offer no reasoning why the “counter-proposal” they reference (but do not provide) would be “fair.” Mot. at 26.

In particular, there is no basis for the claim that CSX and NS will require discovery *from Amtrak* prior to filing their initial brief with the Board. CSX and NS already have Amtrak’s proposed schedule for the Gulf Coast Service, and the compensation for such service is already provided in the parties’ existing Operating Agreements. Beyond that, CSX and NS are—at their own insistence—in sole possession of all of the information about their own operations along the Gulf Coast, which information they have been assembling for over a year in connection with the 2020 RTC study (and presumably, in the 2016 RTC study performed by CSX as well). The claim before the Board is limited to one narrow issue and, given the expedited consideration required by the statute, the Board should resist CSX’s and NS’s attempt to further delay consideration of Amtrak’s application through burdensome and unnecessary discovery demands. The Board should enter Amtrak’s proposed procedural schedule.

**E. The Motion To Dismiss Is Procedurally Improper.**

Finally, the Board may choose to summarily deny the motion to dismiss as procedurally improper. The statute prescribes a particular procedure for the Board to follow if the Board chooses not to entertain an application filed under Section 24308(e). Congress provided that when an application is filed by Amtrak, the Board must conduct “a hearing on the record” unless the Board “decides not to hold a hearing,” in which case “the Board, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.” 49 U.S.C. § 24308(e). More than 30 days have passed since Amtrak filed its application, and the Board has not published in the Federal Register any decision not to hold a hearing. In setting this 30-day timeframe for a Board decision on dismissal, Congress made clear

that it wishes the Board to decide applications brought under Section 24308(e) promptly. The Board has noted the importance of Congress “impos[ing] strict deadlines” in certain proceedings “so that [the Board] will decide them promptly.” *Cent. R.R. Co. of Ind.*, No. AB 459, 1998 WL 148638 at \*3 (S.T.B. served Apr. 1, 1998). The Board has not dismissed Amtrak’s application within the statutorily prescribed 30-day timeframe, and for that reason CSX’s and NS’s motion to dismiss can be summarily denied as moot.

The motion to dismiss also is procedurally improper because it goes well beyond the four corners of Amtrak’s application and asks the Board to weigh in on issues not before it at this stage of the proceedings. The motion raises issues about compensation for the service, *see* Mot. at 3, funding for the service, *id.* at 3-4, political support for the service, *id.* at 4, concerns about on-time performance, *id.* at 8-9, and an expired contract regarding an incomplete study that CSX and NS ask the Board to resurrect and unilaterally bind Amtrak to completing, *id.* at 7-15. None of these issues is before the Board at this time. CSX and NS offer no alternative to the schedule Amtrak has proposed and given Congress’s intent that these proceedings provide an expedited process for Amtrak to add additional trains, the Board should enter that proposed schedule and institute the proceeding promptly.

### **III. CONCLUSION**

For the above stated reasons, Amtrak respectfully requests the Board deny CSX’s and NS’s motion to dismiss, grant Amtrak’s application, institute proceedings under its authority as provided under 49 U.S.C. § 24308(e), enter the proposed briefing schedule, and order all interim access necessary for Amtrak to prepare for the Gulf Coast Service to commence while this proceeding is pending.

April 26, 2021

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

Respectfully submitted:

/s/ Jessica Ring Amunson

Jessica Ring Amunson  
Kali N. Bracey  
Caroline C. Cease  
Jenner & Block LLP  
1099 New York Ave., NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000  
jamunson@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. 36496.

April 26, 2021

/s/ Jessica Ring Amunson  
Jessica Ring Amunson

# **EXHIBIT A**



March 2, 2006

Mr. John M. Gibson, Jr.  
Vice President Passenger and Operations Planning  
CSXT Transportation  
500 Water Street, J305  
Jacksonville, FL 32202

Dear John:

Amtrak would like to meet with CSXT to discuss the resumption of passenger train service east of New Orleans following repairs of Hurricane Katrina damage and restoration of service. Amtrak is continuing to assess the status of our station infrastructure along the route and it would be useful to understand CSX's current situation. We would like to schedule a meeting at your earliest convenience to discuss passenger service along the Gulf Coast with you.

I expect that participation from Amtrak will include myself and a representative from our Southern Division. Please contact me with potential dates and times that would be convenient for you so that we can consider them.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Vilter", written in a cursive style.

Paul Vilter  
AVP Host Railroads

# **EXHIBIT B**



500 Water Street, J315  
Jacksonville, FL 32202  
Jay\_Westbrook@csx.com  
T: 904-359-3568

Jay S. Westbrook  
Assistant Vice President  
Passenger Operations

August 15, 2016

VIA E-MAIL AND  
FIRST CLASS MAIL

Mr. Marc Dixon  
Regional Manager – South Central  
Federal Railroad Administration  
Office of Railroad Policy and Development  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Mr. Dixon:

We appreciate the Federal Railroad Administration's pursuit of a fact-based inquiry into the issues that would surround resumption of Amtrak passenger service from New Orleans, LA, to Orlando, FL. In that regard, we were grateful to participate in the Gulf Coast Working Group ("GCWG") efforts, including hosting the August 11 meeting where the results of HDR's capacity modeling of the corridor were shared. As there was a great deal of detail provided at the session, including about new legal requirements for service, we thought it would be helpful to recap what we heard and to share some of our perspectives about the Amtrak service under consideration.

Attributes of the Gulf Coast Corridor. As we heard at the GCWG meeting, CSXT's Gulf Coast line is comprised of 718 route miles, most of which is single track. Approximately 243 miles of the line is unsignaled, with a current maximum authorized speed of 59 mph for passenger trains, and 49 mph for freight. The line has 17 moveable bridges, and 12 of those are located in the 150 miles between New Orleans and Bay Minette, AL.

We discussed the fact that the U.S. Coast Guard has jurisdiction over the opening and closing of the moveable bridges, and the regulations are designed to ensure that vital maritime commerce is not impaired. Typically, each such bridge takes from 15 to 30 minutes to open, to allow marine traffic through, to close and to then display a proceed signal for waiting or expected trains.

We also discussed the complicated and crowded infrastructure in Mobile at CSXT's Mobile Yard, and yard capacity limits at CSXT yards in New Orleans and Pensacola. CSXT traffic along the line today includes long merchandise trains, several intermodal trains, bulk coal, grain and rock trains, and finally local train traffic. All freight traffic combined tops 17 daily trains from New Orleans to Mobile.

There are 179 active customers along the rail line from New Orleans to Orlando. By far the largest customer site is the Alabama State Port Authority's McDuffie Terminal, where CSX handled nearly 40,000 loads in 2015. Other major customers whose success is important to the regional economy include Chevron in Pascagoula, MS, Ineos Phenol in Theodor, AL and PCS in Lake City, FL.

History of the Sunset Limited. To understand the challenges of the region, it is worth reviewing the passenger service there before Hurricane Katrina damaged much of the Gulf Coast in 2005, including destroying approximately 40 miles and three major bridges and others on CSXT's line. The federal government reported extremely challenging service, financial and ridership numbers for the pre-Katrina Amtrak train, known as the Sunset Limited.

- The on-time performance (OTP) of the Sunset Limited along its entire route averaged 7% according to the testimony of Kenneth Mead, the U.S. Department of Transportation's Inspector General. He reported that 7% performance in testimony before the U.S. Senate Commerce Committee in September, 2005.
- The same testimony reported that each passenger trip on the Sunset Limited was heavily subsidized by the federal government, with estimates as follows:
  - on an operating basis, between \$286 per passenger (coach) and \$366 per passenger (first class); and
  - on a fully- allocated cost basis, between \$416 and \$627 per passenger.
- Gulf Coast trips on the Sunset Limited had an average annual ridership of under 40,000 during its last full year of operation in 2004.

HDR Recommendations. HDR identified the necessary improvements for any Gulf Coast passenger restoration:

- 182 miles of second main track, sidings and yard bypasses;
- 243 miles of CTC signaling and 392 miles of PTC
- 14 improved drawbridges
- 3 replaced drawbridges

These recommendations take into account the geographic constraints of the line, the existing and future freight traffic (estimating 2.4% compound annual growth), and the CSXT infrastructure. We believe these enhancements would cost, at a minimum, \$2 billion. The average run time of the total route would be just over 19 hours westbound, and just under 19 hours eastbound.

Even with those improvements, HDR's modeling suggests that the OTP of the long-distance trains (FRA's Alternative A and A1) would average only 67% at the endpoint. HDR did not take into account the STB rule that takes effect later this month that measures OTP at every station stop, and would deem a train late after 15 minutes at any stop.

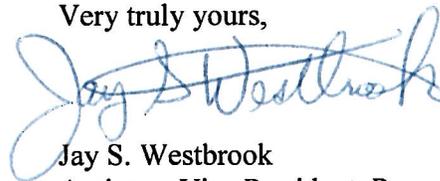
The OTP of the state-supported corridor (FRA Alternative A) did not improve to be close to the 80% standard; it stayed markedly lower at 75%. To summarize, the OTP of both passenger service alternatives could not, as a practical matter, achieve the 80% all station minimum prescribed in a combination of the 2008 Passenger Rail Infrastructure Improvement Act (PRIIA) and the new STB rule.

Performance Compliance Likely Impossible. The historically poor performance of the Sunset Limited, due to the geographic and regulatory challenges cited above, occurred before the passage of PRIIA, which enforced an 80% OTP standard for Amtrak trains based on endpoint OTP. The precise calculation of the 80% is the subject of pending litigation, but the 80% standard remains unless Congress repeals it. The STB in late July published a rule to become effective August 27 which measures the 80% OTP at every station stop, not just endpoint. In other words, while OTP performance would improve *if the HDR recommended improvements are made*, it would still fall far below the regulatory threshold, subjecting CSX to undefined and punitive financial penalties.

CSXT has been a willing partner in the discussions of the GCWG to date and, in that regard, offered expertise and did not pre-judge the modeling results. Now that they have been shared, however, it is clear that the resumption of Amtrak service on the Gulf Coast comes at an extremely steep price, with no practical ability for CSXT to provide the level of service required now by applicable law, which would expose it to uncapped penalties and devastating reputational harm.

Again, we thank the FRA, Amtrak and the members of the Working Group for allowing us to participate in this important effort. We know that all involved understand the complexity of this effort and share our belief that any reinstatement of new service must be designed and funded in a way that would reasonably assure CSXT's ability to meet minimum federal requirements for performance.

