



May 25, 2017

Jamie Rennert
Director, Program Delivery
U.S. Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
West Building- Mail Stop 20
Washington, DC 20590

Dear Ms. Rennert:

The Southern Rail Commission (SRC), as a Congressionally appointed member of the Gulf Coast Working Group (GCWG), writes to express our gratitude for the efforts of the Federal Railroad Administration (FRA) to bring resolution over the past eighteen months in order to answer the directive of the 114th Congress. Section 11304 of Fixing America's Surface Transportation (FAST) Act directs the U.S. Department of Transportation Secretary to "convene a working group to evaluate the restoration of intercity rail passenger service in the Gulf Coast region between New Orleans, Louisiana, and Orlando, Florida," whose work includes developing "a prioritized inventory of capital projects and other actions required to restore such service and cost estimates for such projects or actions." However, we must express our deepest disappointment in the actions and statements of the CSX Railroad.

While the FRA has worked tirelessly to reach consensus through research and negotiation, CSX has demonstrated a commitment to obfuscation and deceit, which culminated with the sentiments they expressed during our May 10, 2017 meeting.¹

From the beginning and throughout this process, SRC has maintained that the restoration and enhancement of service along the Gulf Coast should work for both freight and passenger rail interests. However, CSX has failed to reciprocate this sentiment and their actions demonstrate what can only be understood as an unwillingness to negotiate in good faith and an opposition to bringing back passenger rail service to communities along the Gulf Coast.

CSX's claim that the freight issues they have raised have not been acknowledged by the working group are patently ridiculous. The FRA and SRC have diligently worked to address the purported obstacles to restoring service that CSX identified. SRC's efforts have included working with the US Coast Guard to successfully resolve bridge access issues, resolving missing and incomplete bridge tender log data, making trips to ports and yards along the Gulf Coast to collaborate with locals identifying solutions to address access and movement concerns – all issues raised by CSX as hindering passenger rail resumption. The SRC has been and continues to be an engaged, honest and committed member of the GCWG.

In the May 10 meeting, CSX recanted a previously issued, lower estimation of costs and returned to their initial demand of \$2.3 billion in infrastructure costs for the desired service, which is less than 800 miles. By comparison, CSX literature indicates its annual total infrastructure

¹ See May 10, 2017 GCWG meeting summary included as Attachment B.

expenditures, plus regulatory (including Positive Train Control) expenditures, are less than \$1.5 billion for all of their 21,000 miles of track.² For a historical comparison, CSX signed an agreement with Amtrak in 1992 stating that the capital improvements to extend Amtrak's Sunset Limited service from New Orleans, Louisiana through Mobile, Alabama and on to Jacksonville, Florida would cost \$4,067,191.³ Following Hurricane Katrina, portions of track along this route were rebuilt and thus, their condition substantially improved, which should considerably lower costs for infrastructure improvements necessary to restore passenger rail service. SRC takes issue with CSX's \$2.3 billion number in the following ways:

First, CSX denied the FRA and the GCWG – established by Congress – from seeing the full modeling or any of the underlying assumptions for the modeling used to reach this number. Even worse, CSX accepted taxpayer dollars to conduct this study yet still withheld the underlying assumptions and detailed data upon which the taxpayer funded study was based. CSX also denied FRA experts permission to inspect the rail lines in question. Recent reports concerning safety defects and other issues relative to rail conditions demand greater transparency from the railroad in general, but in particular raise concerns about where the \$2.3 billion demanded by CSX will actually be spent. It is unconscionable that the American taxpayer be asked to foot the bill for improvements for which there is no evidence – save CSX's protestations – and look highly suspect upon even a cursory review.

Second, CSX stated that the railroad would restore the previous three-day per week service along the Gulf Coast route at no cost. Yet, four more trains a week would require \$2.3 billion. One does not require expensive models or an engineering degree to see such a claim as absurd. This claim simply reveals CSX's intent to prevent the American people from getting passenger rail service along this route.

It is important to remember that Congress formed the GCWG to work towards restoring intercity passenger rail service in a manner that will ultimately yield competitive and high quality service, in contrast to what existed before Hurricane Katrina. CSX was well aware of this and was a willing participant in the GCWG; yet, CSX's statements in the May 10 meeting indicate disregard for any successful collaboration towards this objective.

CSX's demands for an unjustified amount of money in exchange for accommodating passenger rail service would, in effect, overturn existing law. If upheld, all freight railroads would have a financial veto over passenger rail service and could ignore 49 U.S. Code § 24308, which states:

"Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or the authority under terms on which the parties agree. ... If the parties cannot agree and if the Surface Transportation Board finds it necessary to carry out this part, the Board shall –

- (i) order that the facilities be made available and the services provided to Amtrak;*
- and*
- (ii) prescribe reasonable terms and compensation for using the facilities and providing the services.*

When prescribing reasonable compensation...the Board shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of

² See Attachment A.

