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Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street S.W.  
Washington, D.C. 20423

Re: In Re: Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f) (STB Docket No. EP-728)

Dear Ms. Brown,

Enclosed for filing in the above-referenced docket are CSX Transportation's reply comments to the Board's Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f). Thank you for your assistance with this matter.

Sincerely,



Michael K. Murphy

*Counsel for CSX Transportation, Inc.*

Enclosure

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. EP-728**

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**POLICY STATEMENT ON IMPLEMENTING INTERCITY PASSENGER TRAIN  
ON-TIME PERFORMANCE AND PREFERENCE PROVISIONS  
OF 49 U.S.C. § 24308(c) AND (f)**

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Dated: April 13, 2016

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CSX Transportation, Inc. (“CSXT”) welcomes the opportunity to reply to the comments submitted to the Surface Transportation Board regarding the Board’s proposed *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, STB Docket No. EP-728. Commenters opposed to the Board’s policy statement have not presented persuasive arguments that warrant the Board to alter or rescind it.

Procedurally, the Board’s policy statement is proper. By calling for comments and reply comments from all interested parties, the Board has provided more process than what is required of it at this juncture.

Substantively, the policy statement recognizes that preference must not be viewed as “absolute priority.” Giving preference such an extreme meaning fails to balance the interests of Amtrak passengers, commuter rail passengers, shippers, and host railroads, and fails to give full effect to the intent of Congress. Amtrak’s view that host railroads owe its trains an absolute right of way (akin to emergency vehicles and presidential motorcades) pays no heed to the importance of network fluidity, leading quickly to systemic gridlock. CSXT performed modeling of its RF&P Subdivision, the results of which are discussed herein and demonstrate that according Amtrak trains with absolute priority upends commuter train operations, drastically limits the number of available slots for freight trains, and likely results in congestion on tracks and in yards that would ripple through the network. Lastly, Amtrak’s attempt to limit the relevant evidence that parties will submit in a preference investigation reveals just how one-sided and absolutist its interpretation of preference is. The Board should issue its policy statement as written, subject to the suggestions put forward by CSXT and other host railroads in their initial comments filed in this docket.

**A. The Board’s Policy Statement Is Procedurally Sound.**

Amtrak’s suggestion that the Board’s policy statement is procedurally flawed is wrong. The Board’s policy statement plainly states that it is “preliminary guidance” and a “*potential* starting point for parties to consider when developing evidence” for investigations, which “likely will be refined in individual § 24308(f) proceedings.” Policy Statement at 3. Amtrak asserts instead that the Board’s policy statement is “*practically* binding on private parties” because “a party to an investigation is ‘reasonably led to believe that failure to conform’ in its evidentiary submission and arguments to the systemic/global approach to preference espoused by the Board ‘will bring adverse consequences.’” Amtrak Comment at 5-6 (quoting *Gen. Elec. Co. v. EPA*, 290 F.3d 377, 383 (D.C. Cir. 2002)) (emphasis added).

Amtrak’s concern of “adverse consequences” during an investigation is misplaced. The Board has invited parties to “present *any* arguments or evidence they could have presented before the Board issued this policy statement.” *Id.* (emphasis added). Thus, the statement in no way requires Amtrak to present certain evidence or arguments during the investigation or constrains the Board’s discretion to consider evidence during that investigation. The Board’s policy statement therefore is diametrically different in this respect from the EPA’s testing procedure at issue in the *General Electric* case relied upon by Amtrak, which instructed the regulated community “that both cancer and non-cancer endpoints *must be addressed*” in filings. *Gen. Elec. Co.*, 290 F.3d at 384 (emphasis added). No “adverse consequences” flow to Amtrak from the Board’s policy statement because no adverse consequences can flow to Amtrak until the Board has held its investigation, considered the parties’ arguments, and issued its decision. *See Consol. Edison Co. of N.Y. v. Fed. Energy Regulatory Comm’n*, 315 F.3d 316, 323 (D.C. Cir.

2003) (“When an agency hears a case under an established policy statement, it may decide the case using that policy statement if the decision is not otherwise arbitrary and capricious.”).

