

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

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

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**AMTRAK'S MOTION FOR LEAVE TO FILE SURREBUTTAL
AND PROPOSED SURREBUTTAL**

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MOTION FOR LEAVE TO FILE SURREBUTTAL

The National Railroad Passenger Corp. (“Amtrak”) hereby seeks leave to file a short surrebuttal to the rebuttal evidence of CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway Company (“NS”) submitted on December 23, 2021. Amtrak will neither reiterate the points made in its reply evidence, nor comprehensively address all of the arguments in the CSX/NS rebuttal brief, but instead seeks leave to briefly address new arguments and evidence that CSX and NS introduced for the first time in their rebuttal filing, as well as to correct certain CSX and NS misstatements about Amtrak’s reply evidence, and to question the apparent change in position that CSX and NS have adopted with respect to the start of the *Gulf Coast* service.

“While the Board’s modified procedures do not allow for replies to rebuttal material, the Board has the discretion to admit additional pleadings in the interest of creating a more complete record.” *Tri-City R.R. Company Pet. for Declaratory Order*, FD 35915, slip op. at 2 (S.T.B. served Aug. 31, 2015) (allowing reply to rebuttal). Here, Amtrak believes that having a more complete record would assist the Board in resolving the proceeding before it, including having Amtrak’s position on the new arguments and evidence that CSX and NS have offered for the very first time in their rebuttal filing. Amtrak therefore moves the Board to allow the attached surrebuttal in accordance with the Board’s practice in other cases. *See, e.g., Natl. R.R. Passenger Corp. and Consol. Rail Corp.--Application Under Sec. 402(a) of the Rail Passenger Serv. Act for an Order Fixing Just Compensation*, FD 32467 (I.C.C. served Feb. 17, 1995) (accepting Amtrak’s surrebuttal because the “proceeding involves complex, technical issues and it would serve no purpose to exclude relevant evidence that completes or clarifies the record and is useful to render a decision in this case”); *Bhd. of Maint. of Way Employees and Soo Line System Div., Bhd. of Maint. of Way Employees*, 3 S.T.B. 1076, 1077 n. 4 (S.T.B. 1998) (denying motion to strike and accepting reply to rebuttal because “no party would be harmed by its admission”).

As is more fully set forth in the attached brief and Surrebuttal Verified Statements of Thomas D. Crowley and Daniel L. Fapp of L.E. Peabody & Associates, Inc. and Clayton Johanson of DB Engineering & Consulting, USA, Inc., Amtrak seeks to address the following issues in this filing:

- (1) CSX's and NS's new arguments about the meaning of the statutory phrase "impair unreasonably," which were not raised in their opening evidence;
- (2) CSX's and NS's claims about the validity of its "representative model" for its Rail Traffic Controller ("RTC") study and the data, "RTC Modeling Rebuttal Report" and new verified statements, none of which were submitted as part of CSX's and NS's opening evidence or workpapers;
- (3) CSX's and NS's misstatements about Amtrak's capacity analysis; and
- (4) CSX's and NS's apparent change of position as to the start of the *Gulf Coast* service.

Here, because the "proceeding involves complex, technical issues and it would serve no purpose to exclude relevant evidence that completes or clarifies the record and is useful to render a decision in this case," *Natl. R.R. Passenger Corp. and Consol. Rail Corp.—Application Under Sec. 402(a)*, FD 32467 (I.C.C. served Feb. 17, 1995), the Board should allow Amtrak to submit its surrebuttal and accompanying Verified Statement.

CONCLUSION

For the above stated reasons, Amtrak respectfully requests the Board accept the attached surrebuttal filing and accompanying Verified Statement.

February 1, 2022

Respectfully submitted:

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AMTRAK'S PROPOSED SURREBUTTAL

The Board has made clear in other contexts that “in presenting evidence, the party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence. Rebuttal presentations are limited to responding to the reply presentation of the opposing party.”¹ Here, CSX and NS have, in part, used their rebuttal filing to attempt to “introduce new evidence” and make new arguments “that could and should have been submitted on opening to support the opening submissions.”² Rather than move to strike the filing, Amtrak briefly responds herein to four aspects of the CSX/NS rebuttal filing that raised new issues or arguments.

First, Amtrak refutes the new arguments CSX and NS make about the meaning of the statutory phrase “impair unreasonably,” which were nowhere raised in their opening brief or evidence. *Second*, Amtrak addresses the new evidence (including the “RTC Modeling Rebuttal Report” along with new Verified Statements and workpapers) submitted by CSX and NS in an attempt to defend their original flawed Rail Traffic Controller (“RTC”) study. *Third*, Amtrak briefly addresses CSX’s and NS’s misunderstandings and misstatements about Amtrak’s capacity analysis. *Finally*, Amtrak questions whether CSX and NS have changed their position as to the start of the *Gulf Coast* service.

This surrebuttal is not intended to and does not comprehensively refute all of the arguments raised in CSX’s and NS’s rebuttal filing, but is instead confined to those that were newly raised. Amtrak looks forward to addressing all of CSX’s and NS’s arguments more comprehensively in the evidentiary hearing scheduled before the Board on March 9th. In support of this surrebuttal, Amtrak submits the Surrebuttal Verified Statement of Thomas D. Crowley and Daniel L. Fapp of

¹ Gen. Procedures for Presenting Evid. in Stand-Alone Cost Rate Cases, 5 S.T.B. 441, 445-46 (S.T.B. 2001).

² *Id.*

L.E. Peabody & Associates, Inc. (Ex. 1, Surrebuttal Verified Statement of Crowley/Fapp) and the Surrebuttal Verified Statement of Clayton Johanson of DB Engineering & Consulting USA, Inc. (Ex. 2, Surrebuttal Verified Statement of DB Engineering).

I. CSX AND NS NOW AGREE THAT THE STATUTORY STANDARD OF “UNREASONABLE IMPAIRMENT” REQUIRES MUCH MORE THAN A POTENTIAL “DEGRADATION” OF FREIGHT SERVICE.

CSX and NS did not offer any definition at all of the statutory terms “impair unreasonably freight transportation of the rail carrier” in 49 U.S.C. § 24308(e) in their opening brief. Instead, CSX and NS simply asserted (repeatedly) that the statutory standard was met by showing there might be a possible “degradation” in freight service when passenger service is reintroduced.³ Indeed, the opening position taken by CSX and NS was that the statute required that CSX’s and NS’s freight transportation be completely “unimpaired” by Amtrak.⁴ Apparently realizing that this interpretation was untenable in light of the plain language of the statute, CSX and NS have now changed their position and concede that the statutory standard requires showing more than just the possibility that freight service might be “degraded” in some vague manner. CSX and NS now agree that, under the plain terms of the statute, the Board must permit the *Gulf Coast* service to run unless CSX and NS can demonstrate that the service would impair their freight transportation to such a degree that it would “exceed[] the bounds of reason or moderation.”⁵

³ Amtrak Reply at 15 & n.39 (citing CSX/NS Opening Br. at 13, 15-16, 17).

⁴ CSX/NS Opening at 49 (arguing that Amtrak must show that upon introducing the *Gulf Coast* service, “no aggregate freight service delays would result, no schedules would be adjusted, and that passenger service will achieve a 95% OTP rate” (emphasis added)).

⁵ CSX/NS Rebuttal at 11.

