

PUBLIC VERSION

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

**CSX TRANSPORTATION, INC.'S RESPONSE TO
AMTRAK'S RENEWED REQUEST FOR AN INTERIM ORDER**

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INTRODUCTION

The National Passenger Railroad Corporation (“Amtrak”) has renewed its request for unconstrained access to the rail lines of CSX Transportation, Inc. (“CSXT”) between New Orleans and Mobile “in order to perform all necessary preparations for the restoration of the *Gulf Coast* service.”¹ Once again, the scope of this request is breathtaking. As written, Amtrak is seeking a blank check to perform whatever work it wants for this new Gulf Coast service, without any explanation of what it proposes to do, without any analysis of its impact on freight service or safety, and without any finding by the Board that the carriers are obligated to permit this new service to begin in the first place. Amtrak’s motion provides no justification for the Board entering such a sweeping order.

The only details offered by Amtrak center on its request to survey and construct a layover facility in the Choctaw Yard. Even if its motion is narrowed in this way, the STB should still deny the request.

First, a request to survey the yard is nothing more than a belated discovery request. The discovery period is over, and no request for access to the property to survey the property was made pursuant to 49 C.F.R. § 1114.30(a)(2). CSXT advised Amtrak it would not consent to its request for access to the Choctaw Yard well within the discovery period. Amtrak is no less bound by the agency’s procedural schedule than is CSXT, and it has offered no reason for having failed to raise this

¹ Amtrak’s Renewed Request For An Interim Order (filed Oct. 20, 2021), at 1 (“Amtrak’s Renewed Request”).

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issue with Administrative Law Judge Thomas McCarthy. **Section I** below explains further why Amtrak's request to compel CSXT to allow Amtrak to survey the line is untimely.

Second, if Amtrak wants to actually start construction—which is how CSXT understood the earlier requests—CSXT reasonably denied access because the concept of Amtrak building a layover track in the middle of Choctaw Yard in lieu of a dedicated track at the Mobile station would create massive disruptions. The Federal Railroad Administration (“FRA”) has recognized that a dedicated station and layover track at the Mobile station would be an essential element to any plan to facilitate Gulf Coast passenger service without harming freight service. {Redacted

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} Yet this is what Amtrak now

seeks, a last minute change in strategy that would tie up freight operations by blocking the mainline for hours every day, simply because it is having undisclosed difficulties in constructing the dedicated layover track at the Mobile Station.

The wisdom of a dedicated layover track at the Mobile station is confirmed by the joint modeling study of Amtrak’s proposed new passenger service between New Orleans, Louisiana and Mobile, Alabama (the “Gulf Coast Corridor”). HNTB Corporation and R.L. Banks & Associates, Inc. (the “RTC Modelers”) developed an RTC model of the Gulf Coast Corridor that studied the impact of passenger service on freight service in 2019 and 2039 (“2021 Gulf Coast RTC Model”). The 2021 Gulf Coast RTC Model found significant impairment to freight service in Mobile and along the Gulf Coast Corridor that could result from the introduction of Amtrak’s proposed passenger service without sufficient supporting infrastructure, including a dedicated station and layover track at the Mobile station. **Section II** below sets forth the evidence showing that Amtrak’s Choctaw Yard layover plan is both harmful to freight and unsafe. It also explains why a request for interim access is fatally premature, placing the cart miles before the horse by asking permission to start construction before the STB has ruled on its application.

Finally, Amtrak claims that CSXT’s refusal to consent to this new proposal is somehow inconsistent with CSXT’s prior commitments to accommodate Amtrak’s

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I. IF AMTRAK IS SIMPLY SEEKING AN ORDER TO SURVEY THE CHOCTAW YARD, ITS REQUEST VIOLATES THE BOARD'S DISCOVERY RULES AND PROCEDURAL SCHEDULE.

Amtrak's renewed request for access "to survey CSX's Choctaw Yard as a site for a temporary layover track for the *Gulf Coast* service" is plainly a request for "entry upon designated land . . . for the purpose of inspecting and measuring, *surveying*, photographing, testing, or sampling the property or any designated object or operation thereon."⁵ Amtrak knew during the discovery period that CSXT was not consenting to Amtrak surveying Choctaw Yard for potential construction, but it chose not to bring this to Judge McCarthy's attention, and instead filed its "Renewed Request for an Interim Order" with the Board well after discovery had closed. The Board should hold Amtrak to the procedural schedule that the Board adopted, and not entertain a pleading that is essentially a late-filed motion to compel.

Amtrak first indicated that it wanted access to Choctaw Yard to conduct a survey on July 14, 2021, a request that initially confused CSXT because it represented such a "significant alteration of plans."⁶ After Amtrak clarified on August 31 that it indeed was changing plans and requesting to use Choctaw Yard

⁵ Amtrak's Renewed Request at 2; 49 C.F.R. § 1114.30(a)(2) (emphasis added).

⁶ Ex. E, July 14, 2021 Email From Charles Szovati to Larry Skipper at 1 (seeking access to perform the field survey, design and layout of the proposed layover track at Choctaw Yard, Mobile, AL); Ex. F, July 21, 2021 Letter From Andy Daly to Charles Szovati at 1 (describing the survey request as "puzzling given Amtrak's previous representations about the Mobile station" and noting that it was "not clear to us what circumstances necessitate this significant alteration of plans, moving a proposed layover track from the Mobile station into our Choctaw Yard").

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as a layover facility,⁷ CSXT denied the request on September 15, 2021, because Amtrak’s use of Choctaw Yard as an interim layover facility for Gulf Coast passenger trains would “cause significant disruption to the freight service CSXT provides to its customers” and “would pose significant safety risks.”⁸ This critical correspondence and CSXT’s denial of the access request occurred during the discovery period, which commenced when the Board issued the procedural schedule in this proceeding on August 6, 2021, and concluded on October 4, 2021.⁹

Judge McCarthy held numerous discovery conferences throughout the discovery period, including on September 20.¹⁰ The parties engaged in numerous meet and confers, including one on September 17, which the parties described to Judge McCarthy as being “brief but productive.”¹¹ Judge McCarthy’s September 21

⁷ See Ex. E, July 14, 2021 Email From Charles Szovati to Larry Skipper; Ex. F, July 21, 2021 Letter From Andy Daly to Charles Szovati; Ex. G, August 31, 2021 Letter From Jim Blair to Andy Daly.

⁸ Ex. H, September 15, 2021 Letter From Andy Daly to Jim Blair at 1.

⁹ Decision at 11–12, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Corporation*, STB Docket No. 36496 (served Aug. 6, 2021) (“August 6 Decision”); Ex. N, Discovery Conference Order at 1, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Corporation*, STB Docket No. 36496 (served Sept. 21, 2021) (“September 21 Discovery Order”) (extending the discovery period by two weeks from September 20 to October 4).

¹⁰ See Ex. N, September 21 Discovery Order.

¹¹ *Id.* at 1.

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Discovery Order noted that the parties “agreed that all outstanding discovery issues appeared to have been resolved.”¹²

Amtrak never voiced any concern about CSXT’s refusal to allow access to Choctaw Yard for a survey during any of the discovery conferences, meet and confers, or discovery correspondence. Amtrak never filed a motion to compel access before Judge McCarthy, nor did it request an extension of discovery to resolve this issue. And again, Judge McCarthy’s September 21 Discovery Order noted that the parties “agreed that all outstanding discovery issues appeared to have been resolved.”¹³ In sum, Amtrak slept on its discovery rights despite receiving CSXT’s denial of the survey request on September 15,¹⁴ five days before the original discovery end date and nearly 20 days before the extended discovery deadline of October 4.¹⁵ The Board should hold Amtrak to the procedural schedule, and deny its untimely request to compel additional discovery.

