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February 24, 2014

BY E-FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0012

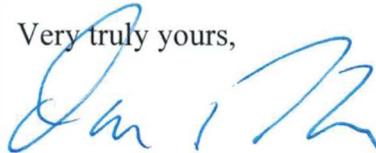
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ENTERED
Office of Proceedings
February 24, 2014
Part of
Public Record

Re: *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(a) – Canadian National Railway Company (Docket No. FD 35743)*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find the Reply of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Petitions to Intervene and Comments.

Very truly yours,



David A. Hirsh

Counsel for Illinois Central Railroad Company and
Grand Trunk Western Railroad Company

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**REPLY OF ILLINOIS CENTRAL RAILROAD COMPANY
AND GRAND TRUNK WESTERN RAILROAD COMPANY TO
PETITIONS TO INTERVENE AND COMMENTS**

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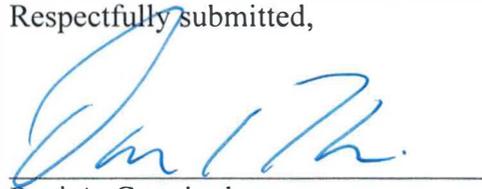
Illinois Central Railroad Company and Grand Trunk Western Railroad Company (together, “CN”) hereby respond to the petitions of Norfolk Southern Railway Company (“NS”) and CSX Transportation, Inc. (“CSX”), filed February 19 and 21, 2014, respectively, for leave to intervene in this proceeding in response to CN’s motion to compel, and to the substantively similar letter to the Board filed by Union Pacific Railroad Company (“UP”) on February 21. CN has no objection to these submissions. As they were filed promptly, they should not delay disposition of the pressing motion to compel, and they are pertinent, since Amtrak’s responses to CN’s discovery requests asserted confidentiality objections on behalf of Amtrak’s operating agreement counterparties (*e.g.*, NS, CSX, and UP), not Amtrak itself. *See* CN Motion, Ex. 3, at 12-13 (Amtrak’s Responses and Objections, served Nov. 19, 2013).

Both NS and UP make clear that they believe that the operating agreements CN is seeking “are relevant, and indeed, of great importance in this proceeding,” NS Pet. at 3; UP Letter at 1, and should be produced without redaction, NS Pet. at 3-4; UP Letter at 1. Similarly, CSX raises no objection to the production of its unredacted operating agreement, subject to the Protective Order. These positions undermine – and UP expressly rejects – Amtrak’s claims that

its operating agreements are irrelevant and should be withheld or redacted.¹

NS, CSX, and UP each seek designation of their operating agreements as “Highly Confidential,” with the understanding, consistent with the Protective Order, that after reviewing the operating agreements, CN’s outside counsel may ask them and, if necessary, the Board, for re-designation as “Confidential.” See NS Pet. at 4-7; CSX Pet. at 4 n.2; UP Letter at 1-2. NS and UP also offer to consult with CN and Amtrak regarding potentially re-designating particular operating agreement provisions. NS Pet. at 11; UP Letter at 2. CN appreciates NS’s, CSX’s, and UP’s positions, and has no objection to the initial designation of their operating agreements as “Highly Confidential” on that basis.

Respectfully submitted,



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February 24, 2014

¹ Amtrak’s February 19 reply to CN’s motion makes, for the first time (three months after its discovery responses and objections), a new argument that confirms the “great importance,” as noted by NS and UP, of the operating agreement evidence CN seeks. Having previously asserted only the confidentiality interests of its counterparties (including NS, CSX, and UP), Amtrak now belatedly asserts “its own proprietary interest.” Amtrak Rep. at 4. Its assertion is not based on any supposed confidential information related to Amtrak and CN competing for each other’s business – after all, they do not. Instead, Amtrak complains that if CN had the same operating agreement information Amtrak already has, that would give CN an “unfair advantage” by potentially enabling CN to “shift the focus” of the proceeding. *Id.* at 9. That is not a valid objection to discovery; rather, it is a tacit admission of relevance.

CERTIFICATE OF SERVICE

I certify that I have this 24th day of February, 2014, caused a true copy of the foregoing Reply of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Petitions to Intervene and Comments to be served by e-mail upon:

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