Inexplicably, CSX and NS spend four full pages of their brief criticizing Amtrak for using the “Legal Definition of unreasonable” in this legal proceeding.⁶ Ultimately, however, CSX and NS offer a definition that is completely in accordance with what Amtrak has argued all along: To meet their burden of proof under the statute, CSX and NS must demonstrate not just that reintroducing the *Gulf Coast* service might cause some undefined degradation to their freight transportation, but that resuming the *Gulf Coast* service will—in the words used by CSX and NS—“‘make worse’ or ‘do harm to’ freight transportation *in a manner ‘exceeding the bounds of reason or moderation.’*”⁷

Whether the Board adopts the legal definition offered by Amtrak—that the impairment must be “clearly inappropriate” or “excessive”—or the alternate definition argued by CSX and NS in their rebuttal brief—that the impairment must “‘make worse’ or ‘do harm to’ freight transportation in a manner ‘exceeding the bounds of reason or moderation’”—the result is the same. CSX and NS cannot meet their burden just by arguing that they will be inconvenienced by the resumption of passenger service. Instead, they have to show, for example, that the 4.5% decrease in freight train speeds they cite as a reason to deny service—*which by their own admission amounts to a reduction of just 0.7 miles per hour*—causes their freight transportation harm that “exceeds the bounds of reason or moderation.”⁸ Or that the 37.7% increase in train crews by 2039 they claim as a reasons to deny service—*which by their own admission amounts to one additional*

⁶ CSX/NS Rebuttal at 12; *see id.* at 11-12 (arguing that “Amtrak’s purported dictionary definition is a fantasy” because Amtrak used the “Legal Definition” of the term “unreasonable” in the Merriam Webster Online Dictionary, which defines “unreasonable” as “clearly inappropriate” or “excessive”).

⁷ CSX/NS Rebuttal at 14 (emphasis added).

⁸ CSX/NS Rebuttal at 37.

train crew every three days seventeen years from now—causes their freight transportation harm that “exceeds the bound of reason or moderation.”⁹ This they plainly cannot do.

In addressing the meaning of 49 U.S.C. § 24308(e), CSX and NS do not dispute that the statute is the product of Congress’s “concern[] that in the past Amtrak’s efforts to add or modify services have involved protracted arbitration proceedings and have often prompted requests by the railroads for inordinate capital improvements,” and that the statute evinces Congress’s belief that it is “important that Amtrak have available to it an expedited procedure for making necessary modifications or additions to its operations.”¹⁰ Nor do they address the congressional direction that the “purpose of this provision” is “to ensure that such service may be added where no significant impairment of freight operations is demonstrated” and no “serious adverse impacts on a railroad’s freight operations” will result from additional service.¹¹

Ignoring Congress’s statements that the very purpose of the statute is to allow Amtrak to add service over freight railroads’ demands for inordinate capital improvements, CSX and NS instead call into question the statute itself, arguing that granting an application for additional service under 49 U.S.C. § 24308(e) would amount to an unconstitutional taking. Beyond being waived since this argument was never raised in CSX’s and NS’s opening brief,¹² it is also meritless. The Board has repeatedly rejected the same arguments from freight railroads that any expansion of Amtrak service amounts to an unconstitutional taking. Here, just as in those prior cases, CSX and NS “will be compensated for Amtrak’s access” upon resumption of the *Gulf Coast*

⁹ *Id.*

¹⁰ H.R. Rep. No. 96-1041, at 42 (Conf. Rep.).

¹¹ *Id.*

¹² *See, e.g., Public Service Company of Colorado d/b/a Xcel Energy v. BNSF Ry.*, NOR 42057, slip op. at 2 (STB served Apr. 4, 2003) (“The interests of fairness and orderly handling of a case dictate that parties submit their best evidence on opening, so that each party has a fair opportunity to reply to the other’s evidence.”).

service and “it is premature to conclude that the compensation will be inadequate.”¹³ Moreover, as the Board has noted, “the courts have already determined that ‘incremental cost’ compensation.... does not effect a compensable taking under the Fifth Amendment.”¹⁴ In short, CSX’s and NS’s (new) constitutional avoidance argument fails because there is no constitutional issue to avoid.

II. CSX AND NS ADMIT THAT THEIR RTC MODEL INCLUDED HUNDREDS OF TRAINS THAT “DO NOT APPEAR IN THE TRAIN DATA SOURCES.”

CSX and NS focus most of their rebuttal on attacking Amtrak for pointing out that CSX’s and NS’s RTC model is not actually based on real-world data and instead the model includes *hundreds of trains that do not actually exist*. Yet CSX and NS frankly admit that “the vast majority of the[] 1,265 trains” that Messrs. Crowley and Fapp questioned in their Reply Verified Statement “either had *no counterpart in the train data*” or “were provided to the RTC Modelers in *narrative form by the field personnel*.”¹⁵ These include, by CSX’s and NS’s own admission, trains in the RTC .TRAIN file “that are not actually trains” and trains that “never occupy CSXT-controlled or NSR-controlled track.”¹⁶ Apparently unaware of the irony, CSX and NS then state that this all “underscores how dependent the accuracy of an RTC model is on a thorough understanding of typical railroad operations and how railroads collect and utilize train data.”¹⁷

¹³ *Application of Nat’l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)—Union Pac. R.R. Co. & S. Pac. Transp. Co.*, 3 S.T.B. 143, 156 (1998).

¹⁴ *Id.* (citing *Metropolitan Transp. Auth. v. ICC*, 792 F.2d 287 (2d Cir. 1986), *cert. denied*, 479 U.S. 1017 (1986)); *see also Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976); *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986) (federal statutes that alter a regulatory scheme and reallocate economic benefits and burdens among regulated parties are presumptively constitutional under the Fifth Amendment and do not constitute a taking).

¹⁵ CSX/NS Rebuttal at 28.

¹⁶ CSX/NS Rebuttal, Ex. 1, App. A, Rebuttal RTC Modeling Report at 17.

¹⁷ CSX/NS Rebuttal at 28.

CSX and NS then criticize Amtrak for not producing an RTC model of Amtrak's own. But as the Surrebuttal Verified Statement of Messrs. Crowley and Fapp makes clear: "Amtrak and its consultants were not provided the complete information that the Railroads used to develop their RTC Model, including, but not limited to, the discussions held between the Railroads and its consultants used to develop their train list as reflected in their RTC .TRAIN file. Therefore, [Amtrak's consultants] were not able to restate the Railroads' RTC Model, as any restatement that [Amtrak's consultants] attempted would have been purely speculative."¹⁸ In CSX's and NS's view, Amtrak's consultants—who were prohibited from talking to Amtrak's internal personnel with knowledge of Gulf Coast operations about the data provided by CSX and NS—apparently should have just figured out that almost **600** of the "trains" in the RTC .TRAIN file were not actually trains. Likewise, Amtrak's consultants—who had no ability to talk to CSX and NS field personnel—were somehow supposed to intuit that some of the "trains" in the RTC .TRAIN file were based entirely on "narratives" from CSX and NS field personnel (which were not provided to Messrs. Crowley and Fapp).

As Messrs. Crowey and Fapp state: The "data used to develop the .TRAIN file needs to be sourced and auditable, and in the case of the Railroads' Opening evidence, this was not true. The Railroads did not provide the complete evidence that they used to develop their RTC inputs because, as the Railroads state themselves, the complete evidence does not exist in any tangible format as the evidence consisted of undocumented conversations with railroad field personnel."¹⁹ It is impossible to restate evidence when no evidence is provided in the first place. Given this, it is disingenuous at best for CSX and NS to claim that Amtrak was supposed to—in the space of 30

¹⁸ Ex. 1, Surrebuttal Verified Statement of Crowley/Fapp at 4.

¹⁹ *Id.* at 8.

days, under the onerous restrictions of CSX’s and NS’s designations of all of their data as “highly confidential,” and without any access to the “narratives” on which CSX and NS relied—accomplish what the parties were not able to jointly complete in a year: an open, transparent, RTC study with reliable inputs.