Very truly yours,



Jay S. Westbrook  
Assistant Vice President, Passenger Operations

cc: Mr. Richard Cogswell  
Ms. Jessie Fernandez-Gatti

# **EXHIBIT C**

May 25, 2017

Jamie Rennert  
Director, Program Delivery  
U.S. Department of Transportation  
Federal Railroad Administration  
1200 New Jersey Avenue, SE  
West Building- Mail Stop 20  
Washington, DC 20590

Dear Ms. Rennert:

The Southern Rail Commission (SRC), as a Congressionally appointed member of the Gulf Coast Working Group (GCWG), writes to express our gratitude for the efforts of the Federal Railroad Administration (FRA) to bring resolution over the past eighteen months in order to answer the directive of the 114th Congress. Section 11304 of Fixing America's Surface Transportation (FAST) Act directs the U.S. Department of Transportation Secretary to "convene a working group to evaluate the restoration of intercity rail passenger service in the Gulf Coast region between New Orleans, Louisiana, and Orlando, Florida," whose work includes developing "a prioritized inventory of capital projects and other actions required to restore such service and cost estimates for such projects or actions." However, we must express our deepest disappointment in the actions and statements of the CSX Railroad.

While the FRA has worked tirelessly to reach consensus through research and negotiation, CSX has demonstrated a commitment to obfuscation and deceit, which culminated with the sentiments they expressed during our May 10, 2017 meeting.<sup>1</sup>

From the beginning and throughout this process, SRC has maintained that the restoration and enhancement of service along the Gulf Coast should work for both freight and passenger rail interests. However, CSX has failed to reciprocate this sentiment and their actions demonstrate what can only be understood as an unwillingness to negotiate in good faith and an opposition to bringing back passenger rail service to communities along the Gulf Coast.

CSX's claim that the freight issues they have raised have not been acknowledged by the working group are patently ridiculous. The FRA and SRC have diligently worked to address the purported obstacles to restoring service that CSX identified. SRC's efforts have included working with the US Coast Guard to successfully resolve bridge access issues, resolving missing and incomplete bridge tender log data, making trips to ports and yards along the Gulf Coast to collaborate with locals identifying solutions to address access and movement concerns – all issues raised by CSX as hindering passenger rail resumption. The SRC has been and continues to be an engaged, honest and committed member of the GCWG.

In the May 10 meeting, CSX recanted a previously issued, lower estimation of costs and returned to their initial demand of \$2.3 billion in infrastructure costs for the desired service, which is less than 800 miles. By comparison, CSX literature indicates its annual total infrastructure

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<sup>1</sup> See May 10, 2017 GCWG meeting summary included as Attachment B.

expenditures, plus regulatory (including Positive Train Control) expenditures, are less than \$1.5 billion for all of their 21,000 miles of track.<sup>2</sup> For a historical comparison, CSX signed an agreement with Amtrak in 1992 stating that the capital improvements to extend Amtrak's Sunset Limited service from New Orleans, Louisiana through Mobile, Alabama and on to Jacksonville, Florida would cost \$4,067,191.<sup>3</sup> Following Hurricane Katrina, portions of track along this route were rebuilt and thus, their condition substantially improved, which should considerably lower costs for infrastructure improvements necessary to restore passenger rail service. SRC takes issue with CSX's \$2.3 billion number in the following ways:

First, CSX denied the FRA and the GCWG – established by Congress – from seeing the full modeling or any of the underlying assumptions for the modeling used to reach this number. Even worse, CSX accepted taxpayer dollars to conduct this study yet still withheld the underlying assumptions and detailed data upon which the taxpayer funded study was based. CSX also denied FRA experts permission to inspect the rail lines in question. Recent reports concerning safety defects and other issues relative to rail conditions demand greater transparency from the railroad in general, but in particular raise concerns about where the \$2.3 billion demanded by CSX will actually be spent. It is unconscionable that the American taxpayer be asked to foot the bill for improvements for which there is no evidence – save CSX's protestations – and look highly suspect upon even a cursory review.

Second, CSX stated that the railroad would restore the previous three-day per week service along the Gulf Coast route at no cost. Yet, four more trains a week would require \$2.3 billion. One does not require expensive models or an engineering degree to see such a claim as absurd. This claim simply reveals CSX's intent to prevent the American people from getting passenger rail service along this route.

It is important to remember that Congress formed the GCWG to work towards restoring intercity passenger rail service in a manner that will ultimately yield competitive and high quality service, in contrast to what existed before Hurricane Katrina. CSX was well aware of this and was a willing participant in the GCWG; yet, CSX's statements in the May 10 meeting indicate disregard for any successful collaboration towards this objective.

CSX's demands for an unjustified amount of money in exchange for accommodating passenger rail service would, in effect, overturn existing law. If upheld, all freight railroads would have a financial veto over passenger rail service and could ignore 49 U.S. Code § 24308, which states:

*“Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or the authority under terms on which the parties agree. ... If the parties cannot agree and if the Surface Transportation Board finds it necessary to carry out this part, the Board shall –*

- (i) order that the facilities be made available and the services provided to Amtrak;*
- and*
- (ii) prescribe reasonable terms and compensation for using the facilities and providing the services.*

*When prescribing reasonable compensation...the Board shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of*

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<sup>2</sup> See Attachment A.

<sup>3</sup> Amtrak, CSX agreement dated April 28, 1992.

*compensation shall be greater than the incremental costs of using the facilities and providing the services.”*

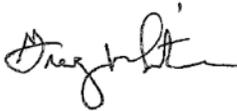
CSX’s demands for \$2.3 billion are nothing close to “reasonable terms and compensation” for the “incremental costs of using the facilities and providing the services” requested along the route.

The final GCWG report recommends continued coordination and collaboration among GCWG members. However, in the May 10 GCWG meeting, CSX clearly stated that their organization will not continue in any further conversations with the other stakeholders represented in the working group.

We cannot allow an unsupported, unreasonable demand by CSX to overturn long-established law and veto a passenger rail service supported by the people and leadership of the coastal south. Congress has identified this route as of high importance and interest for the public. Continued investments in our passenger rail system are vital as our society becomes increasingly mobile and we look for ways to improve access to skilled workers, jobs, and new opportunities for economic development.

We ask that our concerns be reflected in the Gulf Coast Working Group Report to Congress, and we look forward to working with Congress and FRA to enforce the law and establish passenger rail service to the communities along the Gulf Coast.

Sincerely,



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Greg White, Chairman and Alabama Commissioner



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John Spain, Vice-Chairman and Louisiana Commissioner



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Knox Ross, Secretary-Treasurer and Mississippi Commissioner



## Attachment A

Capital Expenditures (Dollars in Millions)	Fiscal Years		
	2016	2015	2014
Track	\$ 714	\$ 866	\$ 750
Bridges, Signals and Other	433	491	538
<b>Total Infrastructure</b>	<b>1,147</b>	<b>1,357</b>	<b>1,288</b>
Freight Cars	82	218	329
Capacity and Commercial Facilities	406	295	452
<b>Regulatory (including PTC)</b>	<b>313</b>	<b>341</b>	<b>321</b>
Locomotives	409	337	51
Public-Private Partnerships - net <sup>(a)</sup>	41	14	8
<b>Total Property Additions</b>	<b>2,398</b>	<b>2,562</b>	<b>2,449</b>
Cash paid for new assets using seller financing <sup>(b)</sup>	307	\$ —	\$ —
<b>Total Capital Expenditures <sup>(a)</sup></b>	<b>\$ 2,705</b>	<b>2,562</b>	<b>2,449</b>

(a) Total capital expenditures shown above include investments related to reimbursable public-private partnerships. These partnership investments are for projects that are partially or wholly reimbursed to CSX through either government grants or other funding sources such as cash received from a property sale. These reimbursements may not be fully received in a given year; therefore the timing of receipts may differ from the timing of the investment.

(b) In 2016, CSX made payments related to locomotive purchases made in 2015 using seller financing of \$307 million.

The chart above was taken from CSX's 2016 Annual Report, "How Tomorrow Moves," Page 52. Highlighted emphasis was added by SRC. <https://www.csx.com/index.cfm/investors/annual-materials/>

## Attachment B

### Gulf Coast Working Group

#### Meeting Summary May 10, 2017

Below is a summary of the Gulf Coast Working Group’s meeting on May 10, 2017, as written by the Southern Rail Commission and Transportation for America.

Attendees:

<b>CSX</b>	<ul style="list-style-type: none"> <li>• Dave Dech, AVP Passenger Operations</li> <li>• Garrick Francis, AVP Federal Affairs</li> <li>• Will Roseborough, Director Project Management</li> <li>• Marco Turra</li> <li>• Sean Craig, Attorney</li> </ul>
<b>Amtrak</b>	<ul style="list-style-type: none"> <li>• Mark Murphy, Senior VP &amp; General Manager – Long Distance Service</li> <li>• Kelly Cunningham, Lead Host Railroads Specialist</li> <li>• Morgan Connell, Lead Host Railroads Specialist</li> <li>• Ken Altman</li> <li>• Jackie Meredith-Batchelor, Attorney</li> <li>• Todd Stennis, Director, Government Affairs-South</li> </ul>
<b>Southern Rail Commission</b>	<ul style="list-style-type: none"> <li>• Greg White</li> <li>• Knox Ross</li> <li>• John Spain</li> <li>• John Robert Smith (advisor to the SRC, Transp. 4 America)</li> </ul>
<b>Florida DOT</b> <i>(participating via teleconference)</i>	<ul style="list-style-type: none"> <li>• Rickey Fitzgerald, Manager, Freight &amp; Multimodal Operations (Rail Office)</li> <li>• Fred Wise, Rail Director – Florida District (HNTB consultant)</li> <li>• Holly Munroe</li> </ul>
<b>FRA</b>	<ul style="list-style-type: none"> <li>• Jamie Rennert, Director, Office of Program Delivery</li> <li>• Trevor Gibson, Office of Program Delivery – Program Implementation</li> <li>• Catherine Dobbs, Office of Program Delivery – Program Implementation</li> <li>• Dick Cogswell, Office of Program Delivery – Engineering &amp; Projects Development</li> <li>• Marc Dixon, Office of Program Delivery – Program Implementation</li> <li>• Mark Hartong, Office of Safety – PTC</li> <li>• Devin Rouse, Office of Safety – PTC</li> <li>• Stephanie Anderson, Office of Chief Counsel - Safety</li> </ul>

## Meeting Summary

### I. Welcome & Introductions

After a round of introductions, Jamie Rennert of FRA remarked that while the group is at the end of a milestone, the group is also at the beginning of a next phase. She noted that CSX had called for the meeting and turned the floor over to CSX to allow them to express their concerns.