II. IF AMTRAK IS SEEKING ACCESS TO CONSTRUCT LAYOVER TRACK AT CHOCTAW YARD, ITS REQUEST IS UNREASONABLE, UNSAFE, AND FATALLY PREMATURE.

The precise scope of the interim order Amtrak seeks has been unclear throughout this litigation. Although the focus of Amtrak’s renewed request for an

¹² *Id.*

¹³ *Id.*

¹⁴ *See* Ex. H, September 15, 2021 Letter From Andy Daly to Jim Blair.

¹⁵ Decision at 1, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Corporation*, STB Docket No. 36496 (served Oct. 14, 2021) (describing Administrative Law Judge Thomas McCarthy’s extension of discovery until October 4, 2021).

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interim order may be limited to conducting a survey of Choctaw Yard, this “access to [CSXT’s] rail lines” is also “to perform all necessary preparations for the restoration of the Gulf Coast service.”¹⁶ In its Application, Amtrak stated that the interim order would “provid[e] Amtrak with all necessary access to CSX’s and NS’s rail lines” because Amtrak needed “enough lead time to make the improvements recommended in the Gulf Coast Working Group’s report,” which included infrastructure improvements.¹⁷ The ultimate purpose of this survey is to “identify for lease . . . a segment of track and/or roadbed that could be used or restored as an interim layover track.”¹⁸ And Amtrak’s initial July 14 request for access to Choctaw Yard was “to perform the field survey, design and layout of the proposed layover track at Choctaw Yard,” which included plans to “prepare an alignment/profile design and *stake out the same for construction during our trip*.”¹⁹ CSXT understood Amtrak’s request as encompassing both a survey and construction activities.

To the extent Amtrak is seeking an order permitting the construction of a layover track in Choctaw Yard, the Board should deny this renewed request for interim access for three independent reasons. First, Amtrak’s abandonment

¹⁶ Amtrak’s Renewed Request at 1.

¹⁷ Application at 6 & n.12.

¹⁸ Amtrak’s Renewed Request at 4; *see also id.* at 7 (“Amtrak still wants to survey the site to evaluate potentially rebuilding the track (at Amtrak’s expense) or find another suitable location.”).

¹⁹ Ex. E, July 14, 2021 Email From Charles Szovati to Larry Skipper at 1 (emphasis added); *see also* Ex. G, August 31, 2021 Letter From Jim Blair to Andy Daly at 2 (expressing Amtrak’s preference to “rebuild and restore the prior facility” in Choctaw Yard used for passenger service decades ago).

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(temporarily or not) of a dedicated station and layover track at the Mobile station location is a significant contributing factor to the unreasonable impairment of freight service experienced in Mobile. Second, Amtrak's proposed operation in an active freight yard poses unnecessary and significant safety risks. Finally, Amtrak's request is fatally premature.

A. Unreasonable Impairment to Freight.

Amtrak's use of Choctaw Yard as a layover facility will exacerbate the congestion in Mobile. The 2021 Gulf Coast RTC Model shows significant impairment to freight in 2019 from the introduction of passenger trains.²⁰ Specifically, the 2019 Passenger Case depicts "an increase in freight delays by 22.7%, reduce[d] train speeds by 4.5%, increase[d] dispatching conflicts by 38.1%, increase[d] reworks by 37.7%, and increase[d] . . . variability of service."²¹

The use of Choctaw Yard for storage of passenger trains greatly contributes to the worsening of freight performance in the 2019 Passenger Case. The obvious impact is that "Choctaw Yard is currently used for freight operations and the use of yard track to store a passenger train will limit current yard capacity and utilization."²² In discovery, Amtrak disclosed that under its Choctaw Yard layover

²⁰ See CSX Transportation, Inc.'s and Norfolk Southern Railway Company's Opening Evidence ("Opening Evidence"), Exhibit 2 – Verified Statement of Charles H. Banks and Larry R. Guthrie, Appendix A – New Orleans – Mobile Gulf Coast Passenger Service RTC Modeling Report by HNTB Corporation and R.L. Banks & Associates, Inc. ("2021 Gulf Coast RTC Report") (filed Nov. 3, 2021).

²¹ 2021 Gulf Coast RTC Report at 45 (§ 6.0).

²² *Id.* at 68 (App'x D).

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plan, passenger trains would occupy or dwell on one of the two mainline tracks at the station for 15 minutes at the start and end of each trip to allow for passengers to board or disembark.²³ The passenger trains would also require 15-minute deadhead moves between Choctaw Yard and the Mobile station at the beginning and end of each trip, which will include entry into and exit from the yard.²⁴ These activities consume valuable capacity on the mainline that CSXT relies on to facilitate through trains and switching.

“Yard trains regularly occupy the mainline between Sibert and Choctaw Yards, utilizing the mainline for headroom to switch cars between tracks.”²⁵ The RTC Modelers explained that “[t]he mainline tracks north of Choctaw Yard are heavily used for freight train yard switching, merchandise train mainline work, and crew change and interchange train movements.”²⁶ Amtrak’s decision not to complete the construction of a dedicated station and layover track at the Mobile station before commencing Gulf Coast passenger service “means passenger trains will compete with yard trains and through trains for space on the mainline during preparations before departing and after arrival.”²⁷ And Amtrak’s inability to secure

²³ Ex. O, Amtrak’s Answers and Objections to CSX’s Second Set of Interrogatories, at 6–7 (Sept. 20, 2021).

²⁴ *Id.*

²⁵ 2021 Gulf Coast RTC Report at 20 (§ 2.4).

²⁶ *Id.* at 68 (App’x D).

²⁷ Opening Evidence, Exhibit 1 – Verified Statement of Ricky Johnson and Randall W. Hunt at 10–11.

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the construction of such a station and layover track at the Mobile stations suggests the proposed Choctaw Yard arrangement could drag on for years at CSXT's and its freight customers' expense.

The 2021 Gulf Coast RTC Model's showing of significant impairment to freight in 2019 from the introduction of passenger trains without infrastructure should come as no surprise to Amtrak. FRA has recognized that a dedicated station and layover track at the current Mobile station location is the only solution to successful Gulf Coast passenger service and avoiding unreasonable impairment to freight service. { **Redacted**

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Amtrak has presented no meaningful plans to remedy this situation. Instead, Amtrak is content to blame everyone else for its failure to appropriately plan for the start of the Gulf Coast passenger service. The “circumstances beyond Amtrak’s control” that are to blame for the fact that “the Mobile station track project has not advanced sufficiently” include purported recalcitrance on the part of the City of Mobile, the Port of Mobile, CSXT, and anyone else that is not Amtrak itself.³⁰ In truth, Amtrak is simply taking what it views as the easier route, admitting in discovery that “Amtrak is not presently communicating with any Person to acquire any rights, approvals, etc. in connection with the proposed station and layover track.”³¹ If just months before the service is supposed to begin, Amtrak has already given up trying to construct the dedicated station and layover track at the Mobile station that everyone has always known is the best solution (short of moving the station to a different location), then CSXT has no guarantee that this temporary

³⁰ Ex. G, August 31, 2021 Letter From Jim Blair to Andy Daly, at 1; *see, e.g.*, Ex. O, Amtrak’s Answers and Objections to CSX’s Second Set of Interrogatories, at 3 (Sept. 20, 2021) (“The ‘circumstances beyond Amtrak’s control’ include the fact that the City of Mobile’s project for the proposed station and layover track has not advanced past the preliminary design stage and CSX has long opposed restoring passenger service on the Gulf Coast line.”); { **Redacted**

³¹ Ex. O, Amtrak’s Answers and Objections to CSX’s Second Set of Interrogatories, at 6–7 (Sept. 20, 2021).

