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February 19, 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

235500
ENTERED
Office of Proceedings
February 19, 2014
Part of
Public Record

Re: *National Railroad Passenger Corporation – Section 213 Investigation of Substandard Performance on Rail Lines of CN (Docket No. NOR 42134)*

Dear Ms. Brown:

Enclosed for filing please find the Second Joint Status Report, submitted in this proceeding on behalf of National Railroad Passenger Corporation and of Canadian National Railway, Illinois Central Railroad Company and Grand Trunk Western Railroad Company.

Very truly yours,



David A. Hirsh

Counsel for Canadian National Railway Company,
Illinois Central Railroad Company, and Grand
Trunk Western Railroad Company

Enclosure

cc: Linda J. Morgan, Esquire
William H. Herrmann, Esquire

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42134

NATIONAL RAILROAD PASSENGER CORPORATION –
SECTION 213 INVESTIGATION OF SUBSTANDARD
PERFORMANCE ON RAIL LINES OF CN

SECOND JOINT STATUS REPORT

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Railroad Company*

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SECOND JOINT STATUS REPORT

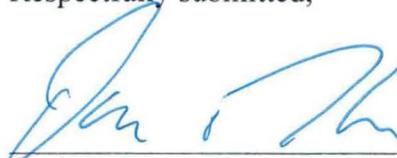
On August 9, 2013, National Railroad Passenger Corporation (“Amtrak”) and Canadian National Railway Company, on behalf of its indirect subsidiaries, Grand Trunk Western Railroad Company and Illinois Central Railroad Company (together, “CN”) jointly moved that the Board hold this proceeding in abeyance until July 31, 2014, in order to facilitate continued discussions aimed at settlement of the parties’ dispute and provide additional time that may be necessary for final resolution of the constitutionality of Section 207(a) of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”). By its order served August 19, 2013, the Board granted the parties’ joint motion and directed the parties to file joint quarterly status reports beginning on November 19, 2013. Accordingly, CN and Amtrak hereby submit this Second Joint Status Report in order to inform the Board of any developments since our November 19, 2013 Joint Status Report.

Since our last filing, the parties have continued discussions, but they have not reached an agreement that would settle their dispute.

In addition, as we reported in our November 19, 2013 Report, on October 11, 2013, the United States Court of Appeals for the District of Columbia denied the rehearing and rehearing *en banc* of its decision in *Association of American Railroads v. United States Department of*

Transportation,¹ which held Section 207(a) of PRIIA to be an unconstitutional delegation of regulatory authority to Amtrak.² The Court issued its mandate in that case on October 22, 2013. The Court of Appeals' ruling is now subject to a possible future petition to the U.S. Supreme Court for a writ of certiorari,³ which could further delay the ultimate resolution of the constitutionality of Section 207(a) and the Metrics and Standards.

Respectfully submitted,



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February 19, 2014

¹ 721 F. 3d 666 (D.C. Cir. 2013).

² It was under authority of Section 207(a) that the Federal Railroad Administration and Amtrak issued the Metrics and Standards that are directly related to Amtrak's Petition in this case. *See* Metrics and Standards for Intercity Passenger Rail Service under Section 207 of PRIIA, 75 Fed. Reg. 26,839 (May 12, 2010) ("Metrics and Standards").

³ Under 28 U.S.C. § 2101(c) and Rule 13 of the Rules of the Supreme Court, the due date for a certiorari petition would have been January 9, 2014 (90 days from the denying of rehearing), but the Court has extended that due date, upon successive requests by the Solicitor General of the United States on behalf of the Department of Transportation and other Government parties, to March 10, 2014.