### II. Opening Remarks by CSX

Dave Dech, CSX, provided an overview of the challenges perceived by CSX, which included the following:

CSX believes HDR provided an unbiased third party opinion regarding infrastructure concerns, but that HDR's study seems to have been discounted. The \$2.3 billion number determined by HDR would still not guarantee on-time performance. CSX made a good faith effort to pare this down to a lower number, but even then could not guarantee on-time performance.

CSX is frustrated that the \$2.3 billion number is not being used as the basis, when they are the ones who will have to answer for the infrastructure along the route.

CSX noted that the previous passenger rail service never performed and struggled with on-time performance and ridership. They are concerned that we live in a different world than then. CSX believes it has all of the liability from a public standpoint. CSX is saying "I can't do this" not "I don't want to do this". Yet, if passenger rail service is restored CSX will have to explain why on-time performance is sub-standard, even though they said all along that they could not achieve it.

CSX does not intend to install PTC along this line but will have to if there is a passenger train. CSX claims Amtrak has the responsibility to pay for PTC. CSX stated that the train has a shelf life of just a few years, which calls into question if this is really where money should be spent.

CSX maintains that this is not restoration of service. The previous service was 3-days per week and had a set schedule. CSX noted that they would be bound to restoring the service at the previous schedule, but will not volunteer to take on any additional days or difference in schedule.

CSX maintains that there is a separate process for establishing such 'new' service, which requires a letter requesting new service to be sent to CSX. Upon receipt of the letter, CSX would name the cost for infrastructure upgrades and if the passenger rail service does not agree to the cost, then STB would be the arbitrator. CSX noted that they see this request for passenger service going to STB.

### III. PTC

Jamie Rennert, FRA, raised the issue of PTC mentioned by CSX as the first point of discussion. FRA representatives noted that PTC exemptions are available for this reason – PTC requirements are not meant to prevent service. There is a threshold for a limited service exemption, which could apply for this line. However, FRA does not know all of the information needed to ensure an exemption would apply. For example, if CSX’s freight movements include certain toxic inhalants along this line, then it cannot be exempt from the PTC requirement.

CSX responded that PTC was forced upon the railroads by law. CSX will not seek an exemption, for fear of ending up in the news. CSX maintains that the provision of PTC is a term and condition of access, for which STB is the arbiter.

FRA noted that a decision to not install PTC would be a decision on the part of CSX, and likely not a required cost for restoring service.

### IV. Modelling Study

Jamie Rennert, FRA, noted that the GCWG established a set of numbers related to cost – CSX put the cost at \$2.3 billion, but walked this down to \$700-\$800 million, which is closer to the \$117 - \$200 million numbers determined by other GCWG stakeholders. She pointedly asked CSX if they would be willing to continue to work with the stakeholders of the GCWG to collaborate towards a mutually agreed on determination of cost.

Dave Dech replied no, CSX would not continue to work with the group. CSX also no longer supports the \$700-\$800 million number and only feels comfortable with the \$2.3 billion number. CSX noted “this is not how we do business with Amtrak” and that Amtrak must send them a letter of request.

CSX noted that they have zero interest in phasing the infrastructure improvements, even though the improvements are based on 20-year growth projections. CSX maintains that all infrastructure improvements, based on 20-year growth projections, must be completed before they will start the first day of service.

FRA noted that the HDR study and CSX’s cost estimates were presented in a “black box.” FRA does not know how CSX / HDR got to that number and does not know what assumptions were made. There has been differences in analysis and the next step would be to collaborate on the analysis.

CSX said that would be a good idea if this was public property, but it is private property. FRA noted that Amtrak has a public interest; to which CSX replied that responsibility falls on Amtrak. FRA noted that the GCWG study was intended as a cost-focused study, not a legal or statutory rights study.

CSX reiterated that the HDR study is the only true, factual analysis done, but that the number has been largely ignored. FRA noted that when they asked CSX if their staff

could accompany CSX to site-visits, CSX denied their request. CSX agreed, stating that their property is private.

SRC noted that they have worked in good faith, made visits to ports and communities along the Gulf Coast to identify solutions to what CSX has maintained as areas of issue. SRC disagreed that HDR is a true third party. SRC noted their desire from the beginning to seek a solution for passenger rail that would work for both freight and passenger interests.

#### V. Submitting Report to Congress

FRA asked if the group could collectively agree to continue working as a group to collectively drill down on the points of PTC and schedule, with the goal of coming closer together and with the goal of not needing to resort to going to the STB. CSX stated that they will not participate in any further meetings or conversations with the group.

FRA wrapped up the meeting with a discussion of the report due for submission to Congress. FRA is currently in final review of the report and will update the report to reflect the conversation of the May 10 meeting. After a final review at FRA, the report will be sent for review with OMB. The final report may be received in Congress as early as May 31st.

# **EXHIBIT D**



David Dech  
Assistant Vice President  
CSX Transportation  
500 Water Street, J315  
Jacksonville, FL 32202  
Office (904) 359-3568  
[David\\_Dech@csx.com](mailto:David_Dech@csx.com)

April 18<sup>th</sup>, 2017

VIA E-MAIL AND  
FIRST CLASS MAIL

Mr. Patrick Warren  
Executive Director and Chair of the Gulf Coast Working Group  
Federal Railroad Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Mr. Warren:

CSX cannot support the Gulf Coast Working Group (“GCWG”) report to Congress in its current form.

While we have sought to participate fully in the GCWG process, in cooperation with all of the other stakeholders, the final draft of the report is not an accurate representation of the work conducted over the last 15 months. Regrettably, we must therefore dissent from the Gulf Coast Working Group (“GCWG”) report that the Federal Railroad Administration (“FRA”) has submitted to Congress.

The GCWG stakeholders have demonstrated a deep commitment to evaluate intercity passenger service between New Orleans, LA and Orlando, FL. However, the report prepared by the FRA fails to adequately portray the real challenges associated with initiating the proposed new passenger service along the Gulf Coast. It inaccurately represents that it has developed a thorough inventory of capital projects as required by the FAST Act.

The report, at best, provides anecdotal information about the infrastructure requirements to establish what should be considered a new passenger service with four daily frequencies rather than a restoration of service along the Gulf Coast. CSX, in particular, takes exception with the “Amtrak Recommendation” and the “FRA Proposed Improvements”, as included in the report, for lacking the analytical rigor and depth to support the introduction of new passenger service. No analysis or study was performed to confirm that the infrastructure improvements recommended would be sufficient to initiate a new passenger service without unduly interfering with freight operations and meeting federally mandated on-time (“OTP”) standards.

During the planning process in 2016, the FRA commissioned a capacity modeling study to assess the infrastructure needs to support a passenger service between New Orleans and Orlando as contemplated by Amtrak's 2015 report on Potential Gulf Coast Service Restoration Options. The planning of passenger service is an iterative process and the transportation consulting firm HDR developed an initial capacity modeling study that should be used as the foundation for developing an accurate inventory of capital projects to support a passenger service that is reliable, sustainable, does not unduly interfere with freight operations and meets PRIIA's OTP standards. Only after this iterative process is completed, to the satisfaction of all the stakeholders, a report to Congress should be submitted. The FRA's disregard for the findings in a study that it commissioned casts significant doubt on any recommendations the FRA is making to Congress.

In addition, the report mischaracterizes the Positive Train Control ("PTC") requirements and financial responsibilities associated with the installation of any equipment required to meet the PTC federal mandate. The report states that "CSX and Amtrak will make a joint determination on the needs and costs" for PTC. On property that is owned by CSX, CSX will require the installation of PTC before passenger service is established regardless of the tonnage or presence of TIH/PIH traffic. When the PTC federal mandate has been triggered by the presence of passenger service, all installation and maintenance costs will have to be paid by the passenger service at no cost to CSX.

In closing we are including two previous letters that CSX sent to the FRA during the planning of the project which demonstrate our on-going concerns while providing continued cooperation and support to successfully progress the project. Since CSX infrastructure is expected to host the preponderance of the route for the proposed service, we believe that our feedback should be incorporated into the final report, and that by withholding such feedback, we think the FRA is providing an inaccurate representation to Congress and the affected communities along the Gulf Coast. Hope is not a strategy. To claim that you can add a new, faster service during a different time of day with only minimal improvements to the stations and get a result different than the 7% OTP of the past is irresponsible.

Thank you again for including CSX's dissent and comments to the FRA report submission to Congress to restore service on the Gulf Coast.

Sincerely,



David Dech

Attachments:

1. August 15, 2016 - Letter from Jay Westbrook to Marc Dixon
2. March 28, 2017 – Letter from David Dech to Marc Dixon

# **EXHIBIT E**

NATIONAL RAILROAD PASSENGER CORPORATION

1 Massachusetts Avenue, NW, Washington, DC 20001  
Tel 202.906.3670 Fax 202.906.2850



**Richard H. Anderson**  
President and Chief Executive Officer

April 10, 2018

Mr. James M. Foote  
Chief Executive Officer  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, Florida 32202

Dear Mr. Foote:

*Jim:*

I write to request your assistance and engagement in finalizing plans to restore intercity passenger rail service to the Gulf Coast, starting with two State Supported daily round trips between New Orleans and Mobile, in the next 12-18 months.

I propose that Amtrak and CSXT negotiating teams, with the Southern Rail Commission's support and guidance, seek to reach an agreement in principle on an operating plan and any necessary infrastructure improvements. Your timely commitment would ensure that the states sponsoring the service have the benefit of CSXT's input, as they prepare to apply for available grant funding to support operation of the service. If this is agreeable to you, Amtrak will promptly designate a negotiating team for this effort.

Thank you in advance for CSXT's cooperation and assistance with this important initiative. I am confident that Amtrak, CSXT, and the Southern Rail Commission can work together to develop this important service along the Gulf Coast Service.

Sincerely,

*Richard*

Richard H. Anderson  
*President and Chief Executive Officer*

cc: The Honorable Ronald Batory, Federal Railroad Administrator  
The Honorable Phil Bryant, Governor of Mississippi  
The Honorable John Bel Edwards, Governor of Louisiana  
The Honorable Kay Ivey, Governor of Alabama

*P.S. This could be a very  
successful service linking  
fast growing coastal communities.*



*Mr. James M. Foote*

*April 10, 2018*

*Page 2*

bcc: Stephen Gardner  
Joe McHugh  
Jay Fox

# **EXHIBIT F**



James M. Foote  
President & Chief  
Executive Officer

Joe M.  
Stephen G.

