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January 30, 2009

VIA Electronic Filing

Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20024

Re: STB Finance Docket No. 35215, National Railroad Passenger Corporation
– Application Under 49 U.S.C. 24311(c) to Condemn Certain Rail Carrier
Property in Atlanta, Fulton County, Georgia – Norfolk Southern Railway
Company – Norfolk Southern Railway Company's Reply to Notice to File
Application and Request for Establishment of Procedural Schedule

Dear Ms. Quinlan:

Enclosed for electronic filing with the Board in the captioned proceeding is
Norfolk Southern Railway Company's reply to National Railroad Passenger
Corporation's (Amtrak's) Notice of Intent to File Application and Request for
Establishment of Procedural Schedule, filed January 21, 2009 in the subject docket.

Very truly yours,

A handwritten signature in cursive script that reads "James R. Paschall".

James R. Paschall

Enclosure

cc: Parties shown on certificate of service

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35215
NATIONAL RAILROAD PASSENGER CORPORATION –
NOTICE OF INTENT TO FILE
APPLICATION UNDER 49 U.S.C. 24311(c) TO CONDEMN CERTAIN RAIL CARRIER
PROPERTY IN ATLANTA, FULTON COUNTY, GEORGIA -
NORFOLK SOUTHERN RAILWAY COMPANY –
AND REQUEST FOR ESTABLISHMENT OF PROCEDURAL SCHEDULE

NORFOLK SOUTHERN RAILWAY COMPANY'S REPLY
TO NATIONAL RAILROAD PASSENGER CORPORATION'S
NOTICE OF INTENT AND REQUEST FOR PROCEDURAL SCHEDULE

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January 30, 2009

Before the
Surface Transportation Board

STB Docket No. AB-290 (Sub-No. 210X)

National Railroad Passenger Corporation –
Notice of Intent to File
Application Under 49 U.S.C. 24311(c) to Condemn Certain Rail Carrier
Property in Atlanta, Fulton County, Georgia -
Norfolk Southern Railway Company –
And Request for Establishment of Procedural Schedule

Norfolk Southern Railway Company's Reply
To National Railroad Passenger Corporation's (Amtrak's)
Notice of Intent to File Application and Request for Procedural Schedule

This is Norfolk Southern Railway Company's ("NSR") reply to the National Railroad Passenger Corporation's ("Amtrak's") Notice Of Intent to File Application Under 49 U.S.C. 24311(c) to Condemn Certain Rail Carrier Property In Atlanta, Fulton County, Georgia - Norfolk Southern Railway Company – and Request for Establishment of Procedural Schedule, filed by Amtrak on January 21, 2009 in the subject docket.¹

NSR supports the reply of the Atlanta Development Authority (the "Authority")

¹ On January 23, 2009, NSR replied to Amtrak's January 21, 2009 "Motion to Supplement Petition to Intervene in Support Stay sought by the Georgia Department of Transportation" ("GA DOT") in the related abandonment proceeding, STB Docket No. AB-290 (Sub-No. 210X), *Norfolk Southern Railway Company - Abandonment Exemption - In Atlanta, Fulton County, Georgia*. NSR stated that it would respond to the requested schedule and merits of Amtrak's related filing in STB Finance Docket No. 35215, *National Railroad Passenger Corporation – Application Under 49 U.S.C. 24311(c) To Condemn Certain Rail Carrier Property and Request for Establishment of Procedural Schedule* in a separate reply. Preparation of this reply was delayed by a death in NSR counsel's family.

and the Atlanta Belt Line, Inc. ("ABI") (collectively referred to herein as the "Authority") in response to Amtrak's Motion to Supplement Its Petition to Intervene and For Stay in STB Docket No. AB-290 (Sub-No. 210X), *Norfolk Southern Railway Company – Abandonment - In Atlanta, Fulton County, Georgia* and Amtrak's Notice of Intent to File Application and Request for Procedural Schedule filed January 26, 2009 in this proceeding. Since NSR already has replied to Amtrak's Motion in the abandonment proceeding, we focus on Amtrak's request for establishment of a procedural schedule² in this proceeding.³

As the Authority has suggested, we also urge that the compensation determination in this proceeding be separated from and handled after consideration of the merits of Amtrak's application to condemn a rail passenger service operating easement over the 4.30-mile railroad line between mileposts DF 633.10 and DF 637.40, in Atlanta, Fulton County, Georgia (the "Line") that is the subject of the abandonment proceeding. The compensation determination issues should be considered only after the Board serves a decision on the merits, if the Board rules in Amtrak's favor. NSR believes that the consideration of the issues and questions concerning the proper

² The Authority's discussion concerning Amtrak's Notice of Intent and its request for a procedural schedule begins on page 3 of its January 26, 2009 submission with the paragraph beginning with the word "Third."