Thus, the Board should reject Amtrak’s calls for it to rescind the policy statement on procedural grounds. In fact, by offering all parties the opportunity to submit initial comments and reply comments in this docket, the Board has provided more process than is typically afforded for policy statements. Amtrak’s contrary assertion appears to be driven by its discomfort with the substance of the Board’s statement more than its concerns about the Board providing allegedly insufficient process to interested parties.

**B. The Preference Requirement Does Not Require Host Railroads To Provide Amtrak Trains With Absolute Priority.**

**1. Amtrak’s Interpretation Is Contrary To The Text Of The Statute.**

The statute provides that “intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing.” 49 U.S.C. § 24308(c). Amtrak’s interpretation of the preference requirement is extreme: “[i]f a host railroad does not resolve an individual dispatching decision at a rail line, junction or crossing in favor of Amtrak, then Amtrak does *not* have preference over the freight train in using that rail line, junction or crossing.” Amtrak Comment at 10 (emphasis in original). Thus, Amtrak believes that its trains *must* move ahead of freight trains at each instance where they meet on a host railroad’s network, and a preference violation occurs if an Amtrak train *ever* slows because of “freight train interference.”

Although Amtrak argues that the text is “clear,” “plain,” and “unambiguous,” *id.* at 3, 6, 15, the text does not support Amtrak’s reading. Preference is not defined in the statute. It certainly does not mean “absolute priority” or “absolute right of way” at every meet with another train—but that is exactly what Amtrak chides the Board for not discerning as the “plain and

unambiguous” meaning of the statute. If Congress had intended for Amtrak trains to receive uninhibited, absolute priority at every meet with another train, (akin to emergency vehicles and presidential motorcades), it could very easily have said so. It did not, using instead the more holistic word “preference,” and the Board should resist Amtrak’s urging to rewrite the statute.

Preference instead must be interpreted in accordance with its plain meaning, the way Congress used it in the statute, and in the context which it was intended. When courts have interpreted the word “preference” in other statutes and regulations, they have rejected interpretations like Amtrak’s proffered reading in this proceeding. *See, e.g., Antonio P. v. Ariz. Dep’t of Econ. Sec.*, 187 P.3d 1115, 1118 (Ariz. Ct. App. 2008) (“Preference means a ‘choice or estimation above another.’ Preference does not mean that a certain choice or estimation is mandated.” (quoting Webster’s New International Dictionary 1787 (3d Ed. 2002))); *Orange Cty. Employees Assn. v. Cty. of Orange*, 234 Cal. App. 3d 833, 842 (Cal. Ct. App. 1991) (“Use of the word ‘preference,’ without more, implies the exercise of judgment. Had the Legislature intended the local agencies to ‘select’ or ‘approve’ a particular kind of plan, it could easily have said so. It did not.”).

Applying Amtrak’s absolutist interpretation of preference—such that preference means a mandate to select one thing over another without any discretion—to other statutes where Congress employed the same term demonstrates the absurdity of Amtrak’s interpretation. For example, just one year after Congress first promulgated the preference requirement now found at 49 U.S.C. § 24308(c), Congress mandated that “[t]he National Railroad Passenger Corporation shall give *preference* to using station facilities that would preserve buildings of historical and architectural significance.” Pub. L. 93–496, § 6, 88 Stat. 1530 (Oct. 28, 1974) (emphasis

added).<sup>1</sup> Interpreting “preference” in this statutory provision in the same manner as Amtrak urges in its comment, Amtrak **must** use **only** rail passenger terminal facilities that will preserve buildings of historic and architectural significance, regardless of any other factor or consideration (such as location, accessibility, and cost of the terminal facility). Amtrak has no discretion—it cannot build a new station or renovate a building of no historical and architectural significance to serve as a station. This is an absurd interpretation of the term “preference,” just as it is an absurd interpretation of the term to suggest that a host railroad **must** give Amtrak trains an absolute right of way at every meet with a freight train regardless of any other factor.