500 Water St., C900  
Jacksonville, FL 32202

~~April 17, 2018~~

Mr. Richard Anderson  
President & Chief Executive Officer  
National Railroad Passenger Corporation  
1 Massachusetts Avenue, NW.  
Washington, DC 20001

Dear Richard:

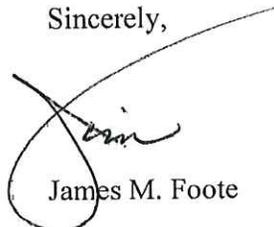
I received your letter requesting joint planning for a new twice-daily State-Supported service between Mobile, AL and New Orleans, LA. As you request, I will assemble a team to discuss and ultimately negotiate with your team, following a process governed by our existing contract.

As you are aware, throughout the 18 month congressionally-mandated FRA study of the Gulf Coast passenger service – which included the only modeling study done on a portion of the New Orleans, LA to Orlando, FL corridor to date – CSX raised several very serious concerns about intercity rail passenger service to that line:

- The need to address issues raised by the operations modeling analysis completed by HDR, Inc. under a commission from the FRA, including OTP requirements of 80%, infrastructure improvements, installation and implementation of PTC, operation and control of draw bridges.
- New or modified passenger service or the restoration of previous service does not degrade freight service.
- The passenger operations will comply with the laws governing intercity passenger service.

CSX has participated fully in the recent FRA study and we provided our analysis and comments on the above issues and other factors concerning the proposed service. We look forward to a thoughtful and comprehensive conversation with your team.

Sincerely,



James M. Foote

# **EXHIBIT G**

# **RTC Study Agreement**

Marked and filed as CONFIDENTIAL  
under the protective order.

# **EXHIBIT H**

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

March 26, 2021

**VIA EMAIL**

Raymond A. Atkins, Ph.D.  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005  
ratkins@sidley.com

William A. Mullins  
Baker & Miller  
2401 Pennsylvania Avenue, NW  
Suite 300  
Washington, DC 20037  
wmullins@bakerandmiller.com

Re: *Application of National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e)*, STB  
Finance Docket No. 36496

Dear Messrs. Atkins and Mullins:

Thank you for your letter of March 19, 2021, on behalf of your respective clients CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway Company (“NS”).

When Amtrak, CSX, and NS entered into the Rail Traffic Controller (“RTC”) Study Agreement and Data Sharing Agreement in January 2020, Amtrak did so with the understanding that the RTC Study would provide “useful input for the reintroduction” of the Gulf Coast Service and that the parties would work “jointly” with the consultant, HDR Engineering, Inc. (“HDR”), on the analysis. The parties also understood that the one-year term of the RTC Study Agreement would provide more than sufficient time for the analysis to be completed.

As you are aware, the RTC Study Agreement expired on January 23, 2021 without the analysis having been completed. Your letter requests Amtrak’s consent to allow CSX and NS to reengage HDR to complete the analysis, asserting that “[t]he study by HDR was nearly complete,” and that “HDR finished all but the final phase of the analysis.” However, neither statement is correct. Based on HDR’s estimates of the remaining work, as well as Amtrak’s experience with the pace of work during the year the study was being conducted, Amtrak estimates that completion would take a minimum of 28 to 36 additional weeks.

Moreover, much of the work done before the RTC Study Agreement expired was severely flawed. Indeed, less than two weeks before the expiration date—on January 12, 2021—HDR notified Amtrak, CSX, and NS that due to a software error, a significant portion of HDR’s work to date was incorrect and would need to be redone, further delaying the completion of the study. With significant work to be done (or redone), and no guaranteed end date, the study could hardly be called “nearly complete.”

Even more critically, however, it became abundantly apparent to Amtrak during the course of the year-long RTC Study Agreement that the HDR analysis was not going to provide the “useful input for the reintroduction” of Gulf Coast Service that Amtrak had envisioned. Clearly, CSX and NS had a very different conception of what it meant to work “jointly” on the study than did Amtrak. As Amtrak detailed in its August 3, 2020 letter to CSX and NS, because CSX and NS designated virtually all of the information they shared with HDR as commercially sensitive and therefore refused to share it with Amtrak, it became impossible for Amtrak to properly verify existing conditions or the reasonableness of any modeling inputs or outputs. At CSX’s and NS’s request, Amtrak provided CSX and NS with a list of the input information Amtrak would need in order to verify the model’s outputs, and Amtrak committed to working with CSX and NS to ensure that the confidentiality of the information would be maintained. Unfortunately, CSX and NS refused to share such information.

In its August 3, 2020 letter, Amtrak further noted that CSX’s and NS’s insistence that all future iterations must be modeled against the “No Build Case” reflecting speculative forecast conditions in the year 2039 would artificially increase the amount of infrastructure supposedly required to mitigate the addition of even a single round trip passenger train. Instead, Amtrak proposed that future iterations be modeled against the Base Case as that would more accurately show the impact of proposed Amtrak service in the 2022 to 2026 timeframe. Once again, CSX and NS refused.

Accordingly, given the parties’ significant disagreement on the proper conduct of the study, the unwillingness of NS and CSX to permit a collaborative, open, and transparent study, and the length of time that would be needed to complete a proper study, Amtrak does not believe it would be useful to reengage HDR to complete what is already a deeply flawed study or to share the results of such a flawed study with the Surface Transportation Board. Amtrak therefore does not provide the consent requested in your March 19, 2021 letter. Amtrak understands that CSX and NS bear the burden under 49 U.S.C. § 24308(e) of demonstrating to the Board that an order to institute service on Amtrak’s proposed terms “would impair unreasonably freight transportation of the rail carrier[s],” and Amtrak looks forward to the opportunity to examine any evidence CSX and NS may choose to present to satisfy their burden under the processes provided by the Board.

Sincerely,

/s/ Jessica Ring Amunson  
Jessica Ring Amunson

# **EXHIBIT I**



January 27, 2021

Andy Daly  
Senior Director – Passenger Operations  
CSX Transportation  
3019 Warrington Street J500  
Jacksonville, FL 32254

***Re: Restoration of Gulf Coast Service***

Dear Andy:

I write with respect to restoration of the Gulf Coast service between New Orleans, LA and Mobile, AL. As you are aware, the RTC Study Agreement entered into on January 24, 2020, by Norfolk Southern Corporation (“NS”), CSX Transportation, Inc. (“CSXT”), and Amtrak expired on January 23, 2021. Due to concerns regarding progress made to date, including concerns regarding data transparency as raised in my letter to you and NS of August 3, 2020, Amtrak does not intend to renew the RTC Study Agreement.

As you are aware, Amtrak previously operated service along the Gulf Coast over CSXT’s facilities until Hurricane Katrina halted service in 2005. Restoring reliable passenger rail service in this region is critical, as Congress recognized in the FAST Act of 2015, when it directed the creation of the Gulf Coast Working Group. It is now fifteen years since Hurricane Katrina caused Amtrak to cease service and five years since the Working Group first convened, and there is still no intercity passenger rail service for the Gulf Coast.

By this letter, we are requesting CSXT’s agreement to Amtrak’s restoration of the Gulf Coast service between New Orleans and Mobile beginning on or about January 1, 2022. Amtrak has proposed that the initial schedule for this twice-daily service be as shown in the attached Exhibit A, and the payments be in accordance with Section 5.1.B of the Agreement Between the National Railroad Passenger Corporation and CSX Transportation, Inc., dated June 1, 1996, as amended (“the Amtrak/CSXT Operating Agreement”), as shown in the attached Exhibit B.

It is Amtrak’s position that the only infrastructure investments required prior to restoration of service are the station-related upgrades previously recommended by the Gulf Coast Working Group. Amtrak commits to working with railroad, regional, state, and local agencies to make those upgrades prior to the start date for service. Amtrak also acknowledges that—after service is restored—some targeted infrastructure improvements could benefit the ongoing service by reducing trip times. Amtrak commits to working with NS and CSXT to secure funding for the additional improvements previously identified by the Gulf Coast Working Group for these purposes.

In order to ensure sufficient time to complete the necessary safety and operational preparations for service launch on or about January 1, 2022, Amtrak requests that CSXT provide its written agreement for operation of the service by no later than March 15, 2021. As noted above, this is a renewed request and we stand ready to discuss any additional planning or preparation CSXT believes is necessary to achieve the start of service on or about January 1, 2022, and thereafter, ensuring service performance consistent with the recently promulgated metrics and minimum standards for intercity passenger rail, as CSXT is doing for several current Amtrak services. In making this request, Amtrak reserves all rights, whether arising under the Amtrak/CSXT Operating Agreement or otherwise, and Amtrak asks for a conversation regarding this request between appropriate CSXT and Amtrak senior leadership during the week of February 8<sup>th</sup>. I will be in touch to schedule this session.

We look forward to working with CSXT to operate this service. Thank you in advance for your cooperation on this very important initiative.

Sincerely,



Jim Blair  
Sr. Director Host Railroads

cc: Dennis Newman - Amtrak  
Ray Lang - Amtrak  
Christine Lanzon - Amtrak  
Jackie Meredith-Batchelor - Amtrak  
Nina Irish - Amtrak  
Kyle Montgomery - Amtrak

# Exhibit A

Gulf Coast Service Train 23			Schedule Skeleton - Gulf Coast Service Westbound AM (Daily) 1-Jan-22										
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
	Dp	Mobile, AL		CSX	0.0							6:30 AM	Mobile, AL
	Dp	Pascagoula, MS		CSX	39.9			37	4	2	7:11 AM	7:13 AM	Pascagoula, MS
	Dp	Biloxi, MS		CSX	60.4			22	6	2	7:41 AM	7:43 AM	Biloxi, MS
	Dp	Gulfport, MS		CSX	72.5			15	1	2	7:59 AM	8:01 AM	Gulfport, MS
	Dp	Bay St. Louis, MS		CSX	87.6			21	3	2	8:25 AM	8:27 AM	Bay St. Louis, MS
	Dp	New Orleans, LA		NS	136.8			48	5		9:20 AM	9:20 AM	XNO - N.O.T. Jct
	Ar	New Orleans, LA		AMT	140.5			7	12		9:39 AM	9:39 AM	XEJ - East City Jct
	Ar	New Orleans, LA		AMT	144.1	T,E,FA,I,W,G		9	5		9:53 AM		New Orleans, LA
				Total Pure Run	159	Total Recovery Minutes	36	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