To be clear, Amtrak does not dispute the validity of RTC modeling in general. As stated in its reply brief, Amtrak has participated in RTC modeling in the past and currently uses RTC modeling for many Northeast Corridor analyses. But Amtrak’s position, as Amtrak repeatedly stated during the 2020 RTC Study and continues to believe today is that *obtaining useful outputs from RTC modeling depends upon having correct, transparent, and agreed-upon inputs*. With respect to the inputs here, CSX and NS frankly concede that their model is not sourced to real-world data. Nonetheless, CSX and NS insist—contrary to the governing Board precedent cited by Messrs. Crowley and Fapp²⁰—that their “representative model” is better than real-world data. Essentially, CSX and NS tell the Board, Amtrak, and Amtrak’s consultants: “Trust us. We know what we’re doing.” Respectfully:

- Amtrak does not “trust” a model that results in a demand that Amtrak build \$440 million of infrastructure—approximately \$3 million per mile—before Amtrak can run a single train when the Gulf Coast Working Group found that restoration of the *Gulf Coast* service would require just \$5.4 million in capital investments at start-up for station-related improvements and just under \$95 million in additional capital improvements to be phased in over time;²¹

²⁰ Ex. 1, Surrebuttal Verified Statement of Crowley/Fapp at 5 n. 3.

²¹ Amtrak Reply at 10.

- Amtrak does not “trust” a model that does not include any cost-benefit analysis actually linking the demand for \$440 million of infrastructure projects to the supposed issues of train delay and reduced speed that they are supposed to solve;²²
- Amtrak does not “trust” a model that never even considers whether operational efficiencies, better use of existing infrastructure, schedule adjustments, dispatching decisions, or minor signal improvements could alleviate any issues and instead goes straight to demands for hundreds of millions of dollars in infrastructure;²³
- Amtrak does not “trust” the wildly fluctuating demands of CSX and NS, who previously stated that restoring the *Gulf Coast* service between New Orleans and Mobile would cost at least \$1.1 billion;²⁴
- Amtrak does not “trust” a model that is predicated on achieving 95% customer on-time performance given CSX’s and NS’s track record of failing to respect Amtrak’s statutory right to preference.

In short, CSX and NS defend their choice of a “representative rather than a replicative model” while at the same time claiming that they are the only parties who get to verify whether the model actually is “representative.” Amtrak and the Board are asked simply to trust that the model really is “representative.” But RTC analysis cannot and should not work that way. As Messrs. Crowley and Fapp note, this Board “requires parties to proceedings to provide support for any evidence

²² CSX’s and NS’s claim that “Amtrak never challenges the location, purpose, effectiveness, or cost of any of the proposed infrastructure solutions put forth by the RTC Modelers,” CSX/NS Rebuttal at 22, is puzzling. An entire section of Amtrak’s reply brief was devoted to this. Section III of Amtrak’s reply was titled, “CSX’s and NS’s Infrastructure Demands are Legally and Factually Unsupported” and discussed CSX’s and NS’s proposed infrastructure solutions at length. Amtrak Reply at 29-38. Moreover, as discussed *infra*, Amtrak’s capacity analysis demonstrated that “the recommended infrastructure would go above and beyond CSX’s current capacity needs, and the growth forecasts.” *Id.* at 34 (citing capacity analysis).

²³ Amtrak Reply at 34.

²⁴ Amtrak Reply at 11 & n.22.

they rely upon in providing their opinions.”²⁵ “The STB enforces this requirement, in major part, so that the STB and parties can understand any underlying data, and make corrections or adjustments where required. By relying upon evidence that was based on undocumented conversations with field personnel and not directly linked to real world data in a way that can be tested and verified the Railroads violated this STB requirement.”²⁶

III. CSX’S AND NS’S CRITICISMS OF AMTRAK’S CAPACITY STUDY MISS THE POINT.

CSX and NS next level a number of criticisms of Amtrak’s capacity study, undertaken by the team at DB Engineering & Consulting USA, Inc. (“DB”). But CSX and NS fundamentally misunderstand the purpose of the capacity analysis. Amtrak asked DB simply to assess the available capacity on the Gulf Coast corridor, to assess the demands on that capacity, and then evaluate the remaining capacity and its ability to accept passenger service. DB’s methodology used *actual data* from CSX and NS for both infrastructure and train movements as well as an evaluation of the operating practices present on the line.²⁷ Variability, calculated from the same data, was utilized to account for the myriad of variable factors that seek to constrain capacity on a line segment.²⁸ With their RTC modeling, CSX and NS have demonstrated the limitations of how the Gulf Coast corridor is operated in its current situation. *But this does not address theoretical capacity nor available capacity, which was the scope and result of DB’s analysis.*

²⁵ Ex. 1, Surrebuttal Verified Statement of Crowley/Fapp at 8.

²⁶ *Id.* Messrs. Crowley and Fapp also point out the problems with CSX’s and NS’s defense of the RTC model’s failure to use existing infrastructure, the issues with the RTC’s modeling of preference for Amtrak trains, and the unjustified use of a 95% OTP standard, among other issues. Amtrak does not restate the entirety of the Surrebuttal Verified Statement here, but incorporates it as if fully set forth herein.

²⁷ Amtrak Reply at 38.

²⁸ Ex. 2, Surrebuttal Verified Statement of DB Engineering at 6.

To be sure, all corridor stakeholders, including Amtrak, may have contributions to make over time on projects that are holistically beneficial for the Gulf Coast corridor, but the DB analysis shows that the \$440 million in infrastructure projects demanded by CSX and NS as a prerequisite to Amtrak’s initial entry into the corridor are not necessary because there already is sufficient capacity for Amtrak to operate two daily round-trip passenger trains right now.²⁹ In addition, as Amtrak has repeatedly made clear and as Amtrak does with its host railroads on any line over which it operates, Amtrak fully intends to work with CSX and NS to implement capital projects over time that will result in improved safety, reliability, and efficiency. Indeed, there is already \$66 million in federal and state capital funds set aside to do exactly this for the *Gulf Coast* service, which CSX and NS never even mention in their rebuttal submission.

Amtrak’s capacity analysis makes a simple point. CSX and NS cannot demand as the price of admission to running a single train on the Gulf Coast that Amtrak first fund and construct \$440 million of infrastructure because the corridor can already accommodate Amtrak’s planned service. Again, Amtrak does not dispute the need for investment in the corridor over time, but DB’s modeling efforts show that the infrastructure improvements demanded by CSX and NS clearly exceed what is needed to add passenger service today.³⁰

CSX and NS repeatedly disparage the DB analysis as a “stringline” analysis.³¹ But the stringlines referenced are just one aspect of a process for service evaluation and are designed to show capacity availability and utilization simply. Indeed, simplicity is the whole point. After this initial capacity evaluation, the next step is to engage in integrated service planning and evaluation

²⁹ Amtrak Reply, Ex. 4, DB Engineering Reply Verified Statement at 13 (finding that the “Amtrak Gulf Coast service can be initiated without any immediate infrastructure improvements” because “no sections of the corridor exceed the available capacity”).

³⁰ *See id.*

³¹ CSX/NS Rebuttal at 43.

of how best to use the capacity. Unfortunately, CSX and NS have been completely unwilling to engage in these next steps of service planning and evaluation due to their demand that Amtrak first build them \$440 million worth of infrastructure before they will even come to the table.

Similarly misplaced are CSX's and NS's repeated attacks on Viriato.³² Like RTC, Viriato is simply a computer program. It is a tool of capacity analysis, and only the first step in what should be—as just discussed—an iterative and collaborative process to decide how to optimally operate the corridor. Viriato simply helps to illustrate the existence of capacity that has the potential to be utilized through more disciplined operational principles or collaborative schedule optimization activities.³³ Viriato is not meant to and does not schedule or plan specific train movements. Contrary to CSX's and NS's claims,³⁴ DB's capacity analysis does not advocate holding freight movements at terminals, but instead shows what would happen if there were disciplined execution of a well-established and robust operating plan to optimize capacity consumption on the corridor by all operators.³⁵

In any event, Amtrak is not here to argue about which type of simulation model is better. Instead, Amtrak is here to point out that under any model, CSX and NS have failed to carry their burden of showing that the addition of two regularly scheduled, round-trip passenger trains on the Gulf Coast corridor in 2022 will “impair unreasonably” their freight transportation.

