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EXPEDITED CONSIDERATION REQUESTED

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

AMTRAK'S RENEWED REQUEST FOR AN INTERIM ORDER

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**AMTRAK’S RENEWED
REQUEST FOR AN INTERIM ORDER**

The National Passenger Railroad Corporation (“Amtrak”) respectfully renews its request for an interim order requiring CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway (“NS”) to provide Amtrak with access to their rail lines between New Orleans and Mobile in order to perform all necessary preparations for the restoration of the *Gulf Coast* service.

Amtrak initially requested such an interim order in its original March 16, 2021 application to the Surface Transportation Board (“the Board”). In the Board’s August 5, 2021 decision instituting a proceeding pursuant to 49 U.S.C. § 24308(e), the Board denied Amtrak’s request as moot in light of the fact that—as of that time—“Amtrak ha[d] received the limited, non-interfering access it sought” and the parties were “work[ing] together to reach a suitable accommodation on this particular issue.” *Application of the National Passenger Railroad Corporation Under 49 U.S.C. § 24308(E)—CSX Transportation, Inc., and Norfolk Southern Railway Company*, FD 36496, slip op. at 11 (STB served Aug. 6, 2021) [hereinafter “Order”]. Unfortunately, in certain areas, Amtrak is no longer receiving the access to CSX’s rail lines that Amtrak seeks and CSX is no longer working with Amtrak to reach a suitable accommodation. Despite the Board’s admonition that the parties should “continue to resolve areas of disagreement such as [interim

access requests] as much as possible,” *id.*, CSX has been unwilling to resolve a particular access issue and therefore Amtrak must reluctantly renew its petition to the Board for an interim order.

The impasse has arisen over Amtrak’s request for access to survey CSX’s Choctaw Yard as a site for a temporary layover track for the *Gulf Coast* service. Amtrak previously used a track at the Choctaw Yard site for storage of trains on both the *Gulf Coast Limited* and *Gulf Breeze* services. However, in approximately late 2019—during the time the parties were actively negotiating for the restoration of the *Gulf Coast* service—CSX removed this track from Choctaw Yard. CSX is now refusing Amtrak’s request to cooperate on a survey of the site for Amtrak to evaluate the potential restoration of the track or determine other options for an interim layover track.

BACKGROUND

On March 16, 2021, Amtrak filed an application with the Board, pursuant to 49 U.S.C. § 24308(e), seeking an order requiring CSX and NS to allow Amtrak to reinstate the *Gulf Coast* service by operating additional intercity passenger trains, consisting of two round-trips per day, over the rail lines of CSX and NS between New Orleans and Mobile beginning on or about January 1, 2022. (Appl. at 1.)

As part of its application, Amtrak also requested that the Board issue an interim order requiring CSX and NS to provide Amtrak with access to their rail lines in order to perform all necessary preparations for the *Gulf Coast* service to restart. As Amtrak explained, “if Amtrak is to begin the Gulf Coast Service on or about January 1, 2022, it will need access to the rail lines in the interim in order to have enough lead time to make the improvements recommended in the Gulf Coast Working Group’s report, allocate and ready the equipment, train and qualify the employees, and take other steps necessary to ensure the safe operation of the Gulf Coast Service.” (*Id.* at 6.)

Amtrak noted that the recommended improvements it intended to make were those “identified in Table 5 of the *Gulf Coast Working Group Report* as the ‘Minimum Needed for Passenger Rail Service.’” (*Id.* at 6 n.12.)¹

CSX and NS moved to dismiss Amtrak’s application. As part of that motion, CSX and NS argued that an interim order was not necessary and the Board was not authorized to issue interim orders under 49 U.S.C. § 24308(e). (Mot. to Dismiss at 26.) Amtrak responded by noting that if CSX and NS were willing to stipulate to voluntarily providing Amtrak with needed access, then an interim order may not be necessary. (Opp. to Mot. to Dismiss at 18-19).