Gulf Coast Service Train 24			Schedule Skeleton - Gulf Coast Service Eastbound AM (Daily) 1-Jan-22										
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
	Ar	New Orleans, LA		AMT	0.0	T,E,FA,I,W,G,X						7:35 AM	New Orleans, LA
	Dp	Mobile, AL		NS	3.4			9	9		7:53 AM	7:53 AM	XEJ - East City Jct
	Dp	Bay St. Louis, MS		CSX	7.1			7			8:00 AM	8:00 AM	XNO - N.O.T. Jct
	Dp	Gulfport, MS		CSX	56.5			48	4	2	8:52 AM	8:54 AM	Bay St. Louis, MS
	Dp	Biloxi, MS		CSX	71.4			20	5	2	9:19 AM	9:21 AM	Gulfport, MS
	Dp	Pascagoula, MS		CSX	84.1			17		2	9:38 AM	9:40 AM	Biloxi, MS
	Dp	Mobile, AL		CSX	104.1			22	10	2	10:12 AM	10:14 AM	Pascagoula, MS
	Dp	Mobile, AL		CSX	144.1			37	7		10:58 AM		Mobile, AL
				Total Pure Run	160	Total Recovery Minutes	35	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

Gulf Coast Service Train 25			Schedule Skeleton - Gulf Coast Service Westbound PM (Daily) 1-Jan-22										
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
	Dp	Mobile, AL		CSX	0.0							4:30 PM	Mobile, AL
	Dp	Pascagoula, MS		CSX	39.9			37	4	2	5:11 PM	5:13 PM	Pascagoula, MS
	Dp	Biloxi, MS		CSX	60.4			22	6	2	5:41 PM	5:43 PM	Biloxi, MS
	Dp	Gulfport, MS		CSX	72.5			15	1	2	5:59 PM	6:01 PM	Gulfport, MS
	Dp	Bay St. Louis, MS		CSX	87.6			21	3	2	6:25 PM	6:27 PM	Bay St. Louis, MS
	Dp	New Orleans, LA		NS	136.8			48	5		7:20 PM	7:20 PM	XNO - N.O.T. Jct
	Ar	New Orleans, LA		AMT	140.5			7	12		7:39 PM	7:39 PM	XEJ - East City Jct
	Ar	New Orleans, LA		AMT	144.1	T,E,FA,I,W,G		9	5		7:53 PM		New Orleans, LA
				Total Pure Run	159	Total Recovery Minutes	36	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

Gulf Coast Service Train 26			Schedule Skeleton - Gulf Coast Service Eastbound PM (Daily) 1-Jan-22										
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station
	Dp	New Orleans, LA		AMT	0.0	T,E,FA,I,W,G,X						5:31 PM	New Orleans, LA
	Dp	Mobile, AL		NS	3.4			9	9		5:49 PM	5:49 PM	XEJ - East City Jct
	Dp	Bay St. Louis, MS		CSX	7.1			7			5:56 PM	5:56 PM	XNO - N.O.T. Jct
	Dp	Gulfport, MS		CSX	56.5			48	9	2	6:53 PM	6:55 PM	Bay St. Louis, MS
	Dp	Biloxi, MS		CSX	71.4			20	5	2	7:20 PM	7:22 PM	Gulfport, MS
	Dp	Pascagoula, MS		CSX	84.1			17		2	7:39 PM	7:41 PM	Biloxi, MS
	Dp	Mobile, AL		CSX	104.1			22	8	2	8:11 PM	8:13 PM	Pascagoula, MS
	Dp	Mobile, AL		CSX	144.1			37	4		8:54 PM		Mobile, AL
				Total Pure Run	160	Total Recovery Minutes	35	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

# **EXHIBIT J**



January 27, 2021

John V. Edwards  
General Director Passenger  
Norfolk Southern Corporation  
Strategic Planning  
Three Commercial Place  
Norfolk, VA 23510

***Re: Restoration of Gulf Coast Service***

Dear John:

I write with respect to restoration of the Gulf Coast service between New Orleans, LA and Mobile, AL. As you are aware, the RTC Study Agreement entered into on January 24, 2020, by Norfolk Southern Corporation (“NS”), CSX Transportation, Inc. (“CSXT”), and Amtrak expired on January 23, 2021. Due to concerns regarding progress made to date, including concerns regarding data transparency as raised in my letter to you and CSXT of August 3, 2020, Amtrak does not intend to renew the RTC Study Agreement.

As you are aware, Amtrak previously operated service along the Gulf Coast over NS’s facilities until Hurricane Katrina halted service in 2005. Restoring reliable passenger rail service in this region is critical, as Congress recognized in the FAST Act of 2015, when it directed the creation of the Gulf Coast Working Group. It is now fifteen years since Hurricane Katrina caused Amtrak to cease service and five years since the Working Group first convened, and there is still no intercity passenger rail service for the Gulf Coast.

By this letter, we are requesting NS’s agreement to Amtrak’s restoration of the Gulf Coast service between New Orleans and Mobile beginning on or about January 1, 2022. Amtrak has proposed that the initial schedule for this twice-daily service be as shown in the attached Exhibit A, and the payments be in accordance with Section 5.1(b) of the Agreement Between the National Railroad Passenger Corporation and Norfolk Southern Corporation, dated February 1, 2006, as amended (“the Amtrak/NS Operating Agreement”), as shown in the attached Exhibit B.

It is Amtrak’s position that the only infrastructure investments required prior to restoration of service are the station-related upgrades previously recommended by the Gulf Coast Working Group. Amtrak commits to working with railroad, regional, state, and local agencies to make those upgrades prior to the start date for service. Amtrak also acknowledges that—after service is restored—some targeted infrastructure improvements could benefit the ongoing service by reducing trip times. Amtrak commits to working with NS and CSXT to secure funding for the additional improvements previously identified by the Gulf Coast Working Group for these purposes.

In order to ensure sufficient time to complete the necessary safety and operational preparations for service launch on or about January 1, 2022, Amtrak requests that NS provide its written agreement for operation of the service by no later than March 15, 2021. As noted above, this is a renewed request and we stand ready to discuss any additional planning or preparation NS believes is necessary to achieve the start of service on or about January 1, 2022, and thereafter, ensuring service performance consistent with the recently promulgated metrics and minimum standards for intercity passenger rail. In making this request, Amtrak reserves all rights, whether arising under the Amtrak/NS Operating Agreement or otherwise, and Amtrak asks for a conversation regarding this request between appropriate NS and Amtrak senior leadership during the week of February 8<sup>th</sup>. I will be in touch to schedule this session.

We look forward to working with NS to operate this service. Thank you in advance for your cooperation on this very important initiative.

Sincerely,



Jim Blair  
Sr. Director Host Railroads

cc: Dennis Newman - Amtrak  
Ray Lang - Amtrak  
Christine Lanzon - Amtrak  
Jackie Meredith-Batchelor - Amtrak  
Nina Irish - Amtrak  
Kyle Montgomery - Amtrak

# Exhibit A

Gulf Coast Service Train 23			Schedule Skeleton - Gulf Coast Service Westbound AM (Daily) 1-Jan-22												
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station		
	Dp	Mobile, AL		CSX	0.0							6:30 AM	Mobile, AL		
	Dp	Pascagoula, MS		CSX	39.9			37	4	2	7:11 AM	7:13 AM	Pascagoula, MS		
	Dp	Biloxi, MS		CSX	60.4			22	6	2	7:41 AM	7:43 AM	Biloxi, MS		
	Dp	Gulfport, MS		CSX	72.5			15	1	2	7:59 AM	8:01 AM	Gulfport, MS		
	Dp	Bay St. Louis, MS		CSX	87.6			21	3	2	8:25 AM	8:27 AM	Bay St. Louis, MS		
	Dp	New Orleans, LA		NS	136.8			48	5		9:20 AM	9:20 AM	XNO - N.O.T. Jct		
	Ar	New Orleans, LA		AMT	140.5			7	12		9:39 AM	9:39 AM	XEJ - East City Jct		
	Ar	New Orleans, LA		AMT	144.1	T,E,FA,I,W,G		9	5		9:53 AM		New Orleans, LA		
				Total Pure Run	159			Total Recovery Minutes	36	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

Gulf Coast Service Train 24			Schedule Skeleton - Gulf Coast Service Eastbound AM (Daily) 1-Jan-22												
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station		
	Ar	New Orleans, LA		AMT	0.0	T,E,FA,I,W,G,X						7:35 AM	New Orleans, LA		
	Dp	Mobile, AL		NS	3.4			9	9		7:53 AM	7:53 AM	XEJ - East City Jct		
	Dp	Bay St. Louis, MS		CSX	7.1			7			8:00 AM	8:00 AM	XNO - N.O.T. Jct		
	Dp	Gulfport, MS		CSX	56.5			48	4	2	8:52 AM	8:54 AM	Bay St. Louis, MS		
	Dp	Biloxi, MS		CSX	71.4			20	5	2	9:19 AM	9:21 AM	Gulfport, MS		
	Dp	Pascagoula, MS		CSX	84.1			17		2	9:38 AM	9:40 AM	Biloxi, MS		
	Dp	Mobile, AL		CSX	104.1			22	10	2	10:12 AM	10:14 AM	Pascagoula, MS		
	Dp	Mobile, AL		CSX	144.1			37	7		10:58 AM		Mobile, AL		
				Total Pure Run	160			Total Recovery Minutes	35	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

Gulf Coast Service Train 25			Schedule Skeleton - Gulf Coast Service Westbound PM (Daily) 1-Jan-22												
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station		
	Dp	Mobile, AL		CSX	0.0							4:30 PM	Mobile, AL		
	Dp	Pascagoula, MS		CSX	39.9			37	4	2	5:11 PM	5:13 PM	Pascagoula, MS		
	Dp	Biloxi, MS		CSX	60.4			22	6	2	5:41 PM	5:43 PM	Biloxi, MS		
	Dp	Gulfport, MS		CSX	72.5			15	1	2	5:59 PM	6:01 PM	Gulfport, MS		
	Dp	Bay St. Louis, MS		CSX	87.6			21	3	2	6:25 PM	6:27 PM	Bay St. Louis, MS		
	Dp	New Orleans, LA		NS	136.8			48	5		7:20 PM	7:20 PM	XNO - N.O.T. Jct		
	Ar	New Orleans, LA		AMT	140.5			7	12		7:39 PM	7:39 PM	XEJ - East City Jct		
	Ar	New Orleans, LA		AMT	144.1	T,E,FA,I,W,G		9	5		7:53 PM		New Orleans, LA		
				Total Pure Run	159			Total Recovery Minutes	36	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