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Choctaw Yard arrangement will not go on in perpetuity to the detriment of freight service and CSXT's customers.

B. Safety Concerns.

Amtrak's use of Choctaw Yard as a layover facility also imposes unnecessary safety risks to CSXT and Amtrak personnel. Amtrak disclosed in discovery that it plans to conduct the following activities in Choctaw Yard: maintenance activities including "minor locomotive maintenance"; "basic train cleaning services"; and "routine briefings" for crew.³² Amtrak anticipates that "a conductor, an assistant conductor, an engineer, other train crew, and mechanical personnel" will need regular access to the site, and that certain managers or other personnel may conduct less frequent site visits.³³ Finally, Amtrak "further anticipates needing enough space for a crew sign-up location and likely also a mechanical trailer and shed for mechanical and cleaning supplies" as well as vehicle access.³⁴

CSXT has previously explained to Amtrak that these daily activities would "place Amtrak employees in the middle of an active, congested[,] and growing railyard on a daily basis."³⁵ In short, there is no justification for taking these unnecessary and significant safety risks when a better solution exists—a dedicated station and layover track at the Mobile station.

³² *Id.* at 5.

³³ *Id.*

³⁴ *Id.* at 5–6.

³⁵ Ex. H, September 15, 2021 Letter From Andy Daly to Jim Blair at 2.

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C. Amtrak's request is premature.

Amtrak commenced this case under 49 U.S.C. § 24308(e). That statute does not authorize the Board to order a host carrier to provide Amtrak access to its rail lines for the purpose of constructing new infrastructure in advance of an order allowing Amtrak to run passenger trains on those rail lines in the first instance. The issuance of such an order would deny CSXT its due process rights.

The Board may issue an order to a rail carrier to provide or allow Amtrak to operate passenger service only “[a]fter a hearing on the record.”³⁶ A “hearing on the record” contemplates formal proceedings that guarantee the parties’ due process rights and an opportunity to present and challenge evidence.³⁷ And in reaching a decision, the Board “shall consider . . . whether an order would impair unreasonably freight transportation of the rail carrier.”³⁸ Amtrak is asking the Board to forego these due process rights in order to allow it to begin the process of constructing a layover track in an inappropriate location prior to the conclusion of this case. Indeed, a Board order requiring CSXT to provide Amtrak access to Choctaw Yard prior to a full decision on the merits following a hearing on the record would suggest

³⁶ 49 U.S.C. § 24308(e)(1) (emphasis added).

³⁷ See *R.R. Comm’n of Texas v. United States*, 765 F.2d 221, 227 (D.C. Cir. 1985) (“A fundamental and well-recognized distinction exists between a requirement that an agency provide a ‘hearing’ and a requirement that an agency provide a ‘hearing on the record.’ Formal proceedings do not attach to a requirement of a ‘hearing;’ such proceedings would obtain only on the requirement of a ‘hearing on the record.’”) (collecting cases).

³⁸ 49 U.S.C. § 24308(e)(2)(A).

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a predetermined outcome in this proceeding. Moreover, CSXT pointed out in the Motion to Dismiss that there was no statutory justification for the issuance of such an order,³⁹ and Amtrak still has not identified one.

III. CSXT HAS HONORED ITS PREVIOUS COMMITMENT TO AMTRAK AND BEEN CANDID WITH THE BOARD.

CSXT has cooperated with Amtrak to provide access and information necessary to facilitate the start of the Gulf Coast passenger service between Mobile and New Orleans. Amtrak incorrectly claims that it “repeatedly sought CSX’s permission to survey the Choctaw Yard site” “[f]rom June through August 2021.”⁴⁰ But even when Amtrak’s requests were vague or confusing, CSXT has always promptly responded within the timeframe requested by Amtrak, and sought clarification on the scope of Amtrak’s requests when necessary. As the history below reveals, CSXT provided Amtrak access to work on the station in Mobile and to survey that location for a layover track, because a layover track at the station has been uniformly recommended by every stakeholder or independent study.

Amtrak first sought access to CSXT’s facilities in early May “to perform various safety, operations, and stations infrastructure assessments along the route in advance of the start of service.”⁴¹ After CSXT requested additional detail on the

³⁹ CSX Transportation, Inc.’s and Norfolk Southern Railway Company’s Motion to Dismiss (filed Apr. 5, 2021), at 22–23 (“Motion to Dismiss”).

⁴⁰ Amtrak’s Renewed Request at 5.

⁴¹ Ex. A, May 10, 2021 Letter From Counsel for Amtrak at 1.

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activities Amtrak proposed to perform on CSXT's property,⁴² Amtrak clarified that it intended to conduct a "Survey for Interim Layover Track" at an undisclosed location, repair work at all passenger stations, crew qualifications, a curve speed safety review, and a grade crossing safety review.⁴³ CSXT timely agreed to provide flagging services to facilitate Amtrak's station repair work, crew qualification, and safety reviews of grade crossing and curve speed so long as such requests were made with sufficient advance notice to avoid "unnecessary delay to our freight customers."⁴⁴ To facilitate these flagging services, CSXT asked Amtrak to provide desired dates and the number of crews that would need to be qualified.⁴⁵ CSXT also provided a Curve Report from the CSX Master Engineering Database for Amtrak's review and use in its curve speed safety review.⁴⁶

These early access requests never suggested that Amtrak intended to use Choctaw Yard. Amtrak first disclosed plans to conduct a survey for an interim layover track in its June 16, 2021 letter. But that letter did not mention Choctaw Yard.⁴⁷ CSXT's June 30, 2021 response provided general agreement to Amtrak's

⁴² Ex. B, May 17, 2021 Letter From Counsel for CSXT at 1.

⁴³ Ex. C, June 16, 2021 Letter From Jim Blair to Andy Daly at 2.

⁴⁴ Ex. D, June 30, 2021 Letter from Andy Daly to Jim Blair at 1.

⁴⁵ *Id.*

⁴⁶ *Id.* at 2.

⁴⁷ *See* Ex. C, June 16, 2021 Letter From Jim Blair to Andy Daly at 2.

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access request to complete activities for the proposed Gulf Coast passenger service.⁴⁸

Amtrak filed its Notice Regarding Amtrak’s Pending Request for Interim Order on July 6, 2021, before CSXT received any further information on the survey request. In that Notice, Amtrak represented to the Board that CSXT had granted Amtrak’s request to “conduct a survey for an interim layover track in Mobile.”⁴⁹ But again, Amtrak failed to identify Choctaw Yard or any other rail facility in the greater Mobile area as the proposed site of an interim layover track.⁵⁰ In its July 9, 2021 letter to the Board, CSXT acknowledged that it had “agreed to the *specific access requests* submitted by Amtrak on June 16, 2021,” but those requests did not include any reference to Choctaw Yard.⁵¹ CSXT has never withdrawn a grant of access to Amtrak for the purpose of surveying Choctaw Yard because no such explicit access was requested or agreed to in any of the correspondence between the parties that preceded Amtrak’s Notice to the Board.

Indeed, it was not until July 14, 2021—*after* Amtrak and CSXT submitted their filings to the Board concerning Amtrak’s interim order request—that Amtrak notified CSXT for the first time of its intent to perform a field survey for the

⁴⁸ Ex. D, June 30, 2021 Letter from Andy Daly to Jim Blair at 1.

⁴⁹ Notice Regarding Amtrak’s Pending Request For Interim Order (filed July 6, 2021), at 2.

⁵⁰ *See id.*

⁵¹ CSXT’s Letter Response to Amtrak’s Notice (filed July 9, 2021), at 2 (emphasis added).