Likewise, another section of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”) required FRA to develop a pilot program that would permit a rail carrier “to be considered as a passenger rail service provider over [a specified] route in lieu of Amtrak for a period not to exceed 5 years.” 49 U.S.C. § 24711(a)(1). If FRA “awards the right and obligation to provide passenger rail service over a route under the program to a rail carrier or rail carriers,” *id.* § 24711(c), then “the winning bidder shall provide hiring **preference** to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the bidder,” *id.* § 24711(c)(4) (emphasis added); *see also* 49 C.F.R. § 269.15(c) (FRA regulation implementing pilot program providing “preference” to “Amtrak employees displaced by the award of the bid.”). Interpreting preference in this provision of PRIIA in the same manner as Amtrak urges in its comment, the winning bidder **must** hire **only** “Amtrak employees displaced by the award of the bid” so long as they are “qualified.” Again, this is an absurd interpretation

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<sup>1</sup> In 1994, Congress recodified and amended this provision to read “Amtrak shall give preference to the use of rail passenger terminal facilities that will preserve buildings of historic or architectural significance.” Pub. L. 103–272, § 1(d), 108 Stat. 854 (July 5, 1994) (codified at 49 U.S.C. § 5567). This provision remains in effect today.

that ignores Congress’s intent to provide a preference for certain employees, not an absolute mandate to hire those employees.

The Board has it exactly right: “a host railroad need not resolve every individual dispatching decision between freight and passenger movements in favor of the passenger train.” Policy Statement at 3. It applies a common-sense definition of preference, recognizing that an individual dispatching decision may “appear, in isolation to favor freight over passenger efficiency” but in fact “may ultimately promote efficiency and on-time service for passenger trains on the network generally.” Amtrak urges instead a myopic view of individual dispatching decisions—even if those decisions ripple through the network and disadvantage other Amtrak trains—rather than a realistic, network-wide approach that maintains fluidity and “focuses on minimization of total delays affecting intercity passenger train movements . . . consistent with the statute.” *See* Policy Statement at 4. The Board should proceed to finalize and issue its policy statement subject to the suggestions made in CSXT’s initial comments.

**2. The Board’s Interpretation Of The Preference Requirement Does Not Conflate The Definition With The Preference Relief Provision.**

Amtrak asserts that the Board erred by “conflating” the definition of preference with the “separate preference relief application procedure” in section 24308(c). Amtrak Comment at 13-15. It argues that the Board’s interpretation “would render the second and third sentences in section 24308(c) without any purpose, because there would be no reason for a host railroad to apply for relief from preference,” *id.* at 14, if the definition itself considered whether preference “materially lessen[s] the quality of freight transportation provided to shippers” and “promoted efficiency in freight service,” Policy Statement at 3. This is not the case for three reasons.

First, the Board’s statement that Congress expressed its view that “preference for . . . passenger transportation . . . [should not] materially lessen the quality of freight

transportation provided to shippers,” Policy Statement at 3, follows from the plain text of the statute. Congress did not intend for preference to “materially lessen the quality of freight transportation” if it provided for a relief provision to prevent this very outcome. The Board once again has it right: when Congress imposes an undefined, single-word requirement and then proceeds to state clearly that it does not intend for a certain outcome to result from the application of that requirement, an agency is well within its discretion to look to the full text of the provision in order to glean Congress’s intent.

Second, Amtrak’s assertion that “the Board’s construction of preference makes the preference relief application procedure superfluous” falls flat. *See* Amtrak Comment at 14. Indeed, while the Board may look to the entire statute to glean the definition of preference, doing so does not subsume a specifically defined relief provision. Simply because the Board has considered Congress’s explicit desire for preference not to “materially lessen the quality of freight transportation” does not mean that a host railroad will never need to seek relief from the preference requirement on a particular route or part of a route under a particular set of circumstances. In most cases, the appropriate and reasonable definition of preference sufficiently addresses Congress’s concern, while in other cases a host railroad may need to seek relief when preference requirements lessen the quality of freight transportation. This approach is entirely consistent with the text of the statute.

Third, Amtrak’s criticism of the Board for referring to its statutory mission to “promote[] efficiency in freight service” in the same policy statement as the preference requirement is severely misguided. Amtrak based this argument on its conclusion that “the rail transportation policy elements that mention ‘efficiency’ do not suggest or make any linkage with preference.” Amtrak Comment at 15. But the linkage is apparent—Congress, through PRIIA, chose to place

the power to investigate Amtrak train performance with the Board. The Board cannot sideline one of its missions simply because it must carry out another responsibility.