³ We adopt and refer to that part of NSR's January 23, 2009 Reply to Amtrak's January 21, 2009 "Motion to Supplement Petition to Intervene in Support Stay sought by the Georgia Department of Transportation" ("GA DOT") in the related abandonment proceeding, STB Docket No. AB-290 (Sub-No. 210X), *Norfolk Southern Railway Company - Abandonment Exemption - In Atlanta, Fulton County, Georgia* that addresses in somewhat more detail some of the similar issues raised by Amtrak in its recent submissions to the Board in both that proceeding and this one.

compensation to Amtrak for acquisition of NSR's passenger rail service easement over the Line can be handled more efficiently and economically after the Board's decision on the merits of Amtrak's condemnation application, if that decision permits the condemnation. The compensation issues in this proceeding may become complicated.⁴ The compensation determination certainly does not need to be made before or along with consideration of the merits of Amtrak's application, especially under the facts and circumstances of this case. As the Authority has pointed out, until Amtrak has proved the essential elements of its case, and the Board has made a determination on whether the condemnation should be permitted, the parties should not be required to spend time or resources addressing the compensation determination issues that may not need to be considered. Thus, NSR urges the Board to deny Amtrak's request for discovery on compensation issues without prejudice to Amtrak's renewal of the discovery request if the Board rules in favor of Amtrak on the merits of its condemnation application.

Amtrak itself has stated that the statute does not require the compensation issue to be decided in the 120-day period provided for this type of proceeding by the statute, 49 U.S.C. 24311(c). See footnote 3 on page 2 of Amtrak's January 21, 2009 Notice of Intent to File Application in this docket. Moreover, in this case, Amtrak is not operating over the subject Line and there is no prospect that it will operate over the Line or require access to the property for any construction or maintenance work in the near future or even the foreseeable future, even if it should succeed on the merits of its application.

⁴ The Authority, a governmental entity, owns the underlying real estate, which may need to be considered, among other issues.

Neither the Multi-Modal Passenger Terminal nor the Southeast High-Speed Rail Line will be completed any time soon, if at all. Amtrak's application is predicated on its need to access these facilities, which are not yet in existence and are unlikely to be in existence until many years after this proceeding has been completed, if at all.

While we agree that the Authority should be able to gain full access to and use of the property as soon as possible, we also note that Amtrak's application does not have the urgency that the statute anticipated most such cases might have because its proposed use of the Line would be far into the future, if ever.⁵ Amtrak's need for the easement it seeks to obtain over the Line, if any, will not become imminent at any time in the near future. Thus, Amtrak will not be prejudiced if the compensation issues are deferred and addressed in the second phase of a bifurcated proceeding in this docket.

While NSR believes that this proceeding should be handled expeditiously in accordance with the statutory time frames once it is initiated, NSR also believes that the proceeding should not be initiated until after NSR and the Authority have had the opportunity to respond on February 9, 2009 to Amtrak's and Georgia DOT's January 28, 2009 submissions in the abandonment proceeding and possibly not until after the Board issues a further decision in that proceeding. This would provide for orderly processing of these related proceedings and give the parties the benefit of the Board's decision on some of the common issues presented in both proceedings. This decision may answer some questions and clarify some issues, which would lead to more economical handling

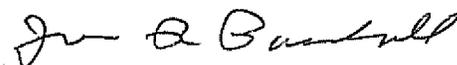
⁵ Indeed, Amtrak's interest in the subject Line in the abandonment proceeding was expressed just six days prior to the Board's decision concerning the petition for stay.

of this proceeding. At that time, Amtrak should be required to present its application and its full case expeditiously, as urged by the Authority in its January 26, 2009 reply.

While NSR has addressed the issues raised by Amtrak's Notice of Intent and Request for Procedural Schedule in this proceeding, we do so without waiving our position or arguments concerning removal of the stay in the abandonment proceeding.

For the foregoing reasons, NSR requests that the Board grant Amtrak's request for establishment of a procedural schedule only in accordance with the comments and modifications, including bifurcation of the proceeding and consideration of discovery and compensation issues after the Board serves a decision on the merits, as suggested in this reply and the January 26, 2009 reply of the Authority.

Respectfully submitted,



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Dated: January 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Notice of Intent to File Application and Request for Establishment of Procedural Schedule was served upon the following parties, by e-mail attachment on January 30, 2009:

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James R. Paschall