When Amtrak then reached out to CSX and NS to explore their willingness to allow Amtrak access to their properties and personnel to make preparations for the *Gulf Coast* service, those inquiries initially were successful. Consequently, in a filing with the Board on July 6, 2021, Amtrak advised the Board that CSX had granted Amtrak’s request to: “(1) conduct a survey for an interim layover track in Mobile; (2) undertake repairs to stations in Bay St. Louis, Gulfport, Biloxi, Pascagoula, and Mobile; and (3) begin the process of qualifying Amtrak crews to operate along the Gulf Coast corridor.” (Amtrak Notice at 2.) Likewise, Amtrak advised the Board that NS had assured Amtrak that “Amtrak’s existing service over NS lines in New Orleans would fully facilitate Amtrak’s access to the safety and operational information Amtrak sought to obtain.” (*Id.*)

On August 5, 2021, the Board denied CSX’s and NS’s motion to dismiss, granted Amtrak’s application to institute a proceeding pursuant to 49 U.S.C. § 24308(e), and established a procedural

¹ Table 5 of the *Gulf Coast Working Group Report* identified a total of \$3,478,000 to “Upgrade Existing Stations” and \$1,898,000 for a “Mobile Station Track.” (Appl., App. B, GCWG Report 30.) The “Mobile Station Track” was further described by saying a “daily round trip train operating from New Orleans to Mobile will need a place to park in Mobile during the middle of the day. A 1,000-foot track on the west side of the existing Mobile station platform and connected to the main track with a fully signaled and interlocked No. 10 turnout is proposed.” (*Id.* at 27.)

schedule. (Order at 5, 11-12.) Specifically as to Amtrak’s initial request for an interim order, the Board found that the developments reported in Amtrak’s July 6, 2021 filing had rendered that request moot because it “appears that Amtrak has received the limited, non-interfering access it sought.” (*Id.* at 11). The Board noted it was “pleased that the parties have been able to work together to reach a suitable accommodation on this particular issue and expects them to continue to resolve areas of disagreement such as this as much as possible.” (*Id.*) Unfortunately, even by the time of the Board’s August 5, 2021 Order, this cooperative state of affairs was already unraveling. Although CSX originally had agreed to Amtrak’s request for a survey for an interim layover track in Mobile, CSX soon rescinded that agreement.

As background, the *Gulf Coast Working Group Report* had identified a need for a layover track in Mobile for Amtrak trains to “park in Mobile during the middle of the day,” and proposed a track on the west side of the existing Mobile station platform. (Appl., App. B, GCWG Report at 27, 30.) However, as Amtrak informed CSX, during preparations for restarting the *Gulf Coast* service, it became apparent that work at the existing Mobile station had not advanced sufficiently to allow the planned layover track to be used for the restart of intercity passenger service in early 2022. Accordingly, Amtrak requested CSX’s cooperation in conducting an engineering survey at CSX’s Choctaw Yard in Mobile to identify for lease to Amtrak, or for Amtrak’s use pursuant to the terms of the June 1, 1999 Agreement Between National Railroad Passenger Corporation and CSX Transportation Incorporated (“Operating Agreement”), a segment of track and/or roadbed that could be used or restored as an interim layover track for the *Gulf Coast* service. (Ex. A, Amtrak Letter at 1, Aug. 31, 2021.)

Amtrak noted that the “West Stub Track,” also called the “Amtrak Track,” at CSX’s Choctaw Yard previously had been used by Amtrak for the storage of trains in connection with

Amtrak's prior daily services, which had both an eastbound and a westbound train. (*Id.*) Amtrak used the Choctaw Yard "Amtrak Track" for the *Gulf Coast Limited* service between New Orleans and Mobile from approximately April 1984 to January 1985 and again from approximately June 1996 to March 1997. (*Id.*) Amtrak also used the track for the *Gulf Breeze* service between Birmingham and Mobile from approximately October 1989 to April 1995. (*Id.*) However, for reasons that were not shared with Amtrak, CSX removed the "Amtrak Track" in or around the latter part of 2019 with no notice to Amtrak and while the parties were in the midst of ongoing negotiations for restoration of the *Gulf Coast* service.