Indeed, Congress was undoubtedly aware that it placed this investigatory power with an agency tasked generally with “regulat[ing] so as to promote efficiency in freight service.” Amtrak’s initial comment quotes from Senator Patty Murray’s statements at a 2007 Senate subcommittee hearing on Amtrak’s budget that discussed moving the responsibility for investigating preference to the Board. Amtrak Comment at 12. At the same hearing, Senator Murray made clear that the preference requirement incorporated considerations for “freight mobility” and could not possibly mean what Amtrak has asserted in this proceeding: “There is no question we need our freight railroads to move cargo. Freight mobility is an essential part of our economy, especially in an agricultural and trade State like [Washington]. *It is simply not realistic to expect our freight railroads to put every coal and container train on a siding so passenger trains can breeze through.*” U.S. Senate Subcommittee on Transp. and Housing and Urban Dev., Committee on Appropriations, Appropriations for Fiscal Year 2008, Opening Statement of Senator Murray at 2-3 (Feb. 28, 2007) (emphasis added).<sup>2</sup> But that is exactly what Amtrak believes the law demands—moving aside all impediments and letting its trains “breeze through,” regardless of the consequences to the network’s fluidity and subsequent impacts to passenger and freight trains. Amtrak’s command that the Board set aside its directive to promote freight transportation to suit its own purposes is meritless.

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<sup>2</sup> Available at <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg69104264/pdf/CHRG-110shrg69104264.pdf> (last accessed Apr. 13, 2016).

### **3. Amtrak's Interpretation Would Result In Network Gridlock.**

If “preference” is replaced with “absolute priority,” as urged by Amtrak, and imposed on host railroads, it would result in absurd consequences that Congress could not have intended and that violate this Board’s stated goal of promoting efficient surface transportation. It would harm passengers and shippers alike through systemic gridlock that would quickly cascade across America’s rail networks. In today’s complex environment, which has changed dramatically since the early 1970s, the network could not function if every dispatch decision was resolved in favor of an Amtrak train blindly and without regard to network fluidity. The Board rightly recognized these significant changes and their impact on today’s rail environment. *See* Policy Statement at 4 (“Due to increased traffic density, the rail operating environment has become more complex since Congress first established a preference requirement in 1973. This environment requires complex decision-making by the host carriers’ dispatchers.”).

To assess the impact of Amtrak’s absolutist interpretation of the preference requirement on just one of CSXT’s subdivisions, CSXT performed modeling using a set of parameters meant to mimic Amtrak’s view of preference contained in its comments. *See* Decl. of Mark H. Dingler, attached hereto as Exhibit A. The subject of this model is CSXT’s RF&P Subdivision, *id.* at ¶4-5, which runs from Washington, D.C. to Richmond, Virginia. The RF&P Subdivision has a high concentration of passenger and commuter traffic and serves as a critical link in CSXT’s eastern seaboard operations. On a typical weekday, 24 Amtrak trains, 32 Virginia Railway Express (“VRE”) commuter trains, and 18 freight trains traverse the RF&P Subdivision. *Id.* at ¶4. On average, 11 or 12 of these freight trains operate between the hours of 6:00 a.m. and 9:00 p.m. each day. *Id.*

CSXT conducted its model of the RF&P Subdivision using Rail Traffic Controller (“RTC”). *Id.* at ¶5. RTC is an industry standard dispatch simulation tool that attempts to replicate dispatcher decisions for a given corridor. *Id.* at ¶3. Many host railroads use RTC for capacity planning, service changes or expansion, and in conjunction with Board rate proceedings. *Id.*

Amtrak argues that “[a] host railroad *must* resolve individual dispatching decisions between Amtrak movements and freight movements in favor of Amtrak.”<sup>3</sup> Amtrak Comment at 19. To illustrate the impact of providing Amtrak with this absolute priority at every meet, CSXT used the following criteria in its model of the RF&P Subdivision. First, all Amtrak trains were modeled without any other traffic using existing schedules. *Id.* at ¶6. Second, commuter trains were added with their existing schedules where possible. *Id.* However, some commuter schedules were shifted in order to ensure that they did not interfere with any Amtrak trains. *Id.* at ¶8. Third, freight trains were added to the model wherever possible. *Id.* at ¶6. CSXT’s model also assumed that all passenger trains were exactly on schedule and that no track maintenance occurred. *Id.* at ¶7.