³² CSX/NS Rebuttal at 40-46.

³³ Ex. 2, Surrebuttal Verified Statement of DB Engineering at 8.

³⁴ CSX/NS Rebuttal at 43-44.

³⁵ Ex. 2, Surrebuttal Verified Statement of DB Engineering at 7.

IV. THE QUESTION HERE IS WHETHER CSX AND NS WILL AGREE TO ALLOW AMTRAK TO PROVIDE FOR THE OPERATION OF ADDITIONAL TRAINS OVER THEIR RAIL LINES.

In their rebuttal brief, CSX and NS repeatedly claim that “this case is not about whether Amtrak may institute a new passenger service on the Gulf Coast Corridor.”³⁶ But that is exactly what this case is about. Pursuant to the plain terms of the statute, in January of 2021, Amtrak asked CSX and NS whether it could add two daily round-trip passenger trips between New Orleans and Mobile starting on or about January 1, 2022, and CSX and NS did “not agree.”³⁷ Thus, Amtrak petitioned the Board to order CSX and NS “within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times.”³⁸

CSX and NS argue that the Board should “deny Amtrak’s application, and encourage it to reengage in a cooperative process to invest in the infrastructure necessary to support its desired service.”³⁹ But that gets it exactly backwards. Pursuant to the statute, the Board should *grant* Amtrak’s application and order CSX and NS to begin engaging in a cooperative process of service planning and evaluation to ensure the success of the service. The Board should not allow CSX and NS to continue to hold the *Gulf Coast* service hostage to their demands that “all infrastructure improvements, based on 20-year growth projections, must be completed before they will start the first day of service.”⁴⁰

It is somewhat unclear to Amtrak whether this most recent rebuttal filing by CSX and NS constitutes a change of position. Over the last several years and up until this most recent filing, CSX and NS have taken the consistent position that they would allow the *Gulf Coast* service to

³⁶ CSX/NS Rebuttal at 8.

³⁷ 49 U.S.C. § 24308(e)(1).

³⁸ *Id.*

³⁹ CSX/NS Rebuttal at 8.

⁴⁰ Amtrak Reply at 11.

run if and only “if Amtrak agreed to fund and construct the full slate of Proposed Passenger Infrastructure”—14 projects totaling \$440 million—“*prior to implementing service.*”⁴¹ In other words, CSX and NS historically have insisted that Amtrak must pay approximately \$3 million per mile of track to fund projects that might be needed in two decades before Amtrak can run even a single passenger train the approximately 150 miles between New Orleans and Mobile.⁴²

In their rebuttal filing, however, CSX and NS appear to backtrack from that absolutist position.⁴³ If so, that is welcome news to Amtrak. Amtrak stands ready to discuss with CSX, NS, the Board, and any other interested stakeholders how best to utilize the \$66 million in federal and state capital funds already dedicated for restoration of the *Gulf Coast* service. But those discussions are not a reason to delay an order that service can start within 60 days. An expedited procedure to get additional Amtrak passenger service trains up and running is precisely what Congress contemplated in 49 U.S.C. § 24308(e) and Amtrak calls upon the Board to follow the statute and deliver that service to the people of the Gulf Coast as soon as possible.

CONCLUSION

For the above stated reasons as well as those set forth in Amtrak’s prior filings, Amtrak respectfully requests the Board order that the *Gulf Coast* service be permitted to resume on the schedule proposed by Amtrak and with the compensation as set forth within the parties’ respective operating agreements within 60 days of the Board’s order.

⁴¹ CSX/NS Opening Evidence at 10-11.

⁴² Amtrak Reply at 33 & n.106.

⁴³ CSX/NS Rebuttal at 54 (arguing that “[t]he Board plainly has the authority to determine whether construction of *some* or all of that Proposed Passenger Infrastructure should be a condition of granting Amtrak’s application” (emphasis added)).

February 1, 2022

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that I have this day served copies of this document upon all parties of record in this proceeding by use of the service list, consistent with 49 C.F.R. § 1104.12.

/s/ Jessica Ring Amunson _____
Jessica Ring Amunson

February 1, 2022

EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36496

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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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Surrebuttal
Verified Statement

of

Thomas D. Crowley
President

and

Daniel L. Fapp
Senior Vice President

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

On Behalf Of

The National Railroad Passenger Corporation

Due Date: February 1, 2022

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I. INTRODUCTION

We are Thomas D. Crowley and Daniel L. Fapp, President and a Senior Vice President, respectively, of L. E. Peabody & Associates, Inc. L. E. Peabody & Associates, Inc. is an economic consulting firm that specializes in addressing economic, transportation, marketing, financial, accounting, operating and fuel supply matters. We are the same Thomas D. Crowley and Daniel L. Fapp that submitted a Reply Verified Statement in Surface Transportation Board (“STB”) Docket No. FD 36496, *Application of The National Railroad Passenger Corporation Under 49 U.S.C. § 24308(E) – CSX Transportation, Inc. And Norfolk Southern Corporation* on December 3, 2021 (“Reply VS”). A copy of our credentials was included as Exhibit No. 1 and Exhibit No. 2, respectively, to our Reply VS.

We were asked by Counsel for the National Railroad Passenger Corporation (“Amtrak”) to review CSX Transportation Inc.’s (“CSXT”) and Norfolk Southern Railway Company’s (“NS”) (jointly “Railroads” or “CSXT/NS”) Rebuttal evidence filed on December 23, 2021 in this case. Specifically, we reviewed the legal argument prepared by the Railroads’ outside counsel (“Rebuttal Argument”), the Rebuttal Verified Statement of Charles H. Banks and Larry R. Guthrie (“Banks/Guthrie Rebuttal VS”), the Rebuttal RTC Modeling Report included as Appendix A of the Banks/Guthrie Rebuttal VS (“Rebuttal RTC Report”) and the Rebuttal Verified Statement of Hannah Rosse and Holly Sinkkanen (“Rosse/Sinkkanen Rebuttal VS”). We also assessed the workpapers filed with the Railroads’ Rebuttal Evidence that pertained to the Railroads’ response to our Reply VS evidence.

Our review of the Railroads’ Rebuttal evidence determined that the Railroads, their respective employees and their experts made many erroneous and misleading statements about the evidence that we presented in our Reply VS. We also determined that the Railroads’ left

unrebutted many of the errors and problems with the Railroads' Opening evidence that we identified in our Reply VS. We address these issues below.

II. REVIEW OF RAILROAD'S REBUTTAL EVIDENCE

We were initially asked by Counsel for Amtrak to review the CSXT/NS presentation of the Rail Traffic Controller (“RTC”) simulations presented by Banks/Guthrie in their opening verified statement (“Opening VS”) in this proceeding, including the “New Orleans – Mobile Gulf Coast Passenger Service RTC Modeling Report” (“RTC Modeling Report”) included as Appendix A to the Banks/Guthrie Opening VS. Counsel for Amtrak also asked us to address Rosse/Sinkkanen’s claim that they provided the freight operating data and other inputs used by Banks/Guthrie to model the Gulf Coast Rail services in Banks/Guthrie’s Opening RTC cases. We described in detail in our Reply VS the deficiencies and flaws with the Railroads’ Opening RTC evidence including, but not limited to, the Opening RTC models lack of resemblance to real world CSXT and NS operations, the Railroads’ lack of support for the inputs in their Opening RTC models, the Railroads’ lack of supporting workpapers for their Opening RTC models and the unusual and out of norm RTC model inputs used in the Railroads’ Opening RTC models.