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purpose of designing and constructing a layover track at Choctaw Yard.⁵² This request took CSXT by surprise⁵³ given that Amtrak had premised its interim order request on the need to implement the improvements recommended in the Gulf Coast Working Group’s 2017 Report to Congress, which called for a track to be constructed at the existing Mobile station location.⁵⁴ Even so, CSXT’s response was not a knee-jerk rejection of Amtrak’s request. Instead, CSXT expressed “significant reservations about the impact that change would have on freight rail operations” and asked for additional information including “conceptual layovers of the proposed project” before CSXT would agree to the request.⁵⁵

⁵² Ex. E, July 14, 2021 Email From Charles Szovati to Larry Skipper, at 1–2.

⁵³ *See id.* at 1 (Larry Skipper wrote to his coworkers that “[t]his reads like he wants to go in the yard at Choctaw Yard in Mobile. . . . A real question---has someone said they can have a track in choctaw yard.”); Ex. F, July 21, 2021 Letter From Andy Daly to Charles Szovati at 1 (describing the survey request as “puzzling given Amtrak’s previous representations about the Mobile station” and noting that it was “not clear to us what circumstances necessitate this significant alteration of plans, moving a proposed layover track from the Mobile station into our Choctaw Yard”).

⁵⁴ Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Railway Company at 5 (“Application”); *see id.* at App’x B – GULF COAST WORKING GROUP REPORT TO CONGRESS (“GCWG 2017 REPORT”), The Gulf Coast Working Group, at 27 (July 2017), available at <https://railroads.dot.gov/elibrary/gulf-coast-working-group-report-congress> and https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/17158/2017-06-27%20Appendices%20-%20Gulf%20Coast%20Report.pdf (“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.”).

⁵⁵ Ex. F, July 21, 2021 Letter From Andy Daly to Charles Szovati at 1.

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Amtrak responded to CSXT's request for additional information *six weeks later*, on August 31, 2021.⁵⁶ On September 15, CSXT timely informed Amtrak that it would not provide access to Choctaw Yard for the reasons set forth below.⁵⁷ CSXT continues to make flagging and other safety-related resources available to Amtrak to facilitate rehabilitation work on the stations that Amtrak rents from CSXT. And should Amtrak realize that additional infrastructure is necessary to support Gulf Coast passenger, CSXT stands ready to negotiate on and facilitate the construction of that infrastructure, including the installation of a layover track at the Mobile station as every independent stakeholder has recommended for years. But the novel idea of dropping a layover track for this new Gulf Coast passenger service into the middle of Choctaw Yard was never contemplated or agreed to by CSXT, nor recommended by any third party. In short, Amtrak's allegation that CSXT has backed out of its commitment to Amtrak is patently false.⁵⁸

⁵⁶ See Ex. G, August 31, 2021 Letter From Jim Blair to Andy Daly.

⁵⁷ See Ex. H, September 15, 2021 Letter From Andy Daly to Jim Blair.

⁵⁸ Amtrak also suggests that CSXT is violating its contractual obligations by denying Amtrak access to Choctaw Yard. Amtrak's Renewed Request at 6 ("Amtrak should not have to petition the Board to force CSX to take actions that CSX is . . . contractually obligated to take[.]"). Amtrak offers no contractual theory and CSXT maintains there is none. In any event, the Board has no jurisdiction over an allegations of a breach of contract claim, whether meritless or not.

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IV. CSXT IS NOT RESPONSIBLE FOR AMTRAK'S INABILITY TO COMMENCE THE GULF COAST PASSENGER SERVICE IN JANUARY 2022.

Amtrak asserts that while it hoped to commence the Gulf Coast passenger service on January 1, 2022, “the delays associated with planning for a layover track in Mobile have made a January 1, 2022 start date infeasible[.]”⁵⁹ What Amtrak fails to disclose to the Board is that self-inflicted delays and unpreparedness are to blame for the lack of a layover track in Mobile and Amtrak’s inability to start service as planned.

A. Amtrak Has Known For Years That A Dedicated Station and Layover Track Was The Only Viable Option In Mobile.

As just explained, Amtrak represented in its Application that an interim order from the Board granting access to CSXT and NSR’s rail lines was necessary “to have enough lead time to make the improvements recommended in the Gulf Coast Working Group’s report.”⁶⁰ The Gulf Coast Working Group’s 2017 Report to Congress called for 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.”⁶¹ In fact, this proposal originated with the Federal Railroad Administration.⁶²

⁵⁹ Amtrak’s Renewed Request at 5.

⁶⁰ Application at 6.

⁶¹ GCWG 2017 REPORT at 27.

⁶² *See id.* at 23, 27, App’x L at L-4 (describing the following “FRA Identified Gulf Coast Route Improvement[]”: a “new 800 – 1000 foot long passenger train stub track on the west side of the existing passenger platform for the rebuilt Mobile Passenger

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Amtrak has been repeatedly reminded since the issuance of the 2017 report that a dedicated station and layover track at the Mobile station location is the proper way to support new Gulf Coast passenger service. In 2018, the Florida Department of Transportation commissioned HNTB Corporation to review previous studies of potential passenger service along the Gulf Coast and provide an independent assessment.⁶³ Although HNTB studied a New Orleans to Orlando service, it also concluded that “[c]onstruction of a new siding off the mainline at the Mobile station is required to provide mid-day storage for Amtrak.”⁶⁴ **Redacted**

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Station at the old station site”).

⁶³ See Motion to Dismiss, Ex. F – GULF COAST PASSENGER SERVICE IMPLEMENTATION STUDY AND COST ESTIMATE, HNTB Corp., at 3 (Dec. 2018).

⁶⁴ *Id.* at 28.

⁶⁵ { **Redacted**

⁶⁶ { ^{Redacted} }

⁶⁷ { **Redacted**

PUBLIC VERSION

Amtrak has known for more than five years that it needed to plan for the construction of a station and layover track in Mobile. Amtrak could have selected a service commencement date that allowed sufficient time to work with the City of Mobile, the Southern Rail Commission, and other stakeholders to complete this critical infrastructure project. Instead, Amtrak chose litigation and a rushed timeline for instituting the new service and now seeks to blame its shortsightedness on CSXT. But it is unmistakably clear that CSXT's unwillingness to allow Amtrak to construct a layover track in an active rail yard in a congested port terminal is not the reason why Gulf Coast passenger service cannot commence on January 1, 2022.

B. The Poor Condition of the Passenger Stations Has Delayed The Start of Gulf Coast Passenger Service Independent of CSXT's Refusal to Allow Amtrak to Use Choctaw Yard.

Amtrak's own missteps with respect to station refurbishment have independently derailed its plans to begin the Gulf Coast passenger service in January 2022. In fact, internal Amtrak documents obtained in discovery reveal that

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68 { ^{Redacted}

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69 { ^{Redacted} }

PUBLIC VERSION

Redacted

}

Amtrak acknowledges in its Renewed Request that it 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.”⁷¹ The FRA review and approval process for any station work that must comply with the Americans with Disabilities Act (“ADA”) has nothing to do with CSXT. And although Amtrak represents that “work is in progress” on the stations with respect to ADA compliance,⁷² CSXT personnel observed no visible change to or evidence of work on the passenger stations (ADA related or otherwise) during a hi-rail trip in late October 2021, less than three months from the planned start of service.