From June through August 2021, Amtrak repeatedly sought CSX's permission to survey the Choctaw Yard site to ascertain whether it would be feasible to potentially rebuild the "Amtrak Track" (at Amtrak's expense) or have CSX designate another existing track that could be used for temporary layover of an Amtrak train. (*See, e.g.,* Ex. A, Amtrak Letter, Aug. 31, 2021.) CSX refused, ultimately informing Amtrak that it "cannot agree to Amtrak's request for an engineering survey of Choctaw Yard or to lease property therein." (Ex. B, CSX Letter at 2, Sept. 15, 2021.) Because the parties are at an impasse and because a layover track will be required for the resumption of the *Gulf Coast* service, Amtrak reluctantly must renew its application to the Board for an interim order.

Amtrak notes that while its original application to the Board requested the resumption of *Gulf Coast* service by on or about January 1, 2022, the delays associated with planning for a layover track in Mobile have made a January 1, 2022 start date infeasible,² though Amtrak is

² Amtrak also has encountered some delays due to the Federal Railroad Administration's modification of Amtrak's initial plan for addressing compliance with the Americans with Disabilities Act at the stations along the *Gulf Coast* route. However, those issues are being addressed and work is in progress.

continuing preparations to be ready to start service at the earliest possible date in 2022, pending the outcome of these proceedings.

ARGUMENT

CSX's refusal to cooperate with Amtrak on an engineering survey for an interim layover track at Choctaw Yard illustrates yet again 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."³ In refusing to cooperate with Amtrak on finding a suitable site for a layover track, CSX simply wants to ignore the basic bargain made when Congress created Amtrak: "as a condition of relief from their common-carrier duties," freight railroads must "allow Amtrak to use their tracks and facilities" and indeed must give Amtrak "preference over freight transportation in using rail lines, junctions, and crossings." *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 47 (2015).

Amtrak should not have to petition the Board to force CSX to take actions that CSX is not only statutorily and contractually obligated to take, but that it already promised Amtrak it would take. In Amtrak's June 16, 2021 correspondence with CSX, Amtrak specifically requested that CSX cooperate on a "Survey for Interim Layover Track." (Amtrak Notice at 10.) CSX "agree[d] to the request" and even identified a CSX contact person for Amtrak to arrange for the survey. (*Id.* at 11-13.) Accordingly, Amtrak advised the Board on July 6, 2021 that CSX had agreed to Amtrak's request with respect to the interim layover track, and the Board subsequently denied

³ H.R. Rep. No. 96-1041, at 42 (1980) (Conf. Rep.); H.R. Rep. No. 96-839, at 20-21 (1980).

Amtrak's request for an interim access order as moot. Yet CSX's renegeing on its promise has made it necessary for Amtrak to return to the Board and again request an interim order.

In its most recent correspondence, CSX expresses surprise that Amtrak would seek to establish an interim layover track at Choctaw Yard given that the *Gulf Coast Working Group Report* identified the location of the potential layover track as west of the Mobile Station. (Ex. B, CSX Letter at 2 n.1, Sept. 15, 2021.) But as Amtrak has informed CSX, the Mobile Station track project has not progressed sufficiently for a start of service in early 2022. Thus, the logical next step is for Amtrak to use the same Choctaw Yard location it previously used for many years to store trains for the *Gulf Coast Limited* and *Gulf Breeze* services. Unfortunately, CSX appears to have recently removed the specific track previously used to layover Amtrak trains. Nonetheless, Amtrak still wants to survey the site to evaluate potentially rebuilding the track (at Amtrak's expense) or find another suitable location. In an ideal world, this would happen cooperatively with CSX. Instead, due to CSX's intransigence, it must happen through this adversarial process.

Thus, Amtrak respectfully renews its request for an interim order. Although CSX and NS previously claimed that such an order would not be statutorily authorized, the Board clearly has the inherent authority to issue interim orders and has exercised that authority regularly 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 circumscribed as CSX and NS have argued.

Amtrak hopes that it will not have to petition the Board again to intervene in what should be a cooperative process among the parties.

CONCLUSION

Amtrak respectfully requests that the Board issue an interim order requiring CSX and NS to allow Amtrak access to their rail lines and facilities between New Orleans and Mobile in order to perform all necessary preparations for the restoration of the *Gulf Coast* service.