The results of CSXT’s modeling were dramatic and offer a glimpse at the systemic gridlock and disruption to freight and passenger traffic that would result if Amtrak’s one-sided position were implemented. According absolute priority to Amtrak on the RF&P subdivision resulted in the reduction of freight service on the subdivision from the current average of 11.6

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<sup>3</sup> Amtrak’s absolutist view of preference extends indirectly to commuter trains. Amtrak classifies delays caused by commuter trains as “CTI”—commuter train interference—and includes such delays when tabulating delays attributable to the host railroad, because Amtrak’s view is that a host railroad’s dispatcher could have advanced a commuter train over a freight train elsewhere on the network in order to avoid a disadvantageous meet between the commuter and the Amtrak train.

slots between 6:00 a.m. and 9:00 p.m. to only three northbound slots and one southbound slot during that same window. *Id.* at ¶9(a). Four VRE trains would have their departure times adjusted—some by over two hours—in order to ensure Amtrak operated unimpeded. *Id.* at ¶8. And three more VRE trains would be delayed *en route*. *Id.* at ¶9(b).

Indeed, this simple modeling exercise demonstrated that providing Amtrak with absolute priority—which it is not entitled to under the statute—would devastate the service CSXT and VRE provide to its customers and would quickly lead to severe congestion and gridlock far beyond this particular Subdivision. Commuters using VRE would be severely inconvenienced—trains that depart today between 5:20 p.m. and 6:45 p.m. would instead depart between 8:10 p.m. and 8:30 p.m. *See id.* at ¶8. These schedule changes most likely would result in the elimination of this service—not the rescheduling used in CSXT’s model. This would decrease VRE ridership and increase congestion on the highways in and around Washington D.C. and Richmond.

If the daylight capacity of the RF&P Subdivision is reduced from nearly 12 freight train slots per day to three or four freight train slots, the eight or nine freight trains that currently travel during this time would have to hold at a yard for a slot to operate overnight—between 9:00 p.m. and 6:00 a.m. Trains that cross the RF&P Subdivision from the north would hold at the yards at Brunswick, Maryland or Baltimore. Trains that cross the RF&P Subdivision from the south would hold at Richmond.<sup>4</sup> Each of these yards, however, has only a limited capacity to hold trains in order to run the vast majority of them at night, and all three yards have commuter or Amtrak traffic which limits the flexibility of where trains can sit. The Richmond yard’s capacity

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<sup>4</sup> These trains likely would hold at a crew change location in order to facilitate switching of crews and reduce the need for additional backup crews.

is so limited, in fact, that trains likely would need to hold farther south at preceding crew change locations (Rocky Mount, North Carolina or Florence, South Carolina, depending on the train). Soon thereafter, these yards would become congested.

This congestion would impact important commodity deliveries network-wide. For instance, even though few grain unit trains operate on the RF&P, two or three such trains operate daily on CSXT's tracks south of Richmond. If Amtrak trains were accorded absolute priority on just the RF&P Subdivision, the elimination of slots for freight trains and the increase in congestion at the Richmond yard would have a detrimental effect on the operation of these grain unit trains.

Today, freight trains are spread throughout the day on the RF&P Subdivision, maximizing the capability of the tracks and of each yard. If the vast majority of freight traffic only moved for nine hours each night, then yards likely would not be able to process the required amount of traffic. Limiting capacity to this extreme degree impermissibly curtails CSXT's ability to make use of its own property and meet its common-carrier obligations now and in the future.

Gridlock caused by affording Amtrak absolute priority would spread like a contagion from the yards and tracks of the RF&P Subdivision to other subdivisions—negatively impacting shippers, commuter passengers, and Amtrak riders alike. This could not have been what Congress intended or desired, and the Board was right to recognize that taking a systemic approach to the preference requirement best served the needs of all stakeholders.

**C. Amtrak's Objections To The Board's Evidentiary Guidelines Are Unfounded.**

Amtrak's criticisms of the Board's statements on potentially relevant evidence that parties to section 24308(f) investigations may wish to develop are unnecessary and unpersuasive.

