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SERVICE DATE – MARCH 23, 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: March 23, 2022

On February 15 and 16, 2022, the Board commenced a public hearing in this docket, at which members of the public had an opportunity to provide comments to the Board. Following the conclusion of the public commentary, on February 16, 2022, the Board held a prehearing conference with counsel for 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),<sup>1</sup> to discuss issues and procedures related to the next phase of the proceeding, an evidentiary hearing originally scheduled to begin on March 9, 2022. Prior to the prehearing conference, on February 14, 2022, the Parties filed a joint summary report offering recommendations for handling exhibits, the treatment of confidential and highly confidential material, and certain other hearing procedures. Also on February 14, 2022, Amtrak and the Port separately filed, and CSXT and NSR jointly filed, lists of witnesses they intend to call at the evidentiary hearing.

By decision served March 1, 2022, the Board granted CSXT's unopposed motion to postpone the hearing and rescheduled it for April 4 and 5, 2022 (continuing on April 6 and 8, 2022, if necessary). See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. (March 1 Decision), FD 36496 (STB served Mar. 1, 2022). By decision served March 14, 2022, the Board identified a number of issues that the Parties should be prepared to address at the evidentiary hearing. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496 (STB served Mar. 14, 2022). This decision provides further information on the evidentiary hearing and directs the Parties to take certain additional actions in advance of the hearing.

The Parties are directed to file their exhibits, as well as any changes to their previously filed witness lists, electronically via e-filing by March 30, 2022. The Parties are also directed to hand-deliver six hard copies of their exhibits to the Board's headquarters between the hours of 9:00 a.m. and noon on March 30, 2022. Although the submission of impeachment exhibits was

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<sup>1</sup> Amtrak, CSXT, NSR, and the Port will be referred to as "the Parties."

discussed at the prehearing conference, the Parties are not required to file any additional documents they may use for impeachment purposes.

The evidentiary hearing, which will be held virtually via Zoom, will begin with the Parties' opening statements, followed by the examination and cross-examination of witnesses, and concluding with the Parties' closing arguments. For opening statements, CSXT and NSR will be jointly allocated 20 minutes, the Port will be allocated 10 minutes, and Amtrak will be allocated 20 minutes. For closing arguments, CSXT and NSR will be jointly allocated 30 minutes, the Port will be allocated 15 minutes, and Amtrak will be allocated 30 minutes.

By March 25, 2022, the Parties are directed to provide to the Board, via email at **Hearings@stb.gov**, a list of email addresses for their representatives and witnesses who will participate at the evidentiary hearing. To facilitate the presentation of materials designated as "confidential" or "highly confidential," the Board will create two breakout rooms in Zoom, one for the presentation of confidential material, and a second for the presentation of highly confidential material. Therefore, the Parties' lists of email addresses to be sent to **Hearings@stb.gov** shall indicate which representatives and witnesses should be assigned to which Zoom breakout room(s), as necessary.

#### Instructions for Attendance at Hearing

No later than March 28, 2022, the Parties' representatives and witnesses participating at the evidentiary hearing 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. Participant links are speaker-specific and should not be forwarded or used by other participants.

Board staff will conduct a technology practice session on March 29, 2022, from 11:00 to 11:50 a.m. for participants to test their Zoom access, including access to the breakout rooms for confidential and highly confidential information. Participants who would like to participate in the practice session should use the "Participant" email invitation that will be sent to them.

The hearing will be available for public viewing at <https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live>. The evidentiary hearing will be recorded, and the link to the recording will be available on the Board's website at [www.stb.gov](http://www.stb.gov), under the tab "News & Communications," by clicking on "Meetings & Hearings." Additionally, a transcript will be created and will be made available as soon as possible on the Board's website, under the tab "News & Communications," by clicking on "Transcripts & Statements."

For further information regarding the evidentiary hearing, contact Jonathon Binet at (202) 245-0368. Additional "Frequently Asked Questions" pertaining generally to participation in Zoom proceedings are posted on the Board's website at [www.stb.gov](http://www.stb.gov). Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

It is ordered:

1. The evidentiary hearing will be held online via Zoom on April 4 and 5, 2022, beginning at 9:30 a.m. (Eastern Daylight Time) each day, and will continue on April 6 and 8, if necessary.

2. The Parties are directed to provide to the Board, by March 25, 2022, via email at **Hearings@stb.gov**, a list of email addresses for their representatives and witnesses, which shall indicate which of their representatives and witnesses should be assigned to the Zoom breakout rooms for confidential and highly confidential material, as necessary.

3. The Parties are directed to file with the Board, via e-filing, their hearing exhibits and any changes to their previously filed witness lists by March 30, 2022, and to hand-deliver six hard copies of their exhibits to the Board's headquarters between the hours of 9:00 a.m. and noon on March 30, 2022, as described above.

4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.