Instead of directly responding to many of the issues that we raised in our Reply VS about their Opening evidence, the Railroads instead misstated or made erroneous statements about the evidence that we included in our Reply VS. The Railroads also failed to provide any tangible rebuttal to many of the issues that we identified in their Opening evidence.

We discuss the specific issues with the Railroads’ Rebuttal evidence below under the following topical headings:

- A. Amtrak and Its Consultants Could Not Restate the Railroads’ RTC Model
- B. “Representative” RTC Models vs. “Replicative” RTC Models
- C. The Railroads’ Claimed the “Representative” RTC Train Count is Within 2.5 Percent of the Actual Peak
- D. CSXT/NS Cannot Support Their RTC Model Inputs
- E. Inappropriately High Preference Given to Amtrak Trains
- F. Contradictions on Modeling Rail Yards in the RTC Model
- G. 95 Percent OTP is Not a RTC Input
- H. Reply Issues Not Explained by the Railroads’ Rebuttal

**A. AMTRAK AND ITS
CONSULTANTS COULD NOT
RESTATE THE RAILROADS' RTC
MODEL**

The Railroads and Banks/Guthrie repeatedly attack Amtrak for identifying errors in the Railroads' Opening RTC Model inputs and assumptions but not presenting a restated RTC Model in its Reply evidence.¹ This is incorrect. Amtrak and its consultants were not provided the complete information that the Railroads' used to develop their RTC Model, including, but not limited to, the discussions held between the Railroads and its consultants used to develop their train list as reflected in their RTC .TRAIN file. Therefore, we were not able to restate the Railroads' RTC Model, as any restatement that we attempted would have been purely speculative.

In this proceeding, the Railroads did not include all of the real-world traffic in their RTC traffic group, but instead relied upon a representative traffic group with no direct links to real-world data. The Railroads also did not provide detailed and linked supporting files and complete records from detailed conversations with internal railroad employees as to how its traffic group was developed. Without such information, any restatement on our part would be pure speculation. The Railroads and their experts' claims that they included all of the necessary data components in their evidence to reconstruct the RTC .TRAIN file is disingenuous as well. Without a map to show how they used the different data components, or decided which set of data took precedence over another set of data, attempting to reconstruct the intended traffic group was impossible.

**B. "REPRESENTATIVE" RTC
MODELS VS. "REPLICATIVE"
RTC MODELS**

The Railroads' witnesses and counsel go to great lengths to claim that their use of a hypothetically robust representative period of traffic movements in the RTC model is better than

¹ See, Rebuttal Argument at 41 and Banks/Guthrie Rebuttal VS at 1.

replicating an operating period based on actual train movements.² The Railroads' position is completely opposite the position that the STB has taken when evaluating RTC results in other STB proceedings.

The Railroads' Rebuttal Argument attempts to rebut our support for using actual data for a defined peak period by stating that we only cited to one case, the *FMC* case, to support our position. The Rebuttal Argument also claims that the *FMC* decision applied only to the calculation of locomotives using a peak period analysis, and not rail operations in general. By focusing on the discussion of locomotives in *FMC*, the Rebuttal Argument ignores the fact that the *FMC* case set the stage for using a peak operating period when evaluating rail operations in rail simulations. Virtually all STB cases after the *FMC* case that used rail simulation models, including simulations that relied upon the RTC model, used peak period analyses.³ While we could have cited each STB case after *FMC* to support our peak period analysis, it was not necessary because they all relied upon the peak period practices used in *FMC*.

Both the Rosse/Sinkkanen Rebuttal VS and the Rebuttal RTC Report create a strawman argument that "representative models are just as good as replicative models"⁴ by misconstruing our arguments about RTC models. Rosse/Sinkkanen's position is that we claim that representative

² See, Rebuttal Argument at 5 and 23-24; Banks/Guthrie Rebuttal VS at 3 and 28; Rosse/Sinkkanen Rebuttal VS at 2-5.

³ See, for example, *Duke Energy Corporation V. Norfolk Southern Railway Company*, NOR 42069_0 (S.T.B. served Nov. 6, 2003); *Otter Tail Power Company v. BNSF Railway Company*, NOR 42071_0 (S.T.B. served Jan. 27, 2006); *Western Fuels Association, Inc. And Basin Electric Power Cooperative v. BNSF Railway Company*, NOR 42088_0 (S.T.B. served Sep. 10, 2007); *AEP Texas North Company v. BNSF Railway Company*, NOR 41191_1 (S.T.B. served Sep. 10, 2007); *Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company And Union Pacific Railroad Company*, NOR 42113_0 (S.T.B. served Nov. 22, 2011); *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, NOR 42121_0, (S.T.B. served Sep. 14, 2016); and *Consumers Energy Company v. CSX Transportation, Inc.*, NOR 42142_0 (S.T.B. served July 15, 2015).

⁴ The Rebuttal Report states that "a replicative model will use exact train inputs, direct from a specific period" and "a representative model incorporates data from a larger time sample and uses data distributions and a selection of trains to represent typical operations." Rebuttal RTC Report, at 6. Stated differently, a replicative model "replicates" precisely what took place on the record (e.g., train XYZ arrived at 2PM on Tuesday), and a representative model requires development of inputs that "represent" what took place on the record (e.g., train XYZ arrived sometime between 12 and 4 PM on Tuesday).

models are inferior to replicative models. At no point do we claim that representative models are inferior to replicative models, but rather, we state that the “representative” RTC model included in the Railroads’ Opening is too disconnected from actual train data that what they are describing as “representative” is not representative at all. We actually stated that if Banks/Guthrie had modeled a replicative model, then they could have eliminated the hundreds of “estimates” afforded by the representative model which Banks/Guthrie exploited to the point that their representative model is no longer representative of the real-world system.⁵

**C. THE RAILROADS’ CLAIMED THE
“REPRESENTATIVE” RTC TRAIN
COUNT IS WITHIN 2.5 PERCENT
OF THE ACTUAL PEAK**

The Railroads and their witnesses claim that the train list included in their Opening RTC model is within 2.5 percent of the actual peak period train count, if corrected.⁶ Banks/Guthrie make this claim by comparing our calculation of actual train counts based on empirical data provided in the proceeding and their RTC train counts by including trains that did not appear in the Railroads’ data and individual real-world trains that represent multiple train movements in their RTC data.⁷ In other words, they attempt to make up the difference between real world trains and their RTC trains by including trains that were unsupported by any empirical data, which was exactly the issue we raised.

For example, a great deal of the difference between our Reply and the Railroads’ Opening train counts is attributable to the Railroads’ claim that multiple yard (or local) trains that they included in their RTC model actually represent a single train making multiple movements. The

⁵ See, Reply VS at 16.

⁶ See, Rebuttal Argument at 5 and 29; Banks/Guthrie Rebuttal VS at 6-7; Rebuttal RTC Report at 15 and 20; Rosse/Sinkkanen Rebuttal VS at 10.

⁷ See, Rebuttal RTC Report at 14-20.

Rebuttal RTC Report cites 174 trains as being modeled as “Train Movements” and cannot be counted as “Train Symbols.”⁸ Essentially the Rebuttal RTC Report claims that multiple trains in the RTC model are actually just one train represented in the model as multiple “movements.” We were aware of this distinction and it was a major criticism of their RTC model as we identified in pages 19 to 22 of our Reply VS. By adding train movements as trains, the Railroads overstated the number of trains in the RTC model as compared to actual real-world trains.

