

SERVICE DATE – NOVEMBER 10, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36496

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

Digest:¹ This decision grants a joint motion to amend the procedural schedule.

Decided: November 10, 2022

On April 4, 2022, the Board commenced the evidentiary hearing phase of this proceeding, which continued on April 5, 6, 8, 12, 14, 18, and 19, and on May 9, 11, and 12, involving the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (collectively, the “Port”; and with Amtrak, CSXT, and NSR, the “Parties”). A decision served on October 28, 2022, announced that the evidentiary hearing would continue on November 17 and 18, 2022, and scheduled a voting conference for December 7, 2022. See Appl. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. (October 28 Decision), FD 36496 (STB served Oct. 28, 2022).

By decision served November 2, 2022, the Board extended mediation to December 1, 2022, and denied, without prejudice, the Parties’ joint request to stay the underlying proceeding during mediation. See Appl. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496 (STB served Nov. 2, 2022). However, the Board afforded the Parties an opportunity to persuade it that a change in the procedural schedule would be warranted and would be constructive, indicating that the Parties could either seek to reschedule the hearing dates or waive further evidentiary hearing. Id. at 2. In either event, the Board stated that if each of the Parties submitted a statement signed by its chief executive officer (CEO), by November 10, 2022, certifying that substantial progress has been made towards reaching a settlement with an explanation that there is a substantial probability that a settlement will be reached, the Board would entertain a motion to cancel the hearing on November 17 and 18. Id.

On November 10, 2022, the Parties filed a joint motion to amend the procedural schedule, requesting that the Board postpone the hearing dates currently set for November 17

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

and 18 to November 30 and December 1. (Parties Joint Mot. 2, Nov. 10, 2022.)² The Parties state that they will file a joint status report by November 21, 2022, indicating whether a settlement agreement has been reached or whether a hearing and closing arguments are still needed. (Id.) In support of their request, the Parties included a joint statement signed by the CEO of each Party attesting to the substantial progress that has been made toward a settlement agreement and to the substantial probability that a settlement will be reached before the voting conference scheduled for December 7. (Id.; see also id., Ex. A.)

The Board will grant the Parties' joint motion to amend the procedural schedule. The Parties are directed to file a joint status report by November 21, 2022, stating whether a settlement agreement has been reached or whether a hearing and closing arguments are still needed. The hearing dates currently scheduled for November 17 and 18, 2022, will be postponed until November 30, 2022, and will be held virtually via Zoom. Specifically, the hearing on November 30 will begin at 10:30 a.m. EST and will conclude no later than 6:00 p.m. EST, and will consist of the Parties' closing arguments, which will be limited to the time allocations set out in the October 28 Decision. The voting conference will remain scheduled for December 7, in the hearing room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001, unless the Parties inform the Board that they have reached a settlement before that date.

As noted in the October 28 Decision, to facilitate Zoom access, the Parties are directed to provide the Board, via email at **Hearings@stb.gov**, updated lists of their representatives who will participate at the hearing, those individuals' email addresses, and whether such individuals will need access to the confidential and/or highly confidential breakout room(s). Those lists must now be provided by November 23, 2022.

It is ordered:

1. The joint motion to amend the procedural schedule is granted, as discussed above.
2. The Parties are directed to file a joint status report by November 21, 2022, as discussed above.
3. The hearing dates scheduled for November 17 and 18, 2022 are postponed until November 30, 2022, beginning at 10:30 a.m. EST on Zoom, as discussed above.
4. The Parties are directed to provide the Board, by November 23, 2022, via email at **Hearings@stb.gov**, updated lists of their representatives who will participate at the hearing, those individuals' email addresses, and whether such individuals will need access to the confidential and/or highly confidential breakout room(s).

² Also on November 10, 2022, the Parties filed a joint witness list, indicating that the Parties have agreed that they will not call witnesses for direct examination or cross-examination and instead requesting that any additional hearing dates consist only of closing arguments. (Parties Joint Witness List 1-2.)

5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.