³ Amtrak, CSX agreement dated April 28, 1992.



compensation shall be greater than the incremental costs of using the facilities and providing the services.”

CSX’s demands for \$2.3 billion are nothing close to “reasonable terms and compensation” for the “incremental costs of using the facilities and providing the services” requested along the route.

The final GCWG report recommends continued coordination and collaboration among GCWG members. However, in the May 10 GCWG meeting, CSX clearly stated that their organization will not continue in any further conversations with the other stakeholders represented in the working group.

We cannot allow an unsupported, unreasonable demand by CSX to overturn long-established law and veto a passenger rail service supported by the people and leadership of the coastal south. Congress has identified this route as of high importance and interest for the public. Continued investments in our passenger rail system are vital as our society becomes increasingly mobile and we look for ways to improve access to skilled workers, jobs, and new opportunities for economic development.

We ask that our concerns be reflected in the Gulf Coast Working Group Report to Congress, and we look forward to working with Congress and FRA to enforce the law and establish passenger rail service to the communities along the Gulf Coast.

Sincerely,

Greg White, Chairman and Alabama Commissioner

John Spain, Vice-Chairman and Louisiana Commissioner

Knox Ross, Secretary-Treasurer and Mississippi Commissioner



Attachment A

Capital Expenditures (Dollars in Millions)	Fiscal Years		
	2016	2015	2014
Track	\$ 714	\$ 866	\$ 750
Bridges, Signals and Other	433	491	538
Total Infrastructure	1,147	1,357	1,288
Freight Cars	82	218	329
Capacity and Commercial Facilities	406	295	452
Regulatory (including PTC)	313	341	321
Locomotives	409	337	51
Public-Private Partnerships - net ^(a)	41	14	8
Total Property Additions	2,398	2,562	2,449
Cash paid for new assets using seller financing ^(b)	307	\$ —	\$ —
Total Capital Expenditures ^(a)	\$ 2,705	2,562	2,449

(a) Total capital expenditures shown above include investments related to reimbursable public-private partnerships. These partnership investments are for projects that are partially or wholly reimbursed to CSX through either government grants or other funding sources such as cash received from a property sale. These reimbursements may not be fully received in a given year; therefore the timing of receipts may differ from the timing of the investment.

(b) In 2016, CSX made payments related to locomotive purchases made in 2015 using seller financing of \$307 million.

The chart above was taken from CSX's 2016 Annual Report, "How Tomorrow Moves," Page 52. Highlighted emphasis was added by SRC. <https://www.csx.com/index.cfm/investors/annual-materials/>

Attachment B

Gulf Coast Working Group

Meeting Summary May 10, 2017

Below is a summary of the Gulf Coast Working Group's meeting on May 10, 2017, as written by the Southern Rail Commission and Transportation for America.

Attendees:

<p>CSX</p>	<ul style="list-style-type: none"> • Dave Dech, AVP Passenger Operations • Garrick Francis, AVP Federal Affairs • Will Roseborough, Director Project Management • Marco Turra • Sean Craig, Attorney
<p>Amtrak</p>	<ul style="list-style-type: none"> • Mark Murphy, Senior VP & General Manager – Long Distance Service • Kelly Cunningham, Lead Host Railroads Specialist • Morgan Connell, Lead Host Railroads Specialist • Ken Altman • Jackie Meredith-Batchelor, Attorney • Todd Stennis, Director, Government Affairs-South
<p>Southern Rail Commission</p>	<ul style="list-style-type: none"> • Greg White • Knox Ross • John Spain • John Robert Smith (advisor to the SRC, Transp. 4 America)
<p>Florida DOT<i>(participating via teleconference)</i></p>	<ul style="list-style-type: none"> • Rickey Fitzgerald, Manager, Freight & Multimodal Operations (Rail Office) • Fred Wise, Rail Director – Florida District (HNTB consultant) • Holly Munroe
<p>FRA</p>	<ul style="list-style-type: none"> • Jamie Rennert, Director, Office of Program Delivery • Trevor Gibson, Office of Program Delivery – Program Implementation • Catherine Dobbs, Office of Program Delivery – Program Implementation • Dick Cogswell, Office of Program Delivery – Engineering & Projects Development • Marc Dixon, Office of Program Delivery – Program Implementation • Mark Hartong, Office of Safety – PTC • Devin Rouse, Office of Safety – PTC • Stephanie Anderson, Office of Chief Counsel - Safety

Meeting Summary

I. Welcome & Introductions

After a round of introductions, Jamie Rennert of FRA remarked that while the group is at the end of a milestone, the group is also at the beginning of a next phase. She noted that CSX had called for the meeting and turned the floor over to CSX to allow them to express their concerns.