The remainder of the difference in the train count we developed based on actual real-world data and the Railroads’ made-for-litigation train count is primarily due to trains that are not included in any CSXT or NS data, but allegedly run in the real-world. For example, the Rebuttal RTC Report cites 582 trains in the RTC model as trains that “would have no counterpart in the train data,”⁹ i.e., trains that are allegedly based on field observations and have no supporting documentation. Specifically, these trains were “based on conversations with field personnel or direct observation of the dispatching.”¹⁰ The Rebuttal RTC Report also identifies 140 trains as “Trains with No Data but have Detailed Descriptions” where “it was necessary to preprocess the data before providing that data to the RTC Modelers.”¹¹ In short, the trains that the Railroads claim we overstated are not supported by any empirical data.

D. CSXT/NS CANNOT SUPPORT THEIR RTC MODEL INPUTS

The Railroads’ experts repeatedly claim that they were unable to provide support for their RTC trains because they were relying upon a representative train list that does not have any ties to actual rail operations.¹² Moreover, Rosse/Sinkkanen claim that the creation of an RTC .TRAIN

⁸ See, Rebuttal RTC Report at 15.

⁹ See, Rebuttal RTC Report at 17.

¹⁰ See, Rebuttal RTC Report at 17.

¹¹ See, Rebuttal RTC Report at 18.

¹² See, Rebuttal RTC Report at 17; Rosse/Sinkkanen Rebuttal VS at 2.

file, a key input file into the RTC model, is an iterative process that required information from multiple sources as well as validation from field personnel.¹³ We never stated in our Reply VS that a .TRAIN list should draw data from a single source. We did state, however, that data used to develop the .TRAIN file needs to be sourced and auditable, and in the case of the Railroads' Opening evidence, this was not true. The Railroads did not provide the complete evidence that they used to develop their RTC inputs because, as the Railroads state themselves, the complete evidence does not exist in any tangible format as the evidence consisted of undocumented conversations with railroad field personnel.¹⁴

The STB requires parties to proceedings to provide support for any evidence they rely upon in providing their opinions.¹⁵ The STB enforces this requirement, in major part, so that the STB and parties can understand any underlying data, and make corrections or adjustments where required. By relying upon evidence that was based on undocumented conversations with field personnel and not directly linked to real world data in a way that can be tested and verified the Railroads violated this STB requirement. The Railroads relied upon a "Just Trust Us" approach that said they developed the RTC data in a way that is consistent with how they do things in the normal course of business.

There are two (2) primary problems with the Railroads' position. First, there is simply no reason that they could not provide a one-to-one match for the trains in the model, identifying the source and the basis for inclusion of the specific train. Even if the trains are only "representative," the Railroads should have provided workpapers that show which "representative" trains are "representing" trains included in the real-world train lists, trains included based on field

¹³ See, Rosse/Sinkkanen Rebuttal VS at 6.

¹⁴ See, Rosse/Sinkkanen Rebuttal VS at 6-8.

¹⁵ See, Reply VS at p. 27.

observations and trains included based on discussions with other railroad personnel. In other words, even if the train list was “representative,” they needed to provide clear and auditable evidence as to how it was prepared.

Second, as we noted at page 27 of our Reply VS, parties in STB cases are required to provide clear and identifiable evidence to support their position(s). The Railroads’ experts in this case did not. Instead, they state that all of the pieces were available in their data, and that we should have replicated their workpapers using these pieces. For example, Rosse/Sinkkanen state that we possessed all of the source documents and information necessary to develop the tables depicting eastbound and westbound trains operating over NS lines in the New Orleans Terminal Area.¹⁶ This is completely contradictory to STB processes and procedures. For example, in *Consumers Energy Company v. CSX Transportation, Inc.*, Consumers Energy’s Opening Evidence describes the specific data and processes used to develop the RTC train list in that proceeding, including references to specific workpapers utilized and a technical document explaining the specific steps taken and the sources of data used in the development of the train list.¹⁷ Parties to STB cases are required to file complete evidence, including how they put evidence together and all the requisite information. It is not acceptable for one party to say, after the fact, that the information was there, and the other party should have put the final product together.

¹⁶ See, Rosse/Sinkkanen Rebuttal VS at p. 23.

¹⁷ See, *Consumers Energy Company v. CSX Transportation*, NOR 42142, Consumers Energy Opening Evidence (Public Version), filed November 2, 2015, at III-C-39 to 56. Mr. Fapp was one of the experts sponsoring the development of the RTC train list in that proceeding involving CSXT.

E. INAPPROPRIATELY HIGH PREFERENCE GIVEN TO AMTRAK TRAINS

The Rebuttal RTC Report states that we claimed in our Reply VS that the RTC modelers gave Amtrak trains inappropriately high preferences in the RTC model.¹⁸ The RTC model can prioritize trains based on prioritization factors included as inputs into the RTC model but this is not what the Railroads used. The RTC model allows a user to set passenger trains as the highest priority and all other trains at lower priorities. However, instead of using RTC train priority ranking to allow Amtrak trains to move ahead of other trains in the RTC model, the Railroads' RTC modelers instead shut down entire sections of the rail network to allow Amtrak trains to move. They did this through the use of maintenance-of-way ("MOW") permits that are usually included in a RTC model to allow time for track maintenance work. We noted at page 48 of our Reply VS that this approach increases non-Amtrak train dwell times while allowing Amtrak trains to move with the highest priority.

Instead of embracing the fact that their approach to providing Amtrak trains priority by using RTC permits increases dwell times for non-Amtrak trains, the Rebuttal RTC Report creates an argument that we claim that Amtrak should not be given priority.¹⁹ We did not take this position. Rather, we pointed out that their modeling approach of shutting down sections of track so Amtrak trains could move was not required and did nothing but increase non-Amtrak train dwell time.

¹⁸ See, Rebuttal RTC Report at 10.

¹⁹ See, Rebuttal RTC Report Executive Summary and Rebuttal RTC Report at 10-14.

F. CONTRADICTIONS ON MODELING RAIL YARDS IN THE RTC MODEL

The Rebuttal RTC Report states that “[a]n RTC model is a dispatch simulation tool; it does not simulate railcars in yards” and that “not including [Yard] tracks in the [RTC] Model does not diminish the capacity of the route at all.”²⁰ These statements are a direct contradiction to the Rebuttal RTC Report regarding yard train lengths and their operation in rail yards.

The RTC Rebuttal Report states that the RTC model was designed such that “[t]he lead and mainline tracks are blocked to other train movements during [railcar] switching movements even when the train is not physically occupying the space. This length, and the lengths of the trains in Mobile, were selected to ensure the tail end of the train would block the yard lead during the [railcar] switching operation.”²¹ In other words, the Railroads designed the RTC model to block the Mobile Yard lead track during switching operations. Blocking the lead track within a yard diminishes capacity along the route. In addition, the Rebuttal RTC Report’s inclusion of 50 “blocks of cars” in the RTC model is also contradictory because these blocks of cars on yard track also take up route capacity.²²

In another contradiction, the Rebuttal RTC Report states that the Railroads’ RTC model does not simulate switching and therefore they do not need to include switching related infrastructure in the RTC simulation.²³ However, the Rebuttal RTC Report states that they modeled switching in the yards to “block the yard lead during switching operation.”²⁴ In other words, the Railroads only modeled switching in yards when it would negatively impact rail

²⁰ See, Rebuttal RTC Report at 21.

²¹ See, Rebuttal RTC Report at 28.

²² See, Rebuttal RTC Report at 17.

²³ See, Rebuttal RTC Report at 21.

²⁴ See, Rebuttal RTC Report at 28.

operations. However, without modeling the entire switching related infrastructure, one is not able to identify the true impact of switching on the operations.

The Railroads' experts claim that the missing track that we pointed out in Reply does not impact their RTC simulations, but they did not rerun their RTC models with the correct yard and industry track added. Also, the Railroads' experts imply that we could only find a few examples of "missing track." We could provide numerous other examples of track that had not been properly modelled but we felt the point was made and it was clear.