October 20, 2021

Respectfully submitted:

/s/ Jessica Ring Amunson

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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.

October 20, 2021

/s/ Jessica Ring Amunson
Jessica Ring Amunson

EXHIBIT A



August 31, 2021

Andy Daly
Senior Director Passenger Operations
CSXT Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Re: Gulf Coast Service

Dear Andy:

The purpose of this letter is to follow up on the June 30th and July 21st correspondence from CSX Transportation Inc. ("CSXT") to Amtrak in the *Gulf Coast* matter currently pending before the Surface Transportation Board. As stated in Amtrak's June 16th, 2021 letter, Amtrak is requesting CSXT's cooperation on an engineering survey for an "Interim Layover Track" for the Gulf Coast Service. Per your request, I am writing to more fully clarify the access Amtrak needs to CSXT property, people, and information, to advance this project.

As your July 21st letter correctly notes, the Gulf Coast Working Group's 2017 report identified a need for a layover track in Mobile for Amtrak trains to "park during the middle of the day," and proposed a track on the west side of the existing Mobile station platform (GCWG Report at 27, 30). Unfortunately, due to circumstances beyond Amtrak's control, the Mobile station track project has not advanced sufficiently to allow the planned layover track to be used for the restart of intercity passenger service in early 2022. Accordingly, Amtrak has determined that the construction of a temporary layover track will be required to serve the same need identified in the Gulf Coast Working Group report, namely, a place for Amtrak trains to park during the middle of the day.

Amtrak therefore is seeking CSXT's commitment, within 15 days, to cooperate on a joint Amtrak-CSXT engineering survey to identify for lease to Amtrak, or use pursuant to the terms of the June 1, 1999 Agreement Between National Railroad Passenger Corporation and CSXT Transportation Incorporated ("Operating Agreement"), a segment of track and/or roadbed within CSXT's Choctaw Yard in Mobile, AL that could be used for the temporary layover of the Amtrak train.

Amtrak's preference would be either to:

1. Lease the location of the former Track #10, commonly referred to as the "West Stub Track" or the "Amtrak Track", which was previously used as a layover facility by Amtrak's *Gulf Coast Limited*, so that Amtrak can rebuild and restore the prior facility to service (such construction would require CSXT to provide flagging protection). Amtrak previously paid CSXT for improvements at this site. For clarity, the below image of the northern end of Choctaw Yard outlines the approximate location of the former Amtrak Track in black; or,

2. Have CSXT restore the Amtrak Track, at Amtrak's expense; or,
3. Have CSXT designate an existing track within the area of Choctaw Yard that could be used for the temporary layover of the Amtrak train.



While the *Gulf Coast Limited* ceased operation in 1997, it is Amtrak's understanding that the Amtrak Track remained in place until it was removed between May and November of 2019. The removal of the fixed ancillary facility was performed without notice to Amtrak.¹ ,

Regardless, Amtrak is not seeking that CSXT restore the ancillary facility that was removed without notice to Amtrak, but instead promptly progress a lease that would allow Amtrak personnel or contractors to do so, or for CSXT to restore the track promptly, at Amtrak's expense.

The Surface Transportation Board has encouraged cooperation between Amtrak and CSXT. In its August 6, 2021 Decision (Docket No. 36496), the Board stated (in reference to the issue of interim access) that, "The Board is pleased that the parties have been able to work together to reach a suitable accommodation on this particular issue and expects them to continue to resolve areas of disagreement such as this as much as possible."

As stated in the March 2021 Application seeking to commence new passenger service, Amtrak's plan for Gulf Coast Service is and remains the construction of a permanent layover facility and

¹ Given that CSXT was on notice well prior to 2019 that Amtrak was seeking to restore the Gulf Coast Service, such notice should have been provided under Section 3.8 of the Operating Agreement, which states that CSXT "shall give notice to Amtrak (30) days prior to disposing of any other ancillary facility which may be useful in the operation of Amtrak trains if such facility is located on lines currently being used for Amtrak service or, upon notice by Amtrak to CSXT, *on lines being considered for Amtrak use.*" (emphasis added).