II. Opening Remarks by CSX

Dave Dech, CSX, provided an overview of the challenges perceived by CSX, which included the following:

CSX believes HDR provided an unbiased third party opinion regarding infrastructure concerns, but that HDR's study seems to have been discounted. The \$2.3 billion number determined by HDR would still not guarantee on-time performance. CSX made a good faith effort to pare this down to a lower number, but even then could not guarantee on-time performance.

CSX is frustrated that the \$2.3 billion number is not being used as the basis, when they are the ones who will have to answer for the infrastructure along the route.

CSX noted that the previous passenger rail service never performed and struggled with on-time performance and ridership. They are concerned that we live in a different world than then. CSX believes it has all of the liability from a public standpoint. CSX is saying "I can't do this" not "I don't want to do this". Yet, if passenger rail service is restored CSX will have to explain why on-time performance is sub-standard, even though they said all along that they could not achieve it.

CSX does not intend to install PTC along this line but will have to if there is a passenger train. CSX claims Amtrak has the responsibility to pay for PTC. CSX stated that the train has a shelf life of just a few years, which calls into question if this is really where money should be spent.

CSX maintains that this is not restoration of service. The previous service was 3-days per week and had a set schedule. CSX noted that they would be bound to restoring the service at the previous schedule, but will not volunteer to take on any additional days or difference in schedule.

CSX maintains that there is a separate process for establishing such 'new' service, which requires a letter requesting new service to be sent to CSX. Upon receipt of the letter, CSX would name the cost for infrastructure upgrades and if the passenger rail service does not agree to the cost, then STB would be the arbitrator. CSX noted that they see this request for passenger service going to STB.

III. PTC

Jamie Rennert, FRA, raised the issue of PTC mentioned by CSX as the first point of discussion. FRA representatives noted that PTC exemptions are available for this reason – PTC requirements are not meant to prevent service. There is a threshold for a limited service exemption, which could apply for this line. However, FRA does not know all of the information needed to ensure an exemption would apply. For example, if CSX’s freight movements include certain toxic inhalants along this line, then it cannot be exempt from the PTC requirement.

CSX responded that PTC was forced upon the railroads by law. CSX will not seek an exemption, for fear of ending up in the news. CSX maintains that the provision of PTC is a term and condition of access, for which STB is the arbiter.

FRA noted that a decision to not install PTC would be a decision on the part of CSX, and likely not a required cost for restoring service.

IV. Modelling Study

Jamie Rennert, FRA, noted that the GCWG established a set of numbers related to cost – CSX put the cost at \$2.3 billion, but walked this down to \$700-\$800 million, which is closer to the \$117 - \$200 million numbers determined by other GCWG stakeholders. She pointedly asked CSX if they would be willing to continue to work with the stakeholders of the GCWG to collaborate towards a mutually agreed on determination of cost.

Dave Dech replied no, CSX would not continue to work with the group. CSX also no longer supports the \$700-\$800 million number and only feels comfortable with the \$2.3 billion number. CSX noted “this is not how we do business with Amtrak” and that Amtrak must send them a letter of request.

CSX noted that they have zero interest in phasing the infrastructure improvements, even though the improvements are based on 20-year growth projections. CSX maintains that all infrastructure improvements, based on 20-year growth projections, must be completed before they will start the first day of service.

FRA noted that the HDR study and CSX’s cost estimates were presented in a “black box.” FRA does not know how CSX / HDR got to that number and does not know what assumptions were made. There has been differences in analysis and the next step would be to collaborate on the analysis.

CSX said that would be a good idea if this was public property, but it is private property. FRA noted that Amtrak has a public interest; to which CSX replied that responsibility falls on Amtrak. FRA noted that the GCWG study was intended as a cost-focused study, not a legal or statutory rights study.

CSX reiterated that the HDR study is the only true, factual analysis done, but that the number has been largely ignored. FRA noted that when they asked CSX if their staff

could accompany CSX to site-visits, CSX denied their request. CSX agreed, stating that their property is private.

SRC noted that they have worked in good faith, made visits to ports and communities along the Gulf Coast to identify solutions to what CSX has maintained as areas of issue. SRC disagreed that HDR is a true third party. SRC noted their desire from the beginning to seek a solution for passenger rail that would work for both freight and passenger interests.

V. Submitting Report to Congress

FRA asked if the group could collectively agree to continue working as a group to collectively drill down on the points of PTC and schedule, with the goal of coming closer together and with the goal of not needing to resort to going to the STB. CSX stated that they will not participate in any further meetings or conversations with the group.

FRA wrapped up the meeting with a discussion of the report due for submission to Congress. FRA is currently in final review of the report and will update the report to reflect the conversation of the May 10 meeting. After a final review at FRA, the report will be sent for review with OMB. The final report may be received in Congress as early as May 31st.