G. 95 PERCENT OTP IS NOT A RTC INPUT

The Rebuttal RTC Report states that we claim the 95 percent on-time performance factor ("OTP") for Amtrak trains was an input into the RTC model.²⁵ We did not claim that the 95 percent OTP is an input, but rather that the Railroads designed their RTC models in order to obtain a 95 percent OTP for Amtrak trains.²⁶ Stated differently, the Railroads included enough extra infrastructure in their RTC models to ensure Amtrak trains would obtain a 95 percent OTP output.

H. REPLY ISSUES NOT EXPLAINED BY THE RAILROADS' REBUTTAL

The Railroads' experts spent much of their Rebuttal attempting to justify their inappropriate use of hypothetical rail information instead of actual rail data. While addressing some of the issues that we identified in our Reply, there are a number of issues that we discussed in detail in our Reply VS that the railroads failed to rebut. Specifically, the Railroads did not respond to the following:

1. **95 Percent RTC OTP And Real-World 80 Percent OTP.** As we discussed in our Reply VS, Banks/Guthrie Opening VS provided no analyses or support for their claim that a 95 percent RTC OTP corresponds to an 80 percent real world OTP.²⁷ Instead,

²⁵ See, Rebuttal RTC Report at 10.

²⁶ See, Reply VS at 35-36.

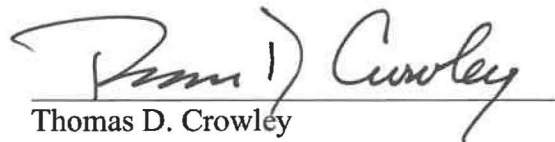
²⁷ *Id.*

they simply assume that the RTC simulation requires a higher OTP than actual operations. Banks/Guthrie did not provide any substantive evidence in their Rebuttal VS to support their position.

2. **STB Preference for Real-World Data.** We noted in our Reply VS the STB's preference for the use of real-world data as opposed to estimated or projected "representative" data.²⁸ While the Railroads and their witnesses spend a considerable amount of time discussing their creation of their "representative" data, they do not rebut our showing of the STB's preference for reliance upon actual real-world data that is verifiable.
3. **More Foreign Trains.** We explained in our Reply VS that Banks/Guthrie's Opening RTC models assumed that there were more foreign trains traversing the network than NS and CSXT road trains combined.²⁹ Banks/Guthrie failed to rebut this point.

VERIFICATIONS

I, Thomas D. Crowley, verify under penalty of perjury that I have read this Surrebuttal Verified Statement on behalf of the National Railroad Passenger Corporation, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Thomas D. Crowley

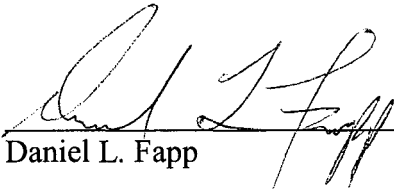
Executed on 2/1/22

* * *

²⁸ See, Reply VS at 12.

²⁹ See, Reply VS at 17.

I, Daniel L. Fapp, verify under penalty of perjury that I have read this Surrebuttal Verified Statement on behalf of the National Railroad Passenger Corporation, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Daniel L. Fapp

Executed on 2/1/22

EXHIBIT 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

)
)
) **Application of the National Railroad**
) **Passenger Corporation Under**
Docket No. FD 36496) **49 U.S.C. § 24308(e) – CSX**
) **Transportation, Inc., and Norfolk**
) **Southern Corporation**
)

Surrebuttal
Verified Statement
of
Clayton S. Johanson
Principal Consultant

Michael Weaver
Senior Consultant

Darkhan Mussanov
Consultant

DB E.C.O. North America, Inc.
Engineering and Consulting Services

On Behalf of
The National Railroad Passenger Corporation

Introduction

Clayton S. Johanson, Michael Weaver, and Darkhan Mussanov are the team engaged on this project on behalf of DB E.C.O. North America, FKA DB E&C USA, Inc.

The DB E.C.O. NA team were retained as experts by the National Railroad Passenger Corporation (“Amtrak”) to analyze the railroad capacity implications for the addition of Amtrak’s Gulf Coast Service on CSX Transportation, Inc. (“CSX”) NO&M Subdivision from Sibert Yard in Mobile, Alabama to NOT Junction in New Orleans, Louisiana, and continuing on Norfolk Southern Railway Company’s (“NSR”) Back Belt Line to East City Junction in New Orleans, to a connection with Amtrak’s New Orleans Union Passenger Terminal (“NOUPT”) to the routes conclusion at NOUPT Passenger Station in New Orleans (“Gulf Coast Corridor”).

The team’s credentials were previously presented for review in the initial presentation before this board and again in the rebuttal evidence, presented by Amtrak regarding the evidence submitted by CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway Company (“NS”) submitted on December 23, 2021. Additionally, the team previously submitted a Verified Statement (VS) on December 3, 2021. in Surface Transportation Board (“STB”) Docket No. FD 36496, *Application of The National Railroad Passenger Corporation Under 49 U.S.C. § 24308(E) – CSX Transportation, Inc. And Norfolk Southern Corporation.*¹

As previously stated, the DB team enjoys several years of experience in railroad operations and planning working directly for Class 1 Railroads and Amtrak, and subsequently in

¹ 2021 STB LEXIS 180

consulting roles engaged exclusively on railroad projects across the country in operations and capacity planning engagements.

DB E.C.O North America, Inc. (DB) is a subsidiary of Deutsche Bahn AG, the German Federal Railway company. The organization is engaged in operations, planning, management, and engineering consulting services to the freight rail, passenger rail, and transit industry, and is based in Sacramento, California. The company has been active in the United States since 2017 and has developed a diverse portfolio of clients spanning the North American continent.

As a contractor to Amtrak, DB was asked by Amtrak to apply its capacity marketplace methodology to the Gulf Coast Corridor to assess the current supply of capacity on the corridor, the demand on that capacity, based on CSX and NS supplied data, and to recommend mitigations that can balance the supply and demand. The DB Capacity Marketplace methodology utilized in this task is a railroad planning methodology developed by DB to facilitate a market style comparison of railroad capacity and demand. As a result of this evaluation, DB was able to conclude that the Amtrak Gulf Coast service can be initiated without any immediate infrastructure improvements. This was because when the two proposed Amtrak Gulf Coast Service roundtrips (four trains total) on the Gulf Coast Corridor were added to the model, no sections of the corridor exceed the available capacity. ²

Simplicity in the delivery of the information is an intentional feature of DB's methodology. The methodology identifies the capacity supply on a line segment and the demands placed upon that capacity. The methodology provides a portrait of capacity which then provides a railroad with a tool to make informed decisions on the consumption of capacity.

² See DB VS at pg. 1.

DB's Methodology for Assessing Line Capacity

DB's methodology establishes a means for measuring the supply of capacity of a section of railroad corridor and then values the consumption of the capacity from a demand perspective. While a modeler may use a simulation model to attempt to find locations and occurrences of delay, and then investigates potential solutions to solve the problem, DB's methodology instead calculates the demand for capacity on a segment, based on real-life operating data, and then compares the supply of available capacity. Subsequently, solutions are evaluated to gauge the ability to solve any identified problems. While the DB methodology may not initially have simulation data behind it, it seeks and then accurately answers the primary question about capacity, using real performance data as an underlying data set.

While much criticism has been levied at the use of a capacity-based methodology, it must be noted that DB's methodology assessed available capacity, capacity constraints, capacity consumed by the variability of railroad operations (derived from CSX and NSR data), and the capacity remaining that could support the proposed Amtrak service.³ The methodology used was specifically tasked with quantifying capacity, identifying capacity constraints, and evaluating what the capacity consumption of increased passenger service would be.

