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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

July 21, 2014

Docket No. NOR 42134

Part of

Public Record

**NATIONAL RAILROAD PASSENGER CORPORATION--SECTION 213
INVESTIGATION OF SUBSTANDARD PERFORMANCE ON RAIL LINES OF
CANADIAN NATIONAL RAILWAY COMPANY**

NOTICE OF INTENT TO FILE A MOTION TO AMEND THE COMPLAINT

Linda J. Morgan
Kevin M. Sheys
Katherine Bourdon
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
(202) 887-1400

William H. Herrmann
Managing Deputy General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002
(202) 906-3971

Counsel for National Railroad Passenger Corporation

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NOTICE OF INTENT TO FILE A MOTION TO AMEND THE COMPLAINT

The National Railroad Passenger Corporation (“Amtrak”) hereby respectfully files a Notice of Intent to File a Motion to Amend the Complaint in the aforementioned proceeding within 30 days of the July 31, 2014 expiration of the abeyance period currently in place for this proceeding.¹ The Amended Complaint will focus the complaint on the performance of a specific route and provide the Board with updated performance information as foundation for the complaint.

On January 19, 2012, Amtrak filed a Petition for Relief by Amtrak Requiring the Initiation of An Investigation of Substandard Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”). In its Petition, Amtrak asked the Board to investigate substandard performance of a number of Amtrak passenger trains on rail lines owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railroad Company and Illinois Central Railroad Company (collectively “CN”).

Following the filing of CN’s reply and a motion to hold the proceeding in abeyance until after a decision from the District Court on a related case involving a challenge to the

¹ Contemporaneous with this filing, Amtrak has notified opposing counsel regarding Amtrak’s intention to amend the pending complaint.

establishment of metrics pursuant to Section 207 of PRIIA,² the parties filed a Joint Motion requesting Board supervised mediation. The Board granted the joint request and held the proceeding in abeyance for up to 90 days while the parties participated in mediation.³ The parties then sought and received three 30-day abeyances to continue mediation through October 4, 2012.⁴

On November 2, 2012, the Board reactivated the proceeding and ordered the parties to meet and confer on an appropriate procedural framework to govern the adjudication of the case due to the Board on November 26, 2012.⁵ The Board also directed CN to indicate whether it intended to pursue its continued abeyance until the D.C. Circuit provided a ruling on the *AAR v. DOT* case, which was then before that court.⁶

On January 2, 2013, the Board issued a decision denying a CN request for a further abeyance, granting a CN motion for leave to file a response to Amtrak's proposed procedural schedule and ordering the parties to consult to develop "a methodology for sampling the movements on each of the relevant Amtrak routes to provide a representative subset of evidence

² *Ass'n of Am. R.R.s v. Dep't of Trans.*, 865 F.Supp. 22 (D.D.C. 2012), *rev'd* 721 F.3d 666 (D.C. Cir. 2013), *cert. granted*, 82 U.S.L.W. 3731 (U.S. June 3, 2014) (No. 13-1080) ("*AAR v. DOT*").

³ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served April 3, 2013).

⁴ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served July 2, 2012); *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served July 31, 2012); and *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served August 31, 2012).

⁵ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1-2 (STB Served Nov. 2, 2012).

⁶ *Id.*

to represent all subject movements.”⁷ The Board also adopted a procedural schedule in its decision.⁸

On February 6, 2013, Amtrak and CN filed a Joint Motion to Stay the Proceedings and hold them in abeyance because they had restarted productive discussions regarding the issues raised in Amtrak’s petition.⁹ The Board granted the abeyance through April 2, 2013.¹⁰ The parties sought another abeyance on March 22 which was granted by the Board on March 27, 2013.¹¹ The Board also directed the parties to file a status report by August 1, 2013.¹² On August 2, 2013, Amtrak and CN filed a Joint Motion to Extend the Abeyance and the due date for the status report to August 8, 2013.¹³ The Board granted the motion.¹⁴ The parties filed a Joint Status Report and Motion to Extend Abeyance on August 9, 2013.¹⁵ The Board granted the parties’ motion and ordered the parties to provide joint quarterly status reports beginning on November 19, 2013.¹⁶

Accordingly, Amtrak and CN filed a joint status report on November 19, 2013, and asked the Board to continue to hold the proceedings in abeyance through July 31, 2014. Amtrak and

⁷ *Id.* at 5.