Compliance with the National Environmental Policy Act (“NEPA”) appears to be another challenge for Amtrak independent of any conduct by CSXT. {Redacted

70 {^{Redacted} }

71 Amtrak’s Renewed Request at 5 n.2.

72 *Id.*

73 {^{Redacted} }

PUBLIC VERSION

Redacted

}

Amtrak has known for months that it is incredibly unprepared to start service in January 2022. Between regulatory oversights and the inability to obtain timely funding approvals, Amtrak has no one to blame but itself for the fact that passenger service will not commence along the Gulf Coast in January 2022. {^{Redacted}

74 {^{Redacted}

75 {^{Redacted}

}

76 {^{Redacted}

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77 {^{Redacted} }

PUBLIC VERSION

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} CSXT is not the cause of Amtrak’s unpreparedness to start service.

C. CSXT’s Conduct Has not Exacerbated The Delays Caused By Amtrak’s Unpreparedness.

Finally, Amtrak wrongly suggests that CSXT’s removal of track from Choctaw Yard that was once used for the storage of passenger trains has contributed to Amtrak’s unreadiness to commence the Gulf Coast passenger service.⁷⁸ Specifically, Amtrak insinuates that CSXT removed an “Amtrak Track” in Choctaw Yard “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.”⁷⁹ But Amtrak only first proposed using Choctaw Yard for a layover facility on July 14, 2021,⁸⁰ and has offered no evidence that it raised the possibility of using this track in Choctaw Yard as a Mobile layover facility in the last five years.

There is no reason CSXT should have known or predicted that Amtrak would want to use a track in Choctaw Yard for a layover facility. Amtrak has consistently claimed throughout this litigation that its proposed Gulf Coast passenger service is merely a “restoration” of service.⁸¹ The last service to operate over this line was the

⁷⁸ Amtrak’s Renewed Request at 2, 7.

⁷⁹ *Id.* at 5.

⁸⁰ *See* Ex. E, July 14, 2021 Email From Charles Szovati to Larry Skipper.

⁸¹ Application at 2 (requesting expedited consideration of its Application so that Amtrak “may restore the Gulf Coast Service”); Amtrak’s Renewed Request at 2 (claiming that CSXT removed track from Choctaw Yard “during the time the parties

PUBLIC VERSION

Sunset Limited, which was suspended following Hurricane Katrina in 2005 and never used this Choctaw Yard track. By Amtrak's own admission, these tracks were last used for passenger service almost 25 years ago, when the Gulf Coast Limited service operated from June 1996 to March 1997.⁸² Prior to that, the Gulf Coast Limited service operated between April 1984 and January 1985, and the Gulf Breeze service operated from October 1989 to April 1995.⁸³ Neither of these passenger services is presently suspended, Amtrak has not paid to maintain any "Amtrak Track" in Choctaw Yard, and Amtrak has not identified any contractual obligation that CSXT had to maintain this specific yard track for passenger service terminated a quarter of a century ago.⁸⁴

CONCLUSION

For all of these reasons, the Board should deny Amtrak's Renewed Request for an order granting interim access to Choctaw Yard for the purpose of designing and constructing a layover facility for passenger trains.

were actively negotiating for the restoration of the *Gulf Coast* service").

⁸² Amtrak's Renewed Application at 5.

⁸³ *Id.*

⁸⁴ *See generally id.*

PUBLIC VERSION

Respectfully submitted,

/s/ Raymond A. Atkins

Raymond A. Atkins

Matthew J. Warren

SIDLEY AUSTIN LLP

1501 K Street, NW

Washington, DC 20005

(202) 736-8000

ratkins@sidley.com

mjwarren@sidley.com

Counsel for CSX Transportation, Inc.

Dated: November 9, 2021

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2021, a copy of the foregoing Response to Amtrak's Renewed Request for An Interim Order was served by email or first class mail on the service list to Finance Docket No. 36496.

/s/ Raymond A. Atkins

Raymond A. Atkins

SIDLEY AUSTIN LLP

Exhibit A

May 10, 2021

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

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:

As you are aware, Amtrak's application to the Surface Transportation Board requests an interim order to allow Amtrak to begin preparations for the Gulf Coast Service to commence on or about January 1, 2022. As Amtrak informed the Board, Amtrak needs access to the facilities of your respective clients CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("NS") in order to perform various safety, operations, and stations infrastructure assessments along the route in advance of the start of service.

As Amtrak also informed the Board, an interim order may not be necessary if CSX and NS are willing to provide Amtrak with the access and resources Amtrak needs to perform these assessments. Amtrak Resp. at 18-19. Amtrak's Senior Director of Host Railroads, Jim Blair, intends to reach out in the near future to Andy Daly at CSX and Randy Hunt at NS to describe with greater particularity the access Amtrak needs and the proposed schedule for such access. If CSX and NS intend to refuse all such access, kindly let me know within seven (7) days of the date of this letter.

Sincerely,

/s/ Jessica Ring Amunson
Jessica Ring Amunson

Exhibit B



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 202 736 8889
RATKINS@SIDLEY.COM

May 17, 2021

By Email

Jessica Ring Amunson
Jenner & Block
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412

Re: Finance Docket No. 36496, *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern*

Dear Ms. Amunson:

We have received your May 10, 2021 letter requesting access and resources so Amtrak may “begin preparations for the Gulf Coast Service to commence on or about January 1, 2022.” Amtrak Letter. The letter does not describe what access Amtrak wants, except to say that it may include “various safety, operations, and stations infrastructure assessments along the route in advance of the start of service,” and represents that Amtrak’s Jim Blair would be reaching out to Andy Daly to “describe with greater particularity the access Amtrak needs and the proposed schedule for such access.” *Id.* To date, Mr. Daly has not received any communication from Mr. Blair describing what access Amtrak is requesting and on what schedule.

Amtrak’s demand that CSXT say whether or not it will oppose a request that Amtrak has not yet made is not reasonable. CSXT will consider Amtrak’s request after Amtrak makes an actual request.

Sincerely,

/s/ Raymond A. Atkins

Raymond A. Atkins, Ph.D.

cc: William A. Mullins
Counsel for Norfolk Southern Railway Co.

Exhibit C

Personally Identifying Information Redacted



June 16, 2021

Andy Daly
Senior Director Passenger Operations
CSX 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 May 10th and May 17th exchange of correspondence between Amtrak's counsel and CSXT's counsel in the *Gulf Coast* matter currently pending before the Surface Transportation Board. As requested in CSX's May 17, 2021 letter, I am writing to describe specifically the access Amtrak needs to CSX property, people, and information, for purposes of preparing for the Gulf Coast Service to begin on or about January 1, 2022.

Attached please find Amtrak's preliminary requests for access, including the requested start date, the requested end date, a description of the activities planned, and a description of any support requested from CSX. I have also included contact information for the Amtrak department lead for each access request should you have questions.

Please let me know by no later than July 1, 2021 whether CSX agrees to provide the requested access on the requested schedule. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Blair", with a large, stylized flourish extending to the right.

Jim Blair
Senior Director, Host Railroads

Cc: Kyle Montgomery - Amtrak

Amtrak Requested Access

Request No.	Expected start date of access	Expected end date of access	What activities are planned?	Required Support from CSXT					Need approval by	Amtrak Department Lead	Amtrak Contact	Amtrak Telephone	Amtrak Email	
				Flagging	HyRail	T&E	Ride Along	Other						If "Other", Explain
1	2021 Q3	2021 Q3	Survey for Interim Layover Track	X						7/1/2020	Troy Mason	Troy Mason	Redacted	Redacted
2	2021 Q3	2021 Q4	Bay St Louis Station Repair	X						7/1/2020	John Bender	Brayton Palmer	Redacted	Redacted
3	2021 Q3	2021 Q4	Gulfport Station Repair	X						7/1/2020	John Bender	Brayton Palmer	Redacted	Redacted
4	2021 Q3	2021 Q4	Biloxi Station Repair	X						7/1/2020	John Bender	Brayton Palmer	Redacted	Redacted
5	2021 Q3	2021 Q4	Pascagoula Station Repair	X						7/1/2020	John Bender	Brayton Palmer	Redacted	Redacted
6	2021 Q3	2021 Q4	Mobile Station Repair	X						7/1/2020	John Bender	Brayton Palmer	Redacted	Redacted
7	2021 Q3	TBD	Crew Qualification - Amtrak Road Foreman				X			7/1/2020	Jarrett Alston	Doug Reisner	Redacted	Redacted
8	2021 Q3	TBD	Crew Qualification - Amtrak Crew			X		X	2 CSX Pilots	7/1/2020	Jarrett Alston	Doug Reisner	Redacted	Redacted
9	2021 Q3	2022 Q1	Curve Speed Safety Review					X	CSX Geocar Data	7/1/2020	Justin Meko	Brett Ulrich	Redacted	Redacted
10	2021 Q3	2022 Q1	Grade Crossing Safety Review					X	Current List of Grade Crossings and Warning Devices	7/1/2020	Justin Meko	Brett Ulrich	Redacted	Redacted

Exhibit D

Personally Identifying Information and
Confidential Attachment Redacted



3019 Warrington Street J500
Jacksonville, FL 32254
Redacted

June 30, 2021

Mr. Jim Blair
Senior Director - Host Railroads
National Railroad Passenger Corporation
30th Street Station, 4 Floor North
Box 20
Philadelphia, PA 19104

RE: Gulf Coast Service

Dear Jim,

This letter responds to your letter of June 16, 2021, requesting Amtrak access to CSX properties and resources to allow Amtrak to complete activities in preparation for the possible commencement of new passenger service on the Gulf Coast.

CSX agrees to the request. Attached to this letter is a list of the appropriate CSX representatives that Amtrak can contact, when ready, to coordinate the requested activities. Please provide an Authorization Number, or numbers depending on how Amtrak desires to track the costs for these various tasks, so that CSX can properly track its costs and use such authorization number(s) to invoice Amtrak for the services requested.

We note that CSX will require significant advance notice of Amtrak's plans to qualify crews or conduct station repair work that requires flagging services to ensure there is no unnecessary delay to our freight customers. To that end, please provide more specific details as to the precise dates when flagging services will be requested (including what type of work); the number of crews that will need to be qualified to support the proposed new Gulf Coast service; and the precise dates when those crews will be ready to begin such qualifications.

We would also note that Amtrak crews qualified on the existing facilities along the Gulf Coast corridor will need to be requalified with respect to any new infrastructure agreed to by the parties or ordered by the Surface Transportation Board to support the new passenger service. Amtrak therefore should consider whether it is efficient or appropriate to seek to qualify crews before those issues have been decided. This is one more reason why Amtrak should reconsider its decision not to complete the HDR study. A comprehensive understanding of future changes to the Gulf Coast route would improve the quality and efficiency of Amtrak crew training and qualification.

We note that one of the planning activities is the “Curve Speed Safety Review” which we believe can be best addressed with the attached Curve Report from the “CSX Master Engineering Database”. All the information provided is confidential and should be treated accordingly.

Kind regards,

A handwritten signature in blue ink, appearing to read 'AD', is positioned above the typed name.

Andy Daly
Senior Director
Passenger Operations
CSXT

CSX Representative By Requested Activity

Amtrak Activity Planned	CSX Contact	Telephone Number	Email
Survey for Interim Layover Track	Larry Skipper	Redacted	Redacted
Bay St Louis Station Repair	Larry Skipper	Redacted	Redacted
Gulfport Station Repair	Larry Skipper	Redacted	Redacted
Biloxi Station Repair	Larry Skipper	Redacted	Redacted
Pascagoula Station Repair	Larry Skipper	Redacted	Redacted
Mobile Station Repair	Larry Skipper	Redacted	Redacted
Crew Qualification - Amtrak Road Foreman	Ken Gumz	Redacted	Redacted
Crew Qualification - Amtrak Crew	Ken Gumz	Redacted	Redacted
Curve Speed Safety Review	See attached		
Grade Crossing Safety Review	See attached		

Attachment

Confidential Attachment Redacted

Exhibit E

Personally Identifying Information Redacted

From: [Skipper, Larry \(External\)](#)
To: [Goodrich, Bradley](#); [Turra, Marco](#)
Subject: Fw: AMTRAK Layover Track at Choctaw Yard
Date: Wednesday, July 14, 2021 8:57:18 PM
Attachments: [image001.png](#)

Brad:

Take a look at this and lets get a game plan together.

This reads like he wants to go in the yard at Choctaw Yard in Mobile.

At first blush this looks way beyond us.....But you and I can talk.

A real question---has someone said they can have a track in choctaw yard. This just seems to be a division or higher call.

I will return from fishing by 2-2:30....I will call you.

From: Szovati, Charles E
Sent: Wednesday, July 14, 2021 12:56 PM
To: Skipper, Larry (External)
Cc: Mason, Troy ; Wescott, Herbert H ; Lenik, Frank ; Szovati, Charles E ; Montgomery, Kyle
Subject: [E] AMTRAK Layover Track at Choctaw Yard

Larry,
Good afternoon. Allow me to introduce myself. My name is Chuck Szovati, Sr. Manager Engineering, AMTRAK.
I will be part of the three person crew mobilizing to perform the field survey, design and layout of the proposed layover track at Choctaw Yard, Mobile, AL, in preparation for the possible commencement of passenger service on the Gulf Coast.
We hope to survey the existing site, prepare an alignment/profile design and stake out the same for construction during our trip.
Our work will be performed using conventional surveying equipment (total station, track board, level, etc.) and possibly the use of RTK GPS equipment.
We anticipate two to three working days, weather permitting, to complete our work on-site. In addition to the location of the proposed track, we would like access to the adjacent track, or tracks, to use as a baseline or reference for our field measurements.
We have a loose itinerary planned and hope you could accommodate us with access and protection on-site.
Sunday, 8/8 Travel, Philadelphia, PA to Knoxville, TN
Monday, 8/9 Travel, Knoxville, TN to Mobile, AL
Tuesday, 8/10 Field survey, Choctaw Yard

Wednesday, 8/11 Field survey, Choctaw Yard

Thursday, 8/12 Field survey, Choctaw Yard (if necessary)

Friday, 8/13 Return travel, Mobile, AL to Knoxville, TN

Saturday, 8/14 Return travel, Knoxville, TN to Philadelphia, PA

Several questions you may be able to help us with as well.

- Do you require us to obtain additional safety training prior to performing work on your property? If so, who should I contact to arrange this training?
- What would be the address/location of our muster point to begin our field work?
- Will a CSX representative be on-site to confirm the desired track center to the adjacent track or tracks?
- Will a CSX representative be on-site to confirm the desired track profile or relationship of the proposed layover track to the adjacent tracks?

If a telephone conversation is preferred, please call me on my office or cell, numbers listed below.

Thank you for your time and attention to this email and I look forward to speaking with you.

Regards,

Chuck Szovati

Charles E. Szovati

Sr. Manager Design Track

Amtrak | 30th Street Station | 2955 Market Street | Suite 4S 163 | Philadelphia, PA 19104

Redacted



Exhibit F

Personally Identifying Information Redacted



3019 Warrington Street J500
Jacksonville, FL 32254
Redacted

July 21, 2021

By Email

Charles E. Szovati
Senior Manager Design Track
Amtrak
30th Street Station
2955 Market Street, Suite 4S 163
Philadelphia, PA 19104

Re: Gulf Coast Passenger Service Between New Orleans and Mobile

Chuck:

This letter responds to your email of July 14, 2021, which Larry Skipper forwarded to my attention, expressing your intention to perform a field survey for the design and layout of a layover track at CSX's Choctaw Yard in Mobile, AL in preparation for the possible commencement of Gulf Coast passenger service.

This survey request is puzzling given Amtrak's previous representations about the Mobile station. In the March 2021 Application seeking to commence new Gulf Coast passenger service, Amtrak represented to the Surface Transportation Board that it planned to make the improvements recommended by the Federal Railroad Administration in Table 5 of the Gulf Coast Working Group's 2017 Report to Congress. Application at 6 & n.12. Table 5 calls for a Mobile station track for Amtrak trains to "park during the middle of the day," which the FRA described as 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." GCWG 2017 Report at 27, 30.

It is not clear to us what circumstances necessitate this significant alteration of plans, moving a proposed layover track from the Mobile station into our Choctaw yard. CSX has significant reservations about the impact that change would have on freight rail operations and would appreciate any clarity you can provide.

To ensure the safety of our employees and Amtrak's survey team, CSX would like to see some conceptual layovers of the proposed project before we agree to allow your team onto the property. This will also help us to productively engage with you and your team concerning the construction of and operation over the proposed layover track. And, as discussed above, we

would appreciate any clarity you can offer on what prompted this proposal to place a layover track within our yard and on property over which you have no lease, rather than on track adjacent to the leased Mobile station platform.

Best,

A handwritten signature in blue ink, appearing to read 'Andy Daly', with a stylized flourish at the end.

Andy Daly

Exhibit G



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
August 31, 2021
Page 3

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 H

Personally Identifying Information Redacted



3019 Warrington Street J500
Jacksonville, FL 32254
Redacted

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.”).

Exhibit I

Exhibit Redacted In Its Entirety
Due to Confidential Designation

Exhibit J

Exhibit Redacted In Its Entirety
Due to Confidential Designation

Exhibit K

Exhibit Redacted In Its Entirety
Due to Confidential Designation

Exhibit L

Exhibit Redacted In Its Entirety
Due to Confidential Designation

Exhibit M

Exhibit Redacted In Its Entirety
Due to Confidential Designation

Exhibit N

SERVICE DATE – SEPTEMBER 21, 2021

SURFACE TRANSPORTATION BOARD

Docket No. FD 36496

APPLICATION OF THE NATIONAL PASSENGER RAILROAD CORPORATION UNDER
29 USC § 24308(E)—CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN
RAILWAY COMPANY

**DISCOVERY CONFERENCE ORDER MEMORIALIZING
SEPTEMBER 20, 2021 AGREEMENTS AND UNDERSTANDINGS**

Before: Judge McCarthy

On September 20, 2021, the undersigned and the parties held a conference call to discuss outstanding discovery issues. The parties reported on a brief but productive meet and confer session on Friday, September 17. Although the parties were still reviewing responses, they agreed that all outstanding discovery issues appeared to have been resolved.

Prior to the conference call, CSX Transportation, Inc. (CSX) filed a motion to extend the discovery period by two weeks until October 14, 2021, to allow sufficient time to review voluminous recent responses and identify any questions or potential gaps in production. Norfolk Southern Railway Company (NSR) consented to this motion. In an email prior to the call and on the call itself, the National Passenger Railroad Corporation (Amtrak) objected to the motion unless the parties agreed to jointly request that the Surface Transportation Board (Board) extend the briefing schedule by two weeks with prejudice against any future extensions. The other parties did not agree to this condition.

After the conference call, Amtrak informed the tribunal and the other parties that it does not oppose a two-week extension of discovery and will join the other parties in seeking a two-week extension of the procedural schedule set by the Board. Amtrak reserved its right to object to any further extension of either the discovery period or the procedural schedule.

The undersigned **GRANTS** CSX's unopposed Motion to Extend Discovery Period. The parties have until October 4, 2021, to resolve all discovery disputes.

CSX and NSR reported that they had completed production except for privilege logs. They also indicated that, if they found documents that were not privileged while completing the privilege logs, they would produce those documents. Amtrak reported that it had completed production, including privilege logs.

Thomas P. McCarthy

Thomas P. McCarthy
Administrative Law Judge

Distribution List:

William Mullins
Crystal Zorbaugh
Baker and Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, DC 20037
WMullins@bakerandmiller.com
czorbaugh@bakerandmiller.com

Raymond A. Atkins
Matthew J. Warren
Stephen S. Laudone
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
ratkins@sidley.com
mjwarren@sidley.com
slaudone@sidley.com

Jessica Ring Amunson
Kali N. Bracey
Caroline C. Cease
Jenner & Block LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
jamunson@jenner.com
kbracey@jenner.com
ccease@jenner.com

Exhibit O

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

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

**AMTRAK’S ANSWERS AND OBJECTIONS
TO CSX’S SECOND SET OF INTERROGATORIES**

Pursuant to 49 C.F.R. § 1114.21 *et seq.*, National Passenger Railroad Corporation (“Amtrak”) hereby responds to the Second Set of Interrogatories served upon Amtrak on September 3, 2021 by CSX Transportation, Inc. (“CSX”). These answers and objections are part of ongoing discovery, and Amtrak reserves the right to supplement or amend them as appropriate, including in connection with expert discovery.

GENERAL OBJECTIONS

Amtrak incorporates by reference the General Objections made in its August 30, 2021 answers and objections to CSXT’s August 13, 2021 interrogatories directed to Amtrak.

ANSWERS AND OBJECTIONS

Interrogatory No. 19

Describe in detail what work is required at the proposed Mobile, Alabama station in order to initiate service.

Amtrak objects to this Interrogatory to the extent that it calls for information irrelevant to whether resuming Amtrak passenger service on the Gulf Coast line would impair unreasonably CSX's transportation of freight and thus is overbroad and unduly burdensome. Without waiving any objection, Amtrak answers that it anticipates that the primary work required to initiate service at the proposed Mobile, Alabama location would be installing new signage, retrofitting existing lighting and adding new lights, building a boarding pad to provide for approximately 8" above top of rail boarding and alighting, and installing one or more ADA lifts. Amtrak anticipates that secondary required work will include striping the boarding platform and painting the crosswalk; some patching of the connecting path between the public sidewalk and boarding platform may also be required. Amtrak further directs CSX to documents and communications produced in response to CSX's First Request for Production of Documents to Amtrak or in response to individual interrogatories.

Interrogatory No. 20

Describe in detail what efforts Amtrak is taking to advance the construction of a "combination station and layover track at Mobile, Alabama" as set forth in Amtrak's response to CSXT's Interrogatory No. 5, including:

- A. What property rights, regulatory approvals, or other pre-conditions are required in order for Amtrak to successfully construct the combination station and layover track;**
- B. What Persons Amtrak is communicating with to acquire the necessary property rights, regulatory approvals, or other pre-conditions to successfully construct the combination station and layover track; and**
- C. What "circumstances beyond Amtrak's control" referenced in Amtrak's August 31, 2021 letter to CSXT have caused the combined station and layover track project to "not advance[] sufficiently to allow the planned layover track to be used for the restart of intercity passenger service in early 2022."**

Amtrak objects to this Interrogatory to the extent that it calls for information irrelevant to whether resuming Amtrak passenger service on the Gulf Coast line would impair unreasonably CSX's

transportation of freight and thus is overbroad and unduly burdensome. Amtrak further objects to this Interrogatory to the extent that it calls for information or analysis that is privileged or protected against discovery by the attorney work product doctrine or otherwise. Without waiving any objection, Amtrak answers this Interrogatory as follows:

- A. It is Amtrak's understanding that it would require permission from CSX to cut in a switch from its mainline to the proposed layover track and that it would further require approval from the City of Mobile to build the station and layover track on city property.
- B. Amtrak is not presently communicating with any Person to acquire any rights, approvals, etc. in connection with the proposed station and layover track.
- C. The "circumstances beyond Amtrak's control" include the fact that the City of Mobile's project for the proposed station and layover track has not advanced past the preliminary design stage and that CSX has long opposed restoring passenger service on the Gulf Coast line.