Gulf Coast Service Train 26			Schedule Skeleton - Gulf Coast Service Eastbound PM (Daily) 1-Jan-22												
	Days of Operation	Effective 1/1/22 Daily	Remarks and Changes	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station		
	Dp	New Orleans, LA		AMT	0.0	T,E,FA,I,W,G,X						5:31 PM	New Orleans, LA		
	Dp	Mobile, AL		NS	3.4			9	9		5:49 PM	5:49 PM	XEJ - East City Jct		
	Dp	Bay St. Louis, MS		CSX	7.1			7			5:56 PM	5:56 PM	XNO - N.O.T. Jct		
	Dp	Gulfport, MS		CSX	56.5			48	9	2	6:53 PM	6:55 PM	Bay St. Louis, MS		
	Dp	Biloxi, MS		CSX	71.4			20	5	2	7:20 PM	7:22 PM	Gulfport, MS		
	Dp	Pascagoula, MS		CSX	84.1			17		2	7:39 PM	7:41 PM	Biloxi, MS		
	Dp	Mobile, AL		CSX	104.1			22	8	2	8:11 PM	8:13 PM	Pascagoula, MS		
	Dp	Mobile, AL		CSX	144.1			37	4		8:54 PM		Mobile, AL		
				Total Pure Run	160			Total Recovery Minutes	35	Total Misc. Adjust.	0	Total Dwell	8	Total Schedule Time	203

# **EXHIBIT K**

**From:** Schwartz, Peter (FRA) <peter.schwartz@dot.gov>

**Sent:** Wednesday, April 01, 2020 4:15 PM **To:** Montgomery, Kyle <Kyle.Montgomery@amtrak.com>; Cogswell, Richard (FRA) <richard.cogswell@dot.gov>

**Cc:** Dixon, Marc (FRA) <marc.dixon@dot.gov>; Irish, Nina L <Nina.Irish@amtrak.com>; Gatti, Jessie (FRA) <Jessie.Gatti@dot.gov>

**Subject:** RE: Items In Non-Confidential Summaries

Hi Kyle,

Thanks for your email, and sorry I had a conflicting meeting that made me unable to be on the call today. Marc had filled me in a bit about what had transpired, and your further summary is very helpful.

Not to get too far back to basics, but stated in the most simple way, railroad operations simulation represents a means of estimating the operational performance of a given territory based two primary inputs – 1) the traffic (i.e. the characteristics of the trains that operate over the territory), and the infrastructure (i.e. the characteristics of the track, signal systems, operating rules, etc. that govern how the traffic operates within the territory). If one is unable to gain a fairly detailed understanding of either one of these inputs, it is nearly impossible to come to an independent conclusion regarding the reasonableness of the outputs, or to understand why the specific outputs are resulting from the simulation. Put another way, without a thorough understanding of all the operationally relevant inputs, the simulation becomes a completely opaque black box, and the outputs become meaningless.

Second, in a situation in which the simulation is being performed to determine, assuming a target level of operating performance, what changes to the infrastructure are necessary to support a proposed change to the traffic (in this case, figuring out what infrastructure changes are needed to mitigate the operational effects on rail freight operating performance that would result from the introduction of a new passenger service), it's pretty hard to come up with hypotheses for potential infrastructure changes if you don't know what you are working from to begin with – i.e. the characteristics of the base case infrastructure. Doing so is essentially an exercise in flying blind. There are numerous types of infrastructure changes that may be worth investigating, from adding track (a costly option that many are too quick to jump to), to alleviating the causes of permanent speed restrictions, to signaling changes, etc. If you don't know what is out there to start with, it is impossible to determine which changes are worth investigating.

What FRA looks to see in terms of the inputs for operations simulation that it funds or incorporates into environmental documents is a set of data that captures all of the operational relevant information (i.e. the information that influences the simulation outputs) for the territory being simulated – both traffic and infrastructure. We are not interested in non-operational, commercially-oriented details – i.e. what the cars that make up the trains are actually loaded with, the origin or destination of cars, the original origins and final destinations of trains where such points lie outside of the simulated territory, etc. As for the commercial sensitivity of the operationally relevant information, or the concern that such data could be used to develop a “competing” simulation model, the fact is that with enough time and money, anyone could gather most, if not all, of this information from public sources, through observation of operations and infrastructure from publicly-accessible vantage points, or through the use of publically-available high-resolution aerial photography. This stuff is all in plain sight, and it would be pretty easy (albeit costly) to independently develop an simulation model of nearly any railroad operation in the country. I would prefer that we not have to raise this specific point in detail with the larger group, but the railroads are all aware of it, just as they are aware of why feel it necessary that the simulation inputs be shared with all of the parties to this effort.

Hope this helps, and let me know if any clarification would be useful.

All the best,

Peter

# **EXHIBIT L**



August 3, 2020

Mr. John V. Edwards  
General Director Passenger Policy  
Norfolk Southern Corporation  
Strategic Planning  
Three Commercial Place  
Norfolk, VA 23510

Mr. Andy Daly  
Senior Director – Passenger Operations  
CSX Transportation  
3019 Warrington Street J500  
Jacksonville, FL 32254

***Re: Gulf Coast RTC Study Data Sharing***

Dear John and Andy:

In early 2020, Amtrak, Norfolk Southern (NS), and CSX reached an agreement to conduct a joint-evaluation of the proposed intercity passenger service between New Orleans, Louisiana and Mobile, Alabama, using Rail Traffic Controller (RTC) software (the “Gulf Coast Study”). A previous CSX-Amtrak term sheet was revised into a set of three agreements and executed in January 2020. These agreements, the RTC Study Agreement, the Data Sharing Agreement, and the Statement of Work, include commitments from all parties to share various items, among them communications, inputs, and model outputs transmitted to the 3<sup>rd</sup> party consultant (HDR) that Amtrak would hire to conduct the Gulf Coast Study.

We received on June 19 the Non-Confidential Summaries prepared by HDR and approved by NS and CSX for their respective territories. They consist of three documents, between four and seven pages in total. Very little data was provided with these summaries: even track charts (“inputs”) or position-speed diagrams (“stringlines”) that were provided in the prior Gulf Coast analysis, were excluded.

It appears to Amtrak that significant amounts of territory detail, HDR communications, inputs, and model outputs have been omitted or have been determined to be commercially sensitive by NS and CSX. We believe that the lack of data sharing is undermining the parties’ collective commitment to a collaborative, open, and transparent analysis, and is not supported by the commitments made by the parties in the three study agreements.

The lack of detail in the provided information makes it virtually impossible for Amtrak to properly develop Future Iterations to model. In particular, the lack of base case stringlines hampers the ability of Amtrak to develop schedules that minimize the impact to NS and CSX operations.

The limited detail provided also significantly compromises the ability of Amtrak and the states of Alabama, Louisiana, and Mississippi to secure future federal funding for improvements on the NS and CSX right-of-way. Moreover, a simulation result without assumptions that are clearly outlined cannot be used to support the environmental review of any proposed improvements under the National Environmental Policy Act (NEPA) or used as justification for funding of any infrastructure projects in competitive grant programs, including improvements on NS or CSX.

Amtrak believes the three agreements governing the Gulf Coast Study provide that NS and CSX should be sharing much more data with Amtrak. Notably, the RTC Study Agreement commits the NS, CSX and Amtrak to:

1. “Jointly working with the Consultant to calibrate the RTC model, so as to develop:
  - i. A "Base Case"...
  - ii. A "No Build Case"...
  - iii. One or more "Future Iterations" for the Proposed SRC Amtrak Service...” (p.2)
2. “Jointly working with the Consultant to develop work elements and deliverables for the Base Case, No Build Case, and each Future Iteration” (p.2)
3. “Jointly reviewing the RTC model output” (p.3)

In addition, the RTC Study Agreement commits the parties to:

4. “Sharing with the Federal Railroad Administration ("FRA") and each other nonconfidential summaries of: all (i) data, (ii) inputs (including passenger and freight train volumes and schedules), (iii) assumptions, (iv) parameters, (v) files and (vi) plans, in each case as those items would be used in the Base Case, No Build Case, or any Future Iteration.” (p.4)
5. “...freight train volumes and schedules...to be provided substantially in the format of the example table attached hereto as Exhibit A.” (p.4)
6. “...sharing with the FRA, and each other, any communications with the Consultant regarding the RTC Services.” (p.4)
7. “Sharing with FRA and Amtrak the summaries of assumptions with regard to traffic growth over the twenty (20) year period of the No-Build Case.” (p.4)

The Data Sharing Agreement reiterates the commitment in the RTC Modeling Agreement to provide non-confidential summaries of communications with the consultant and provides for the sharing of stringline diagrams of the simulation territory to Amtrak.

The Data Sharing Agreement states that,

1. “Amtrak, CSXT, and NSR are willing to provide to the FRA and each other non-confidential summaries of data, inputs, assumptions, parameters, files, plans, or other information/material that each provides to the Consultant.” (p.2)
2. “Amtrak, CSXT, and NSR are willing to provide to the FRA and each other non-confidential summaries of communications with the Consultant regarding the RTC Services.” (p.2)
3. “NSR and CSXT are willing to provide to Amtrak and FRA summaries of NSR and CSXT assumptions with regard to traffic growth over the Base Case levels over the twenty (20) year period anticipated by the modeled No Build Case and the Future Iterations, which assumptions are to be delivered to Amtrak and FRA in the manner depicted in Exhibit A to the RTC Study Agreement.” (p.2)

Finally, the Statement of Work, which was reviewed and approved by the parties, and is an attachment to the RTC Study Agreement, specifically provides that, “Stringline diagrams of the operation simulation territory will be furnished to CSXT, NSR, and Amtrak electronically in PowerPoint format.” (p.3)

This information has not been provided to Amtrak in accordance with the terms of the Agreement.

On July 29<sup>th</sup>, during the Weekly all-party Gulf Coast RTC Study Teleconference call, NS and CSX requested an enumerated list of the data that Amtrak requires for purposes of advancing the analysis, to develop Future Iterations and to validate study results. Amtrak is requesting the following information be shared as soon as possible:

**Traffic Inputs:**

1. *Number of trains operating over the simulated territory, broken down by general train type.*

Please confirm that the mid-subdivision break points used on the traffic volume summary table provided by HDR on June 19<sup>th</sup> accurately represent the actual points where trains enter or exist the simulated territory. This is a requirement in the format specified as Exhibit A to the RTC Study Agreement.