Again, the Board’s policy statement—by its own terms—contains only “preliminary guidance merely as a potential starting point for parties to consider when developing evidence.” Policy Statement at 3. As a party to one of Amtrak’s requests for an investigation, CSXT plans on developing evidence along the lines suggested by the Board if an investigation is triggered, and would have done so even if the policy statement had not been issued.

More importantly, nearly all of Amtrak’s criticisms are based on its own interpretation of the preference requirement. *See* Amtrak Comment at 19 (“A host railroad ***must*** resolve ***individual dispatching decisions*** between Amtrak movements and freight movements in favor of Amtrak.” (emphasis added)). In essence, Amtrak wants to ensnare the Board and host railroads in section 24308(f) investigations that involve a meet-by-meet analysis of every encounter between one of its trains and another train over the period of the investigation—potentially tens of thousands of individual dispatching decisions—and if one of its trains was not given an unimpeded, presidential motorcade-like journey across a host railroad’s network, then that train has not been accorded preference. As CSXT’s modeling has demonstrated, this approach would result in network gridlock and a complete evisceration of commuter traffic and CSXT’s freight capability using current, unreasonable Amtrak schedules.

Although Amtrak envisions an investigation with thousands of dispatching decisions placed under the microscope, it simultaneously wishes to keep out potentially probative evidence on total delays to Amtrak trains, the quality of freight transportation, and host-to-host interchanges. Astonishingly, even Amtrak’s operating agreements with host railroads are “not relevant,” in its view. These positions simply illuminate the extreme, unreasonable, and unsupportable interpretation Amtrak has taken with respect to preference. In Amtrak’s view, nothing matters other than whether its trains “breezed through” entirely unimpeded regardless of

track conditions, weather, temperature, season, other passenger and freight trains, and whether the train is hours late arriving on a host's segment.

\* \* \*

As CSXT made clear in its initial comments in this docket, while an investigation should be narrowly focused on the trains that are identified in the complaint, some broader network-wide information will be relevant to investigations of individual trains. For example, the Board's call for evidence of host carriers' internal policies that pertain to preference, as well as for evidence of how such policies have impacted performance and delays, may be relevant to an investigation of a single train. Similarly, some Amtrak policies and performance data also will be relevant to determine the root cause of delays to the subject train and to analyze damages, if any. CSXT will seek to introduce all of this probative, important evidence if it were to be involved in an investigation.

Respectfully submitted,



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*Counsel for CSX Transportation, Inc.*

Dated: April 13, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. EP-728**

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**POLICY STATEMENT ON IMPLEMENTING INTERCITY PASSENGER TRAIN  
ON-TIME PERFORMANCE AND PREFERENCE PROVISIONS  
OF 49 U.S.C. § 24308(c) AND (f)**

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**REPLY COMMENTS OF CSX TRANSPORTATION, INC.**

# **Exhibit A**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. EP-728**

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**POLICY STATEMENT ON IMPLEMENTING INTERCITY PASSENGER TRAIN  
ON-TIME PERFORMANCE AND PREFERENCE PROVISIONS  
OF 49 U.S.C. § 24308(c) AND (f)**

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**DECLARATION OF MARK H. DINGLER**

## **Declaration of Mark H. Dingler**

I, Mark H. Dingler, hereby declare as follows:

1. I am currently Manager of Network Service Quality for CSX Transportation (“CSXT”). In this position, I provide reporting and conduct analyses that support network health and productivity. From August 2010 until May 2015, I was Manager of Modeling and Analytics for CSXT. In that position, I conducted modeling and analysis of potential operational, volume, and network changes. I conducted this modeling primarily by using Rail Traffic Controller (“RTC”) software as well as by performing data analysis and coordination with other operations managers. I have conducted a wide range of studies, including analyzing the impacts of passenger, commuter, coal, and intermodal service changes.
2. I hold a Bachelor of Science degree with honors and a Master of Science degree, both in Civil Engineering from the University of Illinois at Urbana-Champaign. I studied at the University’s Rail Transportation and Engineering Center and had a particular focus on computer modeling of railroad operations and capacity. My master’s thesis heavily relied on RTC to analyze railroad traffic. I have also published several articles in transportation journals dealing with railroad operations simulations, which have in turn been cited by other experts in the field.
3. I am familiar with the proper use of RTC and its limitations. RTC is an industry standard dispatch simulation software tool used to test the viability of and compare proposed railroad operations plans and identify the impact of infrastructure changes and dispatcher decisions for a given corridor. RTC is used by many railroads for capacity planning, service expansion, and as a part of STB rate cases.
4. I am familiar with the current configuration and operations of the RF&P Subdivision. The RF&P is the railroad subdivision between Richmond, VA and Washington D.C., making it a

