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

Re: In Re: National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company (STB Docket No. NOR 42134)

Dear Ms. Brown,

Enclosed for filing in the above-referenced docket is CSX Transportation's Petition for Leave to Intervene for a Limited Purpose. Expedited consideration is requested because, pursuant to the Board's December 19, 2014 decision, statements regarding the On-Time Performance standard must be filed by January 20, 2015.

Thank you for your assistance with this matter.

Sincerely,

/s/ Thomas H. Dupree, Jr.

Thomas H. Dupree, Jr.

Counsel for CSX Transportation, Inc.

Enclosure

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. NOR 42134

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

**PETITION FOR LEAVE
TO INTERVENE FOR A LIMITED PURPOSE**

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Counsel for CSX Transportation, Inc.

Dated: January 13, 2015

**PETITION FOR LEAVE
TO INTERVENE FOR A LIMITED PURPOSