

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
DOCKET NO. FD 36496**

ENTERED  
Office of Proceedings  
May 19, 2022  
Part of  
Public Record

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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**

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**RENEWED MOTION FOR BOARD-SPONSORED MEDIATION AND STAY,  
TECHNICAL CONFERENCE, AND IN THE ALTERNATIVE FOR AN  
EXTENSION OF TIME FOR FILING SUPPLEMENTAL EVIDENCE**

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CSX Transportation, Inc. (“CSXT”), Norfolk Southern Railway Company (“NSR”), and the Port<sup>1</sup> (together, the “Joint Parties”) respectfully again move the Surface Transportation Board (“Board”) to order the Parties to participate in Board-sponsored mediation and to stay this proceeding until the completion of that mediation process. The Joint Parties continue to believe that an amicable resolution is possible—one that facilitates a prompt and orderly commencement of Gulf Coast passenger service while protecting the customers and shipping partners that rely on quality freight rail service.

The Board has now held 11 days of a public evidentiary hearing, which ended on May 12, 2022. During that exhaustive process, each Party’s evidence was fully aired and subjected to cross-examination and questioning from Board members. And prior to this evidentiary hearing, the Board also held a two-day public hearing on February 15 and 16, 2022, to allow stakeholders and other interested parties to express their views on the National Railroad Passenger Corporation’s (“Amtrak”)

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<sup>1</sup> The Port consists of the Alabama State Port Authority and its rail common carrier operating division, Terminal Railway Alabama State Docks.

## EXPEDITED TREATMENT REQUESTED

Application for Gulf Coast passenger service. Speakers on both sides of the case observed that freight railroads and Amtrak historically have negotiated agreements for the commencement of new or enhanced passenger service. Indeed, on May 12, 2022, Chairman Oberman and other members urged the parties to work collaboratively to settle this dispute.

The Board denied a prior request for Board-sponsored mediation, largely due to the timing of that request. But the Board indicated it would consider a renewed mediation request at the conclusion of the evidentiary hearing. Now, at the conclusion of at least the first round of this evidentiary hearing, the Joint Parties are as confident as ever that Board-ordered mediation is warranted. The respective cases of the parties have been subject to an exhaustive review. The inputs into the Rail Traffic Controller (“RTC”) study have been dissected, alternative analyses examined, and several potential operating and infrastructure solutions discussed. And, above all, the Parties have a better sense of the Board’s concerns.

Moreover, the Board has indicated that—absent settlement—it will permit more evidence to be filed, followed by more hearings with cross-examination. Before any more rounds of evidence, reply evidence, direct testimony, cross examination, objections, post-hearing briefing, and closing legal arguments, an informed mediation effort must be given a chance to succeed. After a springtime of hearings, the Joint Parties are confident that, with the help of a Board-appointed mediator, and with technical support from Board staff on the RTC model, the parties can negotiate a collective, comprehensive settlement. Such a Board-guided undertaking may succeed where previous efforts have not.<sup>2</sup>

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<sup>2</sup> The Board has previously ordered disputants to take part in Board-sponsored mediation even over the objection of one of the parties. *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, LA*, FD 36447 (STB served October 21, 2021).

## EXPEDITED TREATMENT REQUESTED

The Joint Parties therefore appeal to the Board to appoint a mediator to work with the Parties to resolve this case, and to stay the evidentiary proceedings during the mediation period. The mediator would be charged by the Board to be fully engaged with the parties to understand and validate inputs, assumptions, and processes, and to use that information to supervise discussions amongst the parties. We urge the Board to provide the parties 60 days to work with the mediator, recognizing that mediation could be extended with the consent of all the Parties. The case should be stayed while the matter is in mediation so the parties can focus their attention and efforts on settlement. If the mediation is unsuccessful, the evidentiary proceeding could resume with supplemental evidence as invited by the Board.

If the Board declines to issue a stay, the Joint Parties request that the Board modify its May 17, 2022 order to set the deadline for new evidence to June 30, to accommodate the schedule of CSXT's and NSR's RTC modeling experts. Mark Dinger is out of the country from May 29 to June 12, 2022. Larry Guthrie is committed to another project through May and is unavailable for several days in June due to travel for another client.<sup>3</sup> The 30-day timetable proposed by the Chairman is insufficient for the kind of extensive new evidence discussed on May 12, 2022, and invited in the Board's May 17 order. Additionally, the Joint Parties request the Board set a deadline for reply comments 30 days after the supplemental evidence deadline, to allow each party an opportunity to review and respond to any new facts and expert analysis.

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<sup>3</sup> For future planning purposes, CSXT counsel are unavailable for any supplemental hearing days from July 5 through July 18, as both have scheduled (and paid for) separate vacations out of the country.

## **EXPEDITED TREATMENT REQUESTED**

Finally, the Joint Parties renew their request for a technical conference, albeit slightly modified from the historical context, with Board staff and the parties' respective experts. This modified technical conference would allow Board staff and the parties to pose specific questions on a number of complex or contentious RTC modeling topics prior to any further hearing days. This joint review of the inputs, assumptions, and outputs of the RTC model would serve to provide transparency claimed to otherwise be lacking from this proceeding with regard to the RTC model prepared by NSR and CSXT. NSR and CSXT invite such a candid review among the parties to put to rest questions concerning the methods employed and to fully educate the Board on the modeling work that was done.

## **CONCLUSION**

For the reasons set forth above, the Joint Parties renew their request for Board-sponsored mediation and to stay this proceeding until the end of that mediation process.

**EXPEDITED TREATMENT REQUESTED**

Respectfully submitted,

/s/ Robert A. Wimbish

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Dated: May 19, 2022

**EXPEDITED TREATMENT REQUESTED**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of May 2022, a copy of the foregoing motion was served by email or first-class mail on the service list for Finance Docket No. 36496.

/s/ Raymond A. Atkins  
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