## **Declaration of Mark H. Dingler**

critical link in the I-95 Corridor from Miami to New York City. 24 passenger trains (Amtrak), 32 commuter trains (VRE), and 18 freight trains cross the Potomac River Bridge on the RF&P Subdivision on a typical weekday. An average of 11.6 freight trains operate on the RF&P Subdivision between 06:00 and 21:00 each day.

5. I was asked to perform modeling of the RF&P Subdivision with the assumption that the Amtrak trains that traverse that Subdivision would receive absolute priority over other trains. I chose to use the RTC modeling software for this modeling and analysis.
6. To model the impact of giving absolute priority to Amtrak, I took a three-step approach. First, I modeled Amtrak trains on the RF&P Subdivision without any other traffic, using existing schedules. Second, I layered in commuter train traffic using their existing schedules. I shifted certain commuter train schedules in order to ensure that these commuter trains did not interfere with Amtrak trains, as described in paragraph 8 herein. Third, I looked for available slots to run freight trains during the day, and added those trains to the model.
7. My methodology included some key assumptions that affected the model's results. First, I assumed that all passenger trains were exactly on schedule. Trains can be delayed for many reasons beyond dispatching decisions, including: weather, mechanical failures, and incidents with a third party. If an Amtrak train is delayed and does not stay in its planned slot, then all of the planned meets will change locations. If the Amtrak train has absolute priority, then this will exacerbate delays to commuter trains and most likely eliminate additional freight slots. Second, the model assumed that there was no track maintenance occurring. Engineering teams require time to maintain the track to the requisite standard for reliable passenger service. If absolute priority is accorded to Amtrak trains, then any maintenance

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required to take place during the day would further reduce the number of freight train slots and exacerbate delays to commuter traffic.

8. As a part of performing this model, I shifted four VRE train schedules to prevent delays to Amtrak trains on the RF&P Subdivision:

- VRE 309 start time changed from 17:20 to 20:10
- VRE 311 start time changed from 18:05 to 20:20
- VRE 313 start time changed from 18:45 to 20:30
- VRE 322 start time changed from 05:48 to 05:43

Three of the rescheduled commuter trains were originally scheduled at the end of the day, but, due to two reverse-flow Amtrak trains, there is insufficient capacity to support these slots. After the Franconia station stop, VRE trains must remain on Main 2 until Fredericksburg because passenger platforms are available from Main 2. While VRE could drop off passengers from Main 3, this is less safe and requires more time and absolute protection on Main 2 (closing the track to any passing trains). Therefore, schedules are set with the assumption that all stops are at the platform off of Main 2. This changed the last VRE train of the day (313) arriving in Fredericksburg from 20:08 to 21:55.

9. The results of my modeling are as follows:

- a. Affording Amtrak trains absolute priority on the RF&P subdivision would allow for no more than three northbound slots and one southbound slot for freight trains to operate between 06:00 to 21:00. CSXT currently runs an average of 11.6 freight trains each day during these hours now.
- b. In addition to the schedule changes to the four VRE trains described in paragraph 8, three additional VRE trains would incur delays *en route*: 312 would be delayed by 10

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minutes at Alexandria, 307 would be delayed by 25 minutes at Quantico, and 336 would be delayed by 11 minutes at Seminary.

10. I created the stringline reproduced below. It depicts the passenger trains modeled as a part of my analysis. The colors represent the track that each train is on, with red being track 2 and cyan being track 3. There is no track 1 for most of the corridor.



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FURTHER DECLARANT SAYETH NAUGHT

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12 day of April, 2016, in Jacksonville, Florida.

  
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Mark H. Dingler