2. *Average operating characteristics of trains by train type.*

This information was included in the earlier 2017 Gulf Coast Study Report but does not appear in the June 19<sup>th</sup> summary. Please provide relevant characteristics for each train type (bulk, intermodal, automotive, merchandise) including, at a minimum, train length, train tonnage, number of locomotives, and horsepower per ton. Number of trains and operating characteristics are important information for Amtrak and FRA to validate that the current Gulf Coast Study portrays realistic operating conditions.

3. *Significant time-specific requirements for freight operations.*

Please provide information on any time-specific operating requirements for NS and CSX freight operations, such as departure/arrival windows for guaranteed trains, required set-off/pick-up windows at midpoint locations, etc. This information is not contained in the June 19<sup>th</sup> summaries, and it is uncertain whether this omission is due to the absence of such requirements for NS and CSX trains. Amtrak will use this information to inform the schedules they propose for the Future Iterations phase of the current Gulf Coast Study.

**Infrastructure Inputs:**

1. *Basic track configuration drawn at a linear scale.*

The infrastructure data provided in the prior summaries consists of tallies of assets by characteristics. We ask that the infrastructure information to be submitted in the form of track charts that shows the location, characteristics, and configuration of infrastructure assets within the simulated territory. The detail we are requesting for the track charts is described further in items 2-7 below. If the track charts do not include this information, please provide it in the form of a supplemental table. This data will be used by Amtrak and FRA to identify possible infrastructure improvements to model as Future Iterations.

2. *Indication of which tracks are equipped with track circuits (which provide track occupancy information to the signal system) and which are not.*
3. *Size and type (hand-thrown, power operated, electric lock, etc.) of all turnouts.*
4. *Signal Locations, Aspects, and Design Speeds.*
5. *Grade crossing locations.*
6. *Method of operation and PTC status.*
7. *Speed limits and permanent speed restrictions.*

When providing the permanent speed restrictions, please include the reason for each restriction (either on the track charts or in an accompanying table). The reason for the restriction, whether it be curvature, structure condition, butt joints on movable bridges, or local ordinance, allows Amtrak to propose infrastructure improvements to the right-of-way during the Future Iteration phase of the Gulf Coast Study.

8. *Locations of required freight growth infrastructure.*

Please provide detail on the planned or conceptional infrastructure projects NS and CSX plan to handle the freight growth included in the No Build Case. This would include any planned upgrades, improvements, or automations that are planned to handle freight growth volumes and maintain freight metrics at levels similar to those established in the Base Case.

## **Simulation Outputs:**

1. *Train Performance Calculator Outputs.*

Amtrak requests that Train Performance Calculator (TPC) outputs for passenger trains, at a minimum in both graphical and tabular format, be provided for schedule planning. This data is also essential to validate passenger train performance.

2. *Simulation Stringlines.*

Please provide, or authorize HDR to provide, stringline diagrams to Amtrak that show the Base Case traffic levels on NS and CSX. Within the stringline diagrams, we request that individual freight trains be identified by the same neutral train types used for the Traffic Inputs, and that the chart delineates train stops between those that are scheduled and those that are the result of train conflicts (and thus represent delay). This will be used by Amtrak to assist in plotting a passenger train schedule that minimizes freight train conflict and identify opportunities and chokepoints where additional infrastructure improvements may be beneficial. These data are also critical in corroborating the impacts of adding Amtrak service to the corridor.

3. *Tabular results of operational performance metrics.*

For both the Base Case, No Build Case, and any Future Iterations, please provide aggregate ideal run time, aggregate simulated run time, average simulated speed, aggregate simulated delay-minutes, simulated train counts, and aggregate simulated train-miles, broken down both by each train type and by any major geographic divisions within the simulated territory. These metrics will also be used by Amtrak to validate the RTC model is an accurate depiction of reality and can be used to support of future state and Amtrak applications for federal discretionary grant programs.

## **Simulation Parameters:**

CSX and NS have recently asserted that all Future Iterations in the Gulf Coast Study, even those that propose to introduce Amtrak service in the near-term, must be modeled against the No Build Case (reflecting forecast conditions in the year 2039). Amtrak contends that the Base Case (for the year 2019), with appropriate near-term growth factors incorporated, would more accurately show the impact of proposed Amtrak service in the 2022-2026 timeframe. Amtrak believes the three agreements governing the Gulf Coast Study permit Amtrak to model service scenarios for near-term service introduction, and in fact, the data contained in the yet-to-be-delivered Exhibit A to the RTC Study Agreement reflects the growth factors essential to such a near-term analysis.

By insisting that the No-Build Case be used for modeling, NS and CSX are potentially increasing the amount of infrastructure that would be required to mitigate the addition of even a single round trip passenger train. Moreover, if the forecasted freight traffic growth never materializes, the modeling would recommend the construction of infrastructure that

Mr. Andy Daly and Mr. John Edwards  
August 3, 2020

might never be used. It is unreasonable to insist that Future Iterations be limited to a 2039 No Build case, and such a requirement is inconsistent with the language of the agreements.

By releasing the information listed above, and supporting Future Iterations based on near-term traffic volumes and conditions, NS and CSX would permit Amtrak to identify passenger train “slots” that could minimize the impact on NS and CSX freight operations and to develop appropriate mitigation strategies where conflicts are unavoidable. Further, the data would allow Amtrak to assess whether the simulation model is producing plausible results and reasonably reflects the characteristics of the real-world operations over the simulation territory. We believe this essential information can be provided in a non-commercially sensitive fashion and are willing to work with NS or CSX to ensure confidentiality is maintained.

FRA has indicated they have similar data needs to Amtrak’s request, as identified above. Amtrak would be willing, to provide the information listed above to FRA, or NS and CSX can provide the data directly.

We ask that NS and CSX provide (or authorize HDR to provide) the information detailed above within two weeks to minimize any further delay to this important project.

If you wish to discuss any aspect of this request, do not hesitate to contact me.

Respectfully,



Jim Blair  
Sr. Director Host Railroads

cc:

Nina Irish	-	Amtrak
Eamon Walsh	-	Amtrak
Kyle Montgomery	-	Amtrak
Todd Stennis	-	Amtrak
Marco Turra	-	CSX
Stephen Flippin	-	CSX
Cristopher Cruz	-	CSX
Garrick Francis	-	CSX
Hannah Rosse	-	CSX
Michael Williams	-	NS
Holly Sinkkanen	-	NS
Frank Voyack	-	NS
Peter Schwartz	-	FRA
Marc Dixon	-	FRA

# **EXHIBIT M**



August 4, 2020

Jim Blair  
Senior Director Host Railroads  
National Railroad Passenger Corporation  
30<sup>th</sup> Street Station  
Philadelphia, PA 19104

*RE: Response to Amtrak's Letter on Gulf Coast RTC Study*

Dear Jim

This is in response to your letter that we received yesterday by electronic transmission at 6:12pm, the evening before today's 11am discussion with Senator Wicker. Your letter was in response to our non-confidential submission of June 19.

From the outset, CSX reiterates its commitment to fulfilling the terms of the agreements entered into by the parties and has been working diligently to provide HDR all of the information within its responsibility to provide. CSX desires to see this study completed as soon as possible and will continue assisting Amtrak and the other parties in working towards that common goal. To that end, we need to acknowledge that significant progress has been made: the Base Case was completed in June, the No Build Case will be complete any day and HDR advises the Future Iterations is on pace to be completed December 1 as long as HDR receives the required remaining inputs in timely fashion.

On the call with Senator Wicker, and in your letter, it became clear that there are three primary areas where we respectfully have a difference in opinion and which we address immediately below. We also attach an appendix that provides responses to the four categories and fourteen subparts related to the information requests you provided. In some cases, we believe we have already provided the requested information and we may need further clarification to clear-up confusion. In other instances, we provide answers that we hope serve to assist you. In certain cases, however, we feel Amtrak is asking for irrelevant or confidential data that goes beyond what has been contemplated by the parties as set forth in the agreements.

**1. Amtrak States it Requires CSX Data to Provide Its Inputs to HDR**

Amtrak expressed it requires data for the purpose of developing the Future Iterations phase of the study and validating study results. After close review by our modeling team, CSX respectfully disagrees that the requests for CSX data are required for Amtrak to complete its provision of necessary inputs to HDR. According to HDR, the necessary data items remaining are Amtrak's proposed schedules, along with some related data and information about Amtrak's plans for equipment layover purposes in Mobile. Being without such CSX data is not preventing Amtrak from providing those inputs.

In addition, CSX has proactively reached out to Amtrak and offered to assist with Amtrak's formulation of schedules. We have offered a work session between Amtrak and CSX employees to examine potential time windows for the Amtrak proposed train schedules. Further details are provided below in the Appendix related to Traffic Inputs. As for Amtrak's intent to validate data, it's not clear to CSX what Amtrak seeks to validate – ultimately it is the function of HDR as the agreed upon consultant to perform validation of the parties' data.

**2. Amtrak States the Base Case Should be Altered to Provide 2-5 Year Outlook**

Amtrak expressed their desire to use the Base Case (year 2019) with appropriate near-term growth factors as the basis upon which to model a near term (ie., a 2-5 year outlook) commencement of the new service. Amtrak stated it is

concerned that the reliance on the No-Build case with its twenty-year projection could potentially increase the amount of infrastructure that would be required.

The parties agreed to rely upon HDR to develop two cases, which are defined in the RTC Study Agreement as the Base Case (current operations) and the No-Build Case (current operations projected out twenty years). One or more Future Iterations of the proposed Amtrak service would then be applied. The parties' decision to define the No-Build Case as 20 years was non-controversial because such a length of time is standard for modeling of this form. The rail parties' understood that rail assets are long lived and all rail infrastructure investment requires a meticulous, long-term view to justify the investment. Amtrak is requesting a new Case to be developed that would reflect current operations projected out 2-5 years. The agreements did not contemplate it, and reliance upon a Case with such a short-term view would be misleading as it wouldn't provide an accurate capacity projection for the line. It may cause some to mistakenly believe that an inadequate cost estimate is sufficient. Finally, our modelling team believes the inputs necessary for a 2-5 year Case would take an additional 6-8 weeks to provide which would further delay our progress.

**3. Amtrak states that all of the information it is seeking was contemplated in the agreements.**

CSX respectfully disagrees that the CSX data Amtrak is now requesting was covered under the agreements. The Data Sharing Agreement contemplates the designation of confidential information as CSX Data, NS Data, Amtrak Data and the RTC data files, along with other materials the parties designate as confidential. The agreement explicitly identifies stringline diagrams as confidential. The parties went out of their way to protect themselves from having to share their respective data with another party throughout this process. The parties agreed to designate HDR as the repository of this confidential information so that HDR could ultimately process the data into a new form that was appropriate for sharing as a study.