The conclusions, as outlined in the evidence presented by Amtrak, outlined that capacity sufficient for the inauguration of Gulf Coast Service was present, with operational and capital recommendations to account for freight service and specific Amtrak-service related needs identified.

³ See Rebuttal Argument at p. 15.

To clearly identify the methods utilized in DB's methodology, it is critical that capacity is calculated through a process of determining the representative units of capacity for a rail corridor. A unit of capacity established is based on determination of a standard train. The standard train is representative of the type of trains that could potentially be operated on the corridor. The determination of the standard train in this case was based upon the actual data taken from the corridor, in this case provided by CSXT and NSR. Unlike what has been asserted on multiple occasions, DB's methodology specifically does not require every train to adhere to the standard train profile, it simply compares the relative capacity footprint of each train to the standard train.⁴

Using units of capacity allows for the evaluation of the capacity consumption of railroad operations, identifying and presenting visually the implications of capital and operational decisions. This presentation allows railroads to evaluate the appropriateness of those decisions and understand what implications their decisions have on overall capacity consumption. Decisions that consume additional capacity beyond a single unit can be compared to the opportunity cost of other decisions.

DB's Methodology in Compensating for the Effects of Operational Performance Variability

Throughout these proceedings, much discussion has taken place on the validity of a variability metric, a function of factors related to railroad operations. DB's methodology acknowledges that even under the most ideal operating plan that the performance of a train on a particular route can be variable.⁵

⁴ See Rebuttal Argument at p. 45.

⁵ See Banks/Guthrie Rebuttal VS at p. 1.

In the assessment of corridor capacity in this specific case, DB's methodology used CSX and NSR data representing 3 months of actual operation to account for the inherent variability in freight operations and to create a simple picture of capacity, its availability, and the effects of usage against the total capacity available.

The methodology's variability metric is a measure of the additional capacity consumed by the operation of a train. It is obtained by aggregating all historical train runtimes and comparing them to the modeled standard train run times. The average difference is then recorded as a variability metric. Accounting for random and varying events, and closely approximating their frequency and duration, is the hallmark of the variability metric.⁶

In railroad operations, variability is introduced through a multitude of factors often outside of the railroad's individual span of control. These factors impact the ability of a train to adhere to a particular schedule or level of operational performance. These factors can include additional weight, lower-than-planned horsepower per ton ratios, local train work events, temporary track speed restrictions, track work windows, terminal congestion issues, and other varied line congestion issues. This also can include delays incurred when trains are held short of highway-rail grade crossings to avoid blocking them, or when they stop for drawbridges that are open for water traffic. DB accounts for these types of issues using the variability metric as well. Staging of trains, for terminals or interchange carriers greater than 3 hours in duration, is also accounted for, but instead using a train staging metric.⁷

DB's Methodology Does Not Employ a Slot Based Model

⁶ See Rebuttal Argument at 40

⁷ See Rebuttal Argument at 4.

At several points within the evidence submitted by CSX and NSR, it was asserted that DB's methodology is a "Slot Based Dispatching Model," and thus unrealistic for real world operational use. To the contrary, DB's methodology is not a "Slot Based Dispatching Model." The DB methodology does not require railroads to adhere to a rigid operating plan.⁸

Specifically, DB's capacity analysis does not advocate for any specific operating practices, for example holding trains at terminals. The analysis measures the capacity consumption and offers solutions to match identified supply and demand.⁹

Instead of advocating for train performance using rigid slots, DB's methodology measures the impact of capacity consumption decisions. The use of the DB methodology, incorporating analysis of real CSX and NSR operating data, demonstrated, as an example, that trains are already holding waiting entry into New Orleans or Mobile Terminals. Those delays were then covered in the train staging metric. The assertion that trains would be held strictly upon the inauguration of passenger service was proven to be false in this example.¹⁰

At the completion of the DB analysis, 48 units of capacity were identified as available for CSX to utilize along the corridor in each calendar day. This does not mean that a freight train will use capacity every hour. These units of capacity are utilized by the operation of trains, variability in train performance, track maintenance, and the staging of trains on main track when necessary. Capacity, and how it is utilized, is the key factor to understand in evaluating a rail corridor.¹¹

⁸ *Id* at 45.

⁹ See Banks/Guthrie Rebuttal V.S. at p. 20-21.

¹⁰ See Rebuttal Argument at p. 42.

¹¹ *Id* at 42.

The Use of Viriato as an Analysis Tool

Within the evidence presented by CSX and NSR numerous statements were made attempting to discredit the use of Viriato in analysis and criticizing its outputs as a single simplistic approach to a multi-faceted issue and one not usable in the North American railroad environment.¹²

Viriato's primary use within this analysis was to visualize line capacity. It was utilized to visualize the supply of capacity on the line as well as the effects on capacity that would result from the operation of the proposed Amtrak trains in the corridor.

DB did not use Viriato to "measure the capacity" or to schedule train operation, except for the proposed Amtrak schedules.¹³ Viriato was overall a small portion of the work performed by the team. Most of the work was data calculation done in the program "Tableau," which is an extremely popular data visualization program. In this analysis, Data visualization was obtained from the analysis of specific real operating data provided by CSX and NSR.

Additionally, much criticism was logged regarding the presentation of string line diagrams as part of the presentation of information to the Board.

The stringlines referenced were but one aspect of a process for capacity evaluation and were designed to visually display capacity availability. The use of Viriato is an initial step in a broader methodology that determines the capacity and available supply on a railroad. This methodology has been used successfully in multiple railroad capacity analyses.¹⁴

¹² See Rebuttal Argument at p. 42.

¹³ *ID* at p. 46.

¹⁴ See Banks/Guthrie VS at p. 17.

Value of the Utilization of the DB Methodology to Assess Line Capacity

Rather than attempting to dynamically simulate operations that are highly variable, and likely to change, DB's methodology measured the capacity available and the demand on that capacity. After that initial activity, the process stopped because it answered the underlying capacity question. At that point, the process shifts to beginning to identify potential solutions.¹⁵

If the operating plan requires additional infrastructure, such as a scenario with an Amtrak schedule requiring a train meet, or the existence of an exceptionally reliable freight service that conflicts with Amtrak, then the operator plans the infrastructure to support the requirements of that operating plan. DB's methodology places a quantitative value on the consumption of capacity and provides the railroads with the ability to explore service and operational improvements that extract the greatest return from railroad capacity.

Dynamic simulation is not required to come to that conclusion, the conclusion instead comes from understanding line capacity. This team believes the use of DB's methodology, in this case, has provided a conclusion that is accurate and sufficient to agree with Amtrak's conclusions, as articulated in their request of this board.

¹⁵ See Banks/Guthrie VS at p.17.

VERIFICATION

I, Clayton S. Johanson, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 1st day of February 2022.



A handwritten signature in black ink, appearing to read "Clayton S. Johanson", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Clayton S. Johanson

VERIFICATION

I, Michael Weaver, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 1st day of February 2022.

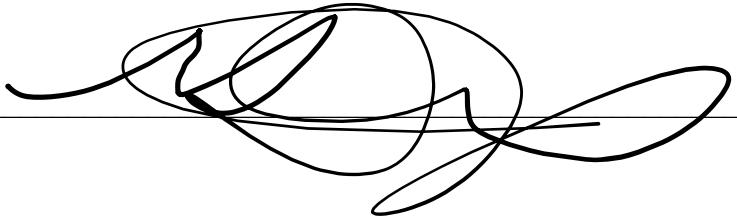
A handwritten signature in black ink, appearing to be 'Michael Weaver', written over a horizontal line. The signature is stylized and somewhat cursive.

Michael Weaver

VERIFICATION

I, Darkhan Mussanov, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 1st day of February 2022.



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a solid horizontal line.