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SERVICE DATE – OCTOBER 28, 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

Decided: October 28, 2022

AGENCY: Surface Transportation Board.

ACTION: Notice of evidentiary hearing and voting conference.

SUMMARY: The evidentiary hearing phase of this proceeding, 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”), will continue on November 17 and 18, 2022. On December 7, 2022, the Board will hold a voting conference, at which Board members will discuss among themselves, and may vote on, the outcome of the case. The evidentiary hearing and voting conference will both take place in the hearing room of the Board’s headquarters. The hearing and voting conference will also be available for public viewing on YouTube.

DATES: The evidentiary hearing will continue on November 17 and 18, 2022, beginning each day at 9:30 a.m. Eastern Standard Time (EST). The Parties are directed to file with the Board lists of witnesses and to provide updated lists of their representatives’ and witnesses’ email addresses by November 10, 2022. The voting conference will take place on December 7, 2022, beginning at 2:00 p.m. EST.

ADDRESSES: The Parties’ lists of witnesses should be filed via e-filing on the Board’s website, www.stb.gov. The Parties’ updated lists of their representatives’ and witnesses’ email addresses should be sent via email to Hearings@stb.gov. The evidentiary hearing and voting conference will both take place in the hearing room of the Board’s headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245-0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: 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 Parties. As of May 12, 2022, the Parties had concluded the presentation of their evidence. However, the Board invited the Parties to submit additional evidence with respect to issues outlined by the Board at the hearing on May 12, 2022. As a result, on July 27, 2022, the Parties each filed supplemental materials, and on August 31, 2022, the Parties each filed a reply to the evidence in the supplemental materials.

The hearing will continue on November 17 and 18, 2022, and will be limited to direct examination and cross-examination on the new evidence presented in the supplemental materials filed following the conclusion of the hearing on May 12, 2022, and to presenting closing arguments. Specifically, the scope of direct examination and cross-examination will be limited to questions related to the modeling submitted with the supplemental evidence and replies showing the results of various operational changes and infrastructure improvements, as well as the potential impacts to customers. Because the Board is familiar with the Parties' filings, the Parties are encouraged to keep any direct examination to a minimum. At no point should the Parties' direct examination or cross-examination involve evidence that was submitted prior to the conclusion of the hearing on May 12, 2022. The Board expects the evidentiary part of this hearing to be completed within five hours.

Subsequent to the completion of the evidentiary presentation, the Board will permit the Parties to make closing arguments. Closing arguments will be limited, as follows: (1) CSXT and NSR will be allowed 60 minutes, collectively; (2) the Port will be allowed 15 minutes; and (3) Amtrak will be allowed 60 minutes. CSXT, NSR, and the Port may reserve a portion of their time for rebuttal.

On December 7, 2022, beginning at 2:00 p.m. EST, the Board will hold a voting conference, at which Board members will discuss among themselves, and may vote on, the outcome of the case. Although the voting conference will be open for public observation, no participation by the Parties or the public will be permitted.

The Parties are directed to confer among themselves and to file with the Board by November 10, 2022 lists of the witnesses (1) whom they intend to call for direct examination at the evidentiary hearing, and (2) whom they request an opportunity to cross-examine. The Parties should include with their witness lists the time they anticipate needing on direct examination with each witness, keeping in mind the goal of completing the evidentiary hearing within five hours.

To facilitate Zoom access, also by November 10, 2022, the Parties are directed to provide the Board, via email at **Hearings@stb.gov**, updated lists of their representatives and witnesses who will participate at the evidentiary hearing, those individuals' email addresses, and whether such individuals will need access to the confidential and/or highly confidential breakout room(s).

The hearing and voting conference will be held in the hearing room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001. The hearing on November 17 and 18 will begin each day at 9:30 a.m. EST. Hearing participants who are unable to attend in person—with the exception of witnesses subject to direct or cross-examination—may

attend the hearing via Zoom. The hearing and voting conference will be available for public viewing on YouTube.

Instructions for Attendance at Hearing and Voting Conference

No later than November 16, 2022, the Parties' representatives and witnesses will receive an email from the Board via **Hearings@stb.gov** titled "Participant" that includes a link and instructions for how to enter the Zoom meeting.¹ Only registered participants will be allowed into the Zoom meeting. As noted above, witnesses subject to direct or cross-examination may not participate virtually in the hearing.

All persons attending the hearing or voting conference in person must use the main entrance to the Board's headquarters, located at 395 E Street, S.W. There will be no reserved seating. The building will be open to the public at 8:00 a.m. There is public parking in the building. The two closest Metro stops are Federal Center S.W. (3rd and D Streets, S.W., serving the Blue, Orange, and Silver Lines) and L'Enfant Plaza (6th and D Streets, S.W., serving the Yellow, Green, Blue, Orange, and Silver Lines). Upon arrival, check in at the security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or federal government identification); sign in at the security desk; submit to an inspection of all briefcases, handbags, etc.; and pass through a metal detector. Persons who exit the building during the hearing will be subject to these security procedures again if they choose to re-enter the building.

Laptops and recorders may be used in the hearing room, and Wi-Fi will be available.² Cell phones may be used quietly in the corridor outside the hearing room or in the building's main lobby.

Members of the media should contact Michael Booth in the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-1760 if they plan to attend the hearing.

The hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245 by the close of business on November 10, 2022.

The hearing and voting conference will be available for public viewing at www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live. A link to the hearing or voting conference can also be accessed through the Board's website at www.stb.gov, under "Quick Links" on the homepage, by clicking on "WATCH LIVE HEARINGS HERE." If confidential or highly confidential materials are to be presented, all attendees who are not authorized to view the confidential or highly confidential information will be asked to leave the hearing room during the presentation of such information, "breakout rooms" will be used if there

¹ The links will allow the Parties' representatives and witnesses to access the evidentiary hearing on November 17 and 18, and the voting conference on December 7.

² The password will be available in the hearing room.

are hearing participants attending via Zoom, and the YouTube stream of the hearing will be interrupted.

BOARD RELEASES AND TRANSCRIPT AVAILABILITY: Decisions and notices of the Board, including this notice, are available on the Board's website at www.stb.gov. A recording of the hearing and the voting conference, as well as a transcript of each, will be posted on the Board's website when they become available.

It is ordered:

1. The evidentiary hearing will continue in the hearing room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001, on November 17 and 18, 2022, beginning each day at 9:30 a.m. EST.

2. A voting conference is scheduled on December 7, 2022, in the hearing room of the Board's headquarters, at 2:00 p.m. EST.

3. The Parties are directed to file with the Board, by November 10, 2022, lists of the witnesses (1) whom they intend to call for direct examination at the evidentiary hearing, along with the time they anticipate needing on direct examination with each witness, and (2) whom they request an opportunity to cross-examine.

4. The Parties are directed to provide the Board, by November 10, 2022, via email at **Hearings@stb.gov**, updated lists of their representatives and witnesses who will participate at the evidentiary hearing, those individuals' email addresses, and whether such individuals will need access to the confidential and/or highly confidential breakout room(s).

5. This decision is effective on its service date.

6. This decision will be published in the Federal Register.

By the Board, Mai T. Dinh, Director, Office of Proceedings.