Most of the requests Amtrak is making now appear to be for the purpose of performing its own separate models apart from the modelling HDR has been retained to do. We respectfully request Amtrak to allow HDR to expeditiously bring the study to conclusion as contemplated, at which point Amtrak and all parties can ask questions and further probe the completed work product.

In closing, CSX remains committed to working with the other parties on the Gulf Coast study to timely deliver a neutral report using the RTC modeling tool to recommend necessary infrastructure to support the desired new Amtrak trains to the Gulf Coast.

Sincerely,



Andy Daly  
Senior Director Passenger Operations

cc:

Nina Irish	-	Amtrak
Eamon Walsh	-	Amtrak
Kyle Montgomery	-	Amtrak
Todd Stennis	-	Amtrak
Marco Turra	-	CSX
Stephen Flippin	-	CSX
Christopher Cruz	-	CSX
Garrick Francis	-	CSX
Hannah Rosse	-	CSX
Michael Williams	-	NS
Holly Sinkkanen	-	NS
Frank Voyack	-	NS
John Edwards	-	NS
Peter Schwartz	-	FRA
Marc Dixon	-	FRA

## Appendix

### **Traffic Inputs:**

- 1) **Confirmation that the mid-subdivision break points used on the traffic volume summary table provided by HDR on June 19th accurately represent the actual points where trains enter or exit the simulated territory.**

CSX has reviewed the information delivered by HDR on June 19, and we can confirm that the mid-subdivision breakpoints accurately represent the actual points where trains enter/exit the simulated territory.

- 2) **Average operating characteristics of trains by train type.**

This data is confidential, proprietary and commercially sensitive. We believe the non-confidential summaries provided by HDR on June 19 provide Amtrak with sufficient information and any further validation that is necessary should be performed by HDR.

- 3) **Significant time specific requirements for freight trains.**

CSX appreciates Amtrak's desire to propose a schedule for the new service that is mindful of any time-specific requirements for freight operations. However, this data is confidential, proprietary and commercially sensitive. On July 21, in an attempt to be cooperative, Hannah Rosse of CSX offered to Amtrak's Kyle Montgomery to collaborate in identifying the least disruptive time slots for such new trains, but Amtrak declined this offer. Finally, on other studies for new Amtrak service (for example Norfolk, VA and Pittsfield, MA), Amtrak has proposed schedules without first having access to such information.

### **Infrastructure Inputs:**

- 1) **Basic track configuration drawn at a linear scale.**

CSX respectfully does not see the relevance or need for such data. The assertion that it is needed to begin identifying infrastructure improvements appears to be for the purpose of Amtrak performing its own modeling to be used for premature conclusions as to the ultimate outcome of HDR's work. The only party that needs such information is HDR, and CSX has provided this information to HDR.

- 2) **Indication of which tracks are equipped with track circuits (which provide track occupancy information to the signal system) and which are not.**

CSX respectfully does not see the relevance or need for such data. The only party which needs such information is HDR and CSX has provided it.

- 3) **Size and type (hand-thrown, power operated, electric lock, etc.) of all turnouts.**

This information was previously provided to Amtrak in HDR's June 19 non-confidential summaries.

- 4) **Signal locations, aspects, and design speeds.**

CSX respectfully does not see the relevance or need for such data. The only party which needs such information is HDR and CSX has provided it.

## 5) Grade crossing locations.

CSX respectfully does not see the relevance or need for such data. The only party which needs such information is HDR and CSX has provided it.

## 6) Method of Operation and PTC status.

This information was previously provided to Amtrak in the June 19 transmission of non-confidential summaries.

## 7) Speed limits and permanent speed restrictions.

This information was previously provided to Amtrak in the June 19 transmission of non-confidential summaries.

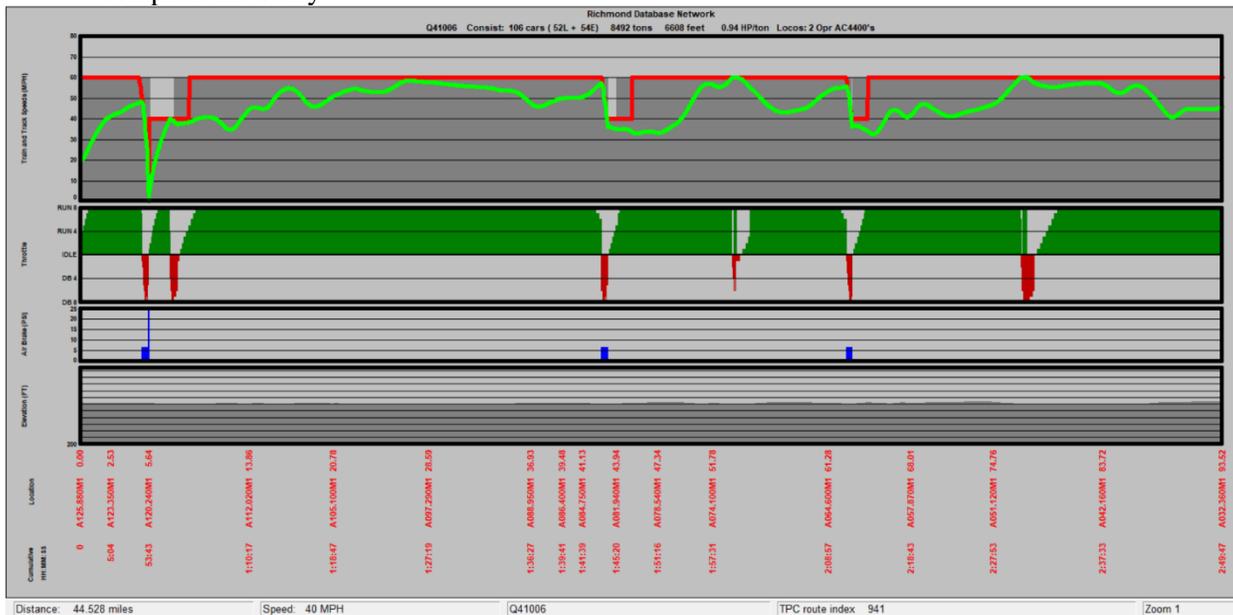
## 8) Location of required freight growth infrastructure.

This data is highly confidential, proprietary and commercially sensitive. We also believe it is unnecessary for Amtrak to provide its remaining inputs to HDR.

### Simulation Outputs:

#### 1) Train performance calculator outputs.

Below is an example of a chart provided in another recent modeling exercise. It shows train speed over the simulated route, the throttle position, air braking, elevation, and some time/mile marker info. Per the HDR Scope of Work, HDR is authorized by CSX to share this sort of chart with the data presented to Amtrak. However, we believe that this data is not required for Amtrak to deliver the remaining inputs to HDR needed to continue and complete the study.



#### 2) Simulation stringlines

Section 7.2 of the Data Sharing Agreement makes clear that stringlines are confidential information and CSX is not required to provide it. Such information is not needed for Amtrak to provide HDR with the remaining inputs necessary for the running of the RTC model. This information is also confidential, proprietary and commercially sensitive. Also, while CSX appreciates Amtrak's desire to propose a new service that "minimizes freight train conflict," as stated above, Amtrak declined CSX's offer to assist and collaborate in developing proposed schedules for the new trains.

**3) Tabular results of operational performance metrics.**

As appropriate, this information would be provided to Amtrak by HDR, and it is not appropriate for Amtrak to request this kind of output data from CSX for the model that HDR is retained to build and operate.

**Simulation Parameters:**

We addressed Amtrak's request for inputs related to a new 2-5 year Case at the beginning of this letter.

# **EXHIBIT N**

**Archived:** Tuesday, April 20, 2021 2:32:56 PM

**From:** [Schwartz, Peter \(FRA\)](#)

**Sent:** Wed, 2 Sep 2020 15:36:18

**To:** [Blair, Jim Montgomery, Kyle](#)

**Cc:** [Dixon, Marc \(FRA\)](#) [Gatti, Jessie \(FRA\)](#) [Cogswell, Richard \(FRA\)](#)

**Subject:** Gulf Coast and Future No-Build and Future Iteration Output Metrics

**Importance:** Normal

**Sensitivity:** None

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Hi Jim and Kyle,

Following up from the call today and our prep call yesterday, there now seems to be newly-introduced ambiguity around what output metrics will be shared with Amtrak (and, by extension, FRA) from the simulation of the Future No-Build and Future Iterations cases. From today's call, it now sounds like there is planned to be some kind of set of triangulated conversations - between 1) Amtrak, 2) HDR, and 3) CSX and NS - to discuss what metrics will be shared. Based on our conversation yesterday, though, I understood that Amtrak would be seeking clarity on this issue during today's call by asking the railroad's directly whether they would consent with the distribution of these output metrics to all the parties. Instead, things seemed to have been set up for additional (and, based on prior experience, likely fruitless) conversations, and resulting additional delay.

To reiterate what FRA has expressed previously, we believe it is increasingly (and, at this point, largely definitively) clear that the level of opacity that has come to define the Gulf Coast Study has rendered it incapable of fulfilling its intended purpose. As such, it is now in the interest of the ultimate goal of this endeavor (i.e. the restoration of intercity passenger rail service along the Gulf Coast) to determine and document exactly how opaque this process has become, and to do so as quickly as possible. There seems to be some certainty concerning most of the issues at hand (input metrics, stringlines, Base Case outputs, and the analysis years for Future Iteration scenarios), with the one remaining issue being the output metrics for the Future No-Build and Future Iterations cases. However, if we are now entering another round of back-and-forth between Amtrak, HDR, and CSX and NS, it seems the resolution of this remaining issue may be needlessly delayed, with the entire study just getting strung along even further than it already has been. Please let us know when you anticipate getting some clarity around this remaining issue, and when FRA can anticipate receiving from Amtrak the "final" set of information concerning the now-completed Base Case and Future No-Build simulations.

As for the proposed use of "heat maps" as a substitute for stringlines which was discussed during today's call, we would like to reiterate that FRA does not believe that the heat maps have any analytically value whatsoever. As such, we do not see what value there is to continuing to have HDR work on them - in fact, drawing this out seems to run the risk of incorrectly signaling that that this type of output might, in fact, have the potential to be useful and an acceptable substitute for stringlines.

Sincerely,

Peter Schwartz