Mr. Andy Daly
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station track at the current downtown Mobile, AL station site. Amtrak simply requests a lease at the temporary site while the permanent facility is fully designed and constructed.

Please let me know by no later than September 15, 2021 whether CSXT will agree to provide the requested access on the requested schedule. Thank you for your prompt attention to this matter.

Sincerely,



Jim Blair
Senior Director, Host Railroads

Cc: Kyle Montgomery - Amtrak

Charles Szovati - Amtrak

EXHIBIT B



3019 Warrington Street J500
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September 15, 2021

By Email

Jim Blair
Senior Director, Host Railroads
Amtrak
30th Street Station
2955 Market Street, 4th Floor North, Box 20
Philadelphia, PA 19104

Re: Gulf Coast Passenger Service, Choctaw Yard

Dear Jim:

This letter responds to Amtrak's August 31 letter asking CSXT to conduct a joint engineering survey with Amtrak in order to identify a segment of track or roadbed within CSXT's Choctaw Yard, which Amtrak proposes to lease for use as an "Interim Layover Track" for the proposed Gulf Coast passenger service between New Orleans and Mobile. CSXT cannot agree to Amtrak's request.

Amtrak's use of Choctaw Yard would cause significant disruption to the freight service CSXT provides to its customers. In the first place, without a dedicated Mobile station and layover track at the platform location, Amtrak's passenger trains would block the main line for prolonged periods of time during boarding and detraining at the beginning and end of each scheduled run. In addition, Amtrak would further congest the main line during repositioning moves between the Mobile station and Choctaw Yard.

Moreover, due to the location in Mobile and current use, Choctaw Yard is an already busy and congested facility, which provides valuable switching and storage services to the Port of Mobile and many shippers that rely on CSXT's freight service. The lack of a layover track in Mobile would require Amtrak to not only park trains in Choctaw during the day but overnight as well. This will result in the use of the layover track for a substantial portion of every day.

Amtrak's presence in the yard for layover and service preparation activities also would pose significant safety risks. Amtrak presumably would need to, at minimum, clean the passenger coaches, conduct routine maintenance checks, and

perform turnaround services. These daily activities would place Amtrak employees in the middle of an active, congested and growing railyard on a daily basis.

Amtrak explains that it is making this new request to lease track in Choctaw Yard because a layover track at the Mobile station will not be completed before the end of 2021 due to circumstances that are purportedly “beyond Amtrak’s control.” Amtrak suggests that the use of Choctaw Yard as a layover location will be “temporary,” but provides no explanation of the obstacles Amtrak has encountered or how long it might take to resolve them. CSXT cannot agree to significant disruption at a key terminal for an indefinite period.

Finally, Amtrak’s suggestion that it had some claim on certain track that was removed from Choctaw Yard is meritless. According to Amtrak’s own letter, the Track #10 was last used by an Amtrak train in 1997. The Sunset Limited did not use this track in the years leading up to Hurricane Katrina, and CSXT had no indication that Amtrak needed or planned to use this track to accommodate future service. On the contrary, recent studies like the Gulf Coast Working Group and the 2018 HNTB study have assumed that Amtrak would use a dedicated station and layover track at the Mobile platform location.¹ Whatever obstacles that Amtrak has encountered in its longstanding plans for a Mobile station cannot be overcome by leasing track in Choctaw Yard.

For these reasons, CSXT cannot agree to Amtrak’s request for an engineering survey of Choctaw Yard or to lease property therein.

Best regards,



Andy Daly
Senior Director Passenger Operations
CSX Transportation, Inc.

¹ See GULF COAST PASSENGER SERVICE IMPLEMENTATION STUDY AND COST ESTIMATE, HNTB Corp., at 28 (Dec. 2018) (“Construction of a new siding off the mainline at the Mobile station is required to provide mid-day storage for Amtrak.”); GULF COAST WORKING GROUP REPORT TO CONGRESS, The Gulf Coast Working Group, at 27 (July 2017) (“A 1,000-foot track on the west side of the existing Mobile station platform and connected to the main track with a fully signaled and interlocked No. 10 turnout is proposed.”).