Amtrak further directs CSX to documents and communications produced in response to CSX's First Request for Production of Documents to Amtrak or in response to individual interrogatories.

Interrogatory No. 21

Describe in detail the precise location of the proposed "combination station and layover track at Mobile, Alabama."

Amtrak objects to this Interrogatory to the extent that it calls for information irrelevant to whether resuming Amtrak passenger service on the Gulf Coast line would impair unreasonably CSX's transportation of freight and thus is overbroad and unduly burdensome. Without waiving any objection, Amtrak answers that the precise location of the proposed station and layover track is 11 Government St., Mobile, AL 36602. Amtrak further directs CSX to documents and

communications produced in response to CSX's First Request for Production of Documents to Amtrak or in response to individual interrogatories.

Interrogatory No. 22

Describe in detail Amtrak's use of former Track #10 (known as the "West Stub Track" or "Amtrak Track") in CSXT's Choctaw Yard, including:

- A. When the track was first used by Amtrak;**
- B. When the track was last used by Amtrak; and**
- C. The schedule of how often and for what duration Amtrak used the track including in connection with the *Gulf Coast Limited* service.**

Amtrak objects to this Interrogatory because the information it calls for is entirely irrelevant to whether resuming Amtrak passenger service on the Gulf Coast line would impair unreasonably CSX's transportation of freight and thus is overbroad and unduly burdensome. Without waiving any objection, Amtrak answers this Interrogatory as follows:

- A. Amtrak first used the track in or about April 1984.
- B. Amtrak last used the track in or about March 1997.
- C. Amtrak used the track for the storage of trains in connection with daily service that used two train consists on the line: one eastbound and one westbound. Amtrak used the track for the *Gulf Coast Limited* service from approximately April 1984 to January 1985 and again from approximately June 1996 to March 1997. Amtrak also used the track for the *Gulf Breeze* service from approximately October 1989 to April 1995.

Amtrak further directs CSX to documents and communications produced in response to CSX's First Request for Production of Documents to Amtrak or in response to individual interrogatories.

Interrogatory No. 23

Describe in detail all activities Amtrak proposes to conduct at the Choctaw Yard to support and in connection with passenger service, including:

- A. Any routine maintenance activities;**
- B. Any service preparation activities;**
- C. What Amtrak personnel will need to access Choctaw Yard on a regular basis;**
- D. How long Amtrak requests access to the proposed Choctaw Yard layover facility; and**
- E. The precise physical limits of the proposed leased layover facility and where proposed activities will occur within those limits, including locations of personnel and vehicle access.**

Amtrak objects to this Interrogatory to the extent that it calls for information irrelevant to whether resuming Amtrak passenger service on the Gulf Coast line would impair unreasonably CSX's transportation of freight and thus is overbroad and unduly burdensome. Without waiving any objection, Amtrak answers this Interrogatory as follows:

- A. Amtrak anticipates conducting minimal maintenance activities at Choctaw Yard, including minor locomotive maintenance.
- B. Amtrak anticipates performing basic train cleaning services (emptying trash) at Choctaw Yard. Amtrak further anticipates that its crews would receive routine briefings at the site.
- C. Amtrak anticipates that the following people would need to access the site on a daily basis: a conductor, an assistant conductor, an engineer, other train crew, and mechanical personnel. Amtrak anticipates that other Amtrak personnel such as managers or others conducting site visits would visit the site less frequently and perhaps less regularly.

- D. Amtrak requests access to the Choctaw Yard facility until such time as the layover track at the proposed station and layover track is operational.
- E. Amtrak anticipates needing a length of track sufficient to accommodate the planned consist of two locomotives (approximately 69 feet each) and three cars (85 feet each). Allowing adequate clearance, Amtrak estimates this length of track would be no more than 500 feet. Amtrak further anticipates needing enough space for a crew sign-up location and likely also a mechanical trailer and shed for mechanical and cleaning supplies. The precise locations of such spaces and structures as well as locations of personnel access and any vehicle access would depend upon which section of track CSX makes available to Amtrak.

Amtrak further directs CSX to documents and communications produced in response to CSX's First Request for Production of Documents to Amtrak or in response to individual interrogatories.

Interrogatory No. 24

Describe in detail Amtrak's proposed operations in Mobile, Alabama until such time that a combination station and layover track is constructed, including:

- A. How long will passenger trains occupy CSXT's mainline at the Mobile station prior to its scheduled departure time and after its schedule arrival time;**
- B. The timing of any deadhead moves between the Mobile station and Choctaw Yard; and**
- C. All activities that will be performed in Choctaw Yard.**

Amtrak objects to this Interrogatory to the extent that it calls for information irrelevant to whether resuming Amtrak passenger service on the Gulf Coast line would impair unreasonably CSX's transportation of freight and thus is overbroad and unduly burdensome. Amtrak objects to

paragraph C of this Interrogatory because it is wholly duplicative of Interrogatory No. 23. Without waiving any objection, Amtrak answers this Interrogatory as follows:

- A. Amtrak anticipates that each passenger train will occupy the CSX mainline at the Mobile station approximately 15 minutes before its scheduled departure time and approximately 15 minutes after its scheduled arrival time.
- B. Amtrak anticipates that deadhead moves between the Mobile Station and the layover track in Choctaw Yard will take approximately 15 minutes per arrival or departure. This estimated length of time includes all time spent, including getting into and out of Choctaw Yard.
- C. Amtrak states that its answers to this paragraph C are set forth in its answers to paragraphs A and B of Interrogatory No. 23 above.

Amtrak further directs CSX to documents and communications produced in response to CSX's First Request for Production of Documents to Amtrak or in response to individual interrogatories.

SUPPLEMENTAL ANSWER

Interrogatory No. 1

Although CSX's August 13, 2021 Interrogatory No. 1 applied only to CSX's First Set of Interrogatories and Amtrak therefore has no obligation to supplement its answer to Interrogatory No. 1 in the context of its answers and objections to CSX's Second Set of Interrogatories, in the interests of cooperative discovery, Amtrak nonetheless hereby supplements its answer to Interrogatory No. 1. First, Amtrak incorporates herein its August 30, 2021 answers and objections to that Interrogatory No. 1. Second, Amtrak states that in addition to certain individuals named in its answers to that Interrogatory No. 1, the following individuals contributed to Amtrak's preparation of its objections and answers to CSX's Second Set of Interrogatories:

- Jarrett Alston, AVP Transportation – Southeast Division, Amtrak
- John Bender, Senior Manager Facilities Development, Amtrak
- Lonnie Murray, Senior Director Portfolio Management, Amtrak

The individuals above may be contacted through Jenner & Block, LLP, counsel for Amtrak.

September 20, 2021

Respectfully submitted:

/s/ Kali N. Bracey

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
Jonathan A. Enfield
Jenner & Block LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com
kbracey@jenner.com
jenfield@jenner.com

Counsel for National Railroad Passenger Corporation

CERTIFICATE OF SERVICE

I, Kali N. Bracey, certify that I have this day caused a copy of this document to be served upon CSX by email to counsel for CSX at the following email addresses:

ratkins@sidley.com
mjwarren@sidley.com
slaudone@sidley.com

September 20, 2021

/s/ Kali N. Bracey
Kali N. Bracey