⁸ *Id.*

⁹ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served Feb. 8, 2013).

¹⁰ *Id.* at 2.

¹¹ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served March 27, 2013).

¹² *Id.* at 2.

¹³ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served August 6, 2013).

¹⁴ *Id.*

¹⁵ *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1 (STB Served Aug. 19, 2012).

¹⁶ *Id.*

CN stated that they were continuing discussions but had not reached an agreement and also cited the possibility of Supreme Court review of the *AAR v. DOT* decision at the Court of Appeals.¹⁷ The Parties then filed Joint Status Reports on November 19, 2013, February 19, 2014, and May 19, 2014.

As of this date, the proceeding remains in abeyance and the Supreme Court has granted certiorari to review the *AAR v. DOT* case. Amtrak sees no further need to hold this matter in abeyance, given that performance of Amtrak trains on CN routes continues to be substandard, and a complaint can be pursued under Section 213 irrespective of the legality of the PRIIA metrics at issue in the case before the Supreme Court. Under 49 U.S.C. 24308(f)(1), the Board shall initiate an investigation if any intercity passenger train averages less than 80 percent on-time performance for any two consecutive quarters, or the service quality of any intercity passenger train fails to meet the metrics set forth in Section 207 for two consecutive calendar quarters. The constitutionality of the Section 207 metrics are at issue in the case before the Supreme Court; the 80 percent standard is not. Amtrak's Amended Complaint will be based on the 80 percent standard and focus on a particularly egregious performance problem that can and should be investigated without further delay pursuant to Section 213.¹⁸

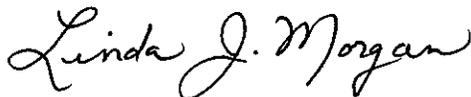
¹⁷ *Joint Status Report, National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op. at 1-2 (STB Served Nov. 19, 2013).

¹⁸ In its Motion to Amend the Complaint, Amtrak will provide a fuller discussion of the merits of its Amended Complaint.

Accordingly, Amtrak hereby informs the Board of its intent to file a Motion to File an Amended Complaint within 30 days of the end of the abeyance period on July 31, 2014. During this 30-day period, Amtrak asks the Board to maintain the procedural status quo ante with respect to this proceeding.

Dated: July 21, 2014

Respectfully submitted,



Linda J. Morgan
Kevin M. Sheys
Katherine Bourdon
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
(202) 887-1400

/s/William H. Herrmann

William H. Herrmann
Managing Deputy General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

Counsel for National Railroad Passenger Corporation

CERTIFICATE OF SERVICE

I certify that on July 21, 2014, a true copy of the foregoing National Railroad Passenger Corporation's Notice of Intent to File a Motion to Amend the Complaint was served via email upon the following counsel of record:

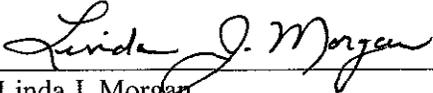
Paul A. Cunningham
Harkins Cunningham LLP
1700 K Street, N.W., Suite 400
Washington, DC 20006-3817
pac@harkinscunningham.com

David A. Hirsh
Harkins Cunningham
1700 K Street, NW, Suite 400
Washington, DC 20006-3817
dhirsh@harkinscunningham.com

Theodore K. Kalick
CN
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004-3608
ted.kalick@cn.ca

Honorable Richard J. Durbin
United States Senate
Washington, DC 20510-1304
schedule@durbin.senate.gov

Louis P. Warchot
Association Of American Railroads
425 3rd Street, S.W., Suite 1000
Washington, DC 20024
lwarchot@aar.org


Linda J. Morgan