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SERVICE DATE – FEBRUARY 1, 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: February 1, 2022

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this docket, consisting of two phases. The first phase, which will involve comments from the public, will commence on February 15, 2022, and will continue on February 16, 2022, if necessary. The second phase will be an evidentiary hearing commencing on March 9, 2022, and will be limited to the four parties to this case—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”). Immediately following the first phase, the Board will hold a conference with the Parties on February 16, 2022, to discuss issues related to the second phase.

DATES: The public hearing will commence on February 15, 2022, at 9:30 a.m., and will continue on February 16, 2022, if necessary. Notices of intent to participate shall be filed (and participants’ email addresses separately provided to the Board via email) by February 7, 2022. The pre-evidentiary hearing conference with the Parties will be held on February 16, 2022, commencing at 9:30 a.m. or at the conclusion of the first phase of the hearing, whichever is later. At the conclusion of the pre-evidentiary hearing conference, the Board will recess the public hearing until March 9, 2022. Phase two, the evidentiary hearing on the record with the Parties, will be held beginning on March 9, 2022, at 9:30 a.m., and continuing on March 10, 2022, if necessary.

ADDRESSES: All filings, referring to Docket No. FD 36496, should be filed with the Surface Transportation Board via e-filing on the Board’s website. Persons who file notices of intent to participate in the first phase of the public hearing shall concurrently provide to the Board, via email at Hearings@stb.gov, their email address.

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 March 16, 2021, Amtrak filed an application with the Board, pursuant to 49 U.S.C. § 24308(e), seeking an order requiring CSXT and NSR¹ to allow Amtrak to operate additional intercity passenger trains, consisting of two round-trips per day, over the rail lines of CSXT and NSR between New Orleans, La., and Mobile, Ala. The Board received numerous comments in response to Amtrak's application. By decision served August 6, 2021, the Board, among other things, denied CSXT and NSR's motion to dismiss the application, adopted a procedural schedule, and appointed Administrative Law Judge Thomas McCarthy to handle all discovery matters and resolve initially all discovery disputes.

In accordance with the procedural schedule, on November 3, 2021, CSXT and NSR filed opening evidence. On December 3, 2021, Amtrak filed reply evidence. On December 23, 2021, CSXT and NSR filed rebuttal evidence. The Board also received opening evidence, reply evidence, and rebuttal evidence from the Port, which the Board has permitted to intervene in this proceeding. On December 30, 2021, the Board received proposals on the format for the hearing from CSXT and NSR jointly and from Amtrak.

The initial phase of the hearing will commence on February 15, 2022. The primary purpose of this phase of the hearing is for interested persons, other than the four Parties to the case, to provide comments.² The hearing will continue on February 16, 2022, as necessary to accommodate participating persons. This initial phase of the hearing will be entirely virtual. It will be held online via Zoom and will be available for concurrent viewing on YouTube by the public. All interested persons are invited to appear at this phase of the public hearing. Any person wishing to participate in this phase of the public hearing shall file with the Board by February 7, 2022, a notice of intent to participate (identifying the entity, if any, the person represents; the proposed speaker; the amount of time requested; and briefly summarizing the key points that the speaker intends to address). The notices of intent to participate need not be served on any persons or entities; they will be posted to the Board's website when they are filed. Concurrently with filing a notice of intent to participate, persons wishing to participate in the public commentary phase of the hearing shall also provide to the Board, via email at **Hearings@stb.gov**, their email address.

The Board will issue, prior to commencement of the February 15 public hearing, a decision setting a schedule of appearances for speakers, with specific allotments of time for presentations. To ensure an opportunity for all interested persons to be heard, such allotments may be limited, and persons wishing to speak at the hearing should be prepared to keep their comments as succinct as possible, to ensure an opportunity for all interested persons to be heard.

¹ Although Amtrak names Norfolk Southern Corporation in its application, it appears that NSR is the proper party. (See Mot. to Dismiss 1 n.1.)

² The Board recognizes that this proceeding is an adjudication to be decided after a hearing on the record pursuant to 49 U.S.C. § 24308(e), but given the broad public interest in Amtrak matters, the Board is also providing this opportunity for public comments.

The Parties will be given an opportunity to respond after other interested persons have provided comments.

As noted, on February 16, 2022, beginning at 9:30 a.m. or immediately following the conclusion of the public commentary phase of the hearing, whichever is later, the Board will also hold a conference, at which counsel for the Parties are directed to appear. The conference will be entirely virtual. It will be held online via Zoom and will be available for concurrent viewing on YouTube by the public. During the conference, the Board and the Parties will discuss issues and procedures to be followed at the evidentiary hearing on the record. The Board encourages the Parties to meet and confer in advance of the conference, in an effort to narrow the issues to be heard at the hearing on the record and to stipulate to any facts that are not contested. Before the conference, the Board will issue a decision with additional information for the Parties, including what they will need to prepare in advance of the conference and further details on the evidentiary phase of the hearing, including whether it will be held online, in-person, or in a hybrid format. At the conclusion of the conference, the Board will recess the public hearing until commencement of the evidentiary phase at 9:30 a.m. on March 9, 2022.

On March 9, 2022, the Board will commence the evidentiary portion of the hearing, at which the Parties are directed to appear, and which will be open to the public. The evidentiary portion will involve participation by the Parties only and will be presided over by the entire Board. The Board will accept all of the previously filed evidence into the record. The evidentiary portion of the hearing is not intended as an opportunity for the Parties simply to restate the entirety of their written evidence or, on the other hand, to submit a substantially different case. Rather, the evidentiary portion of the hearing is intended to allow the Parties to illuminate their primary contentions, evidence, and points of disagreement through direct examination of witnesses, cross-examination, and re-direct examination, as appropriate, and through opening and closing presentations by counsel.

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 public commentary phase of the hearing, the conference, and the evidentiary phase of the hearing, as well as a transcript of each, will be posted on the Board's website when they become available.

It is ordered:

1. A public hearing in this proceeding will commence on February 15, 2022. All portions of the hearing taking place on February 15, 2022, and February 16, 2022, will be held online using video conferencing.
2. By February 7, 2022, any person who is not one of the Parties identified above and wishes to speak at the public portion of the hearing shall file with the Board a notice of intent to participate identifying the entity, if any, the person represents, the proposed speaker, and the amount of time requested, and also summarizing the key points that the speaker intends to address. Also by February 7, 2022, such persons shall submit, via email at **Hearings@stb.gov**, the email address of the speaker.

3. Notices of intent to participate will be posted to the Board's website and need not be served on any other persons or entities.
4. Counsel for Amtrak, CSXT, NSR, and the Port are directed to appear at a conference before the Board on February 16, 2022, at 9:30 a.m., or immediately following the conclusion of the public commentary phase of the hearing, whichever is later.
5. Amtrak, CSXT, NSR, and the Port are directed to appear at the evidentiary phase of the hearing before the Board beginning on March 9, 2022, at 9:30 a.m.
6. All evidence previously filed in this proceeding is accepted into the record.
7. This decision is effective on its service date.
8. This decision will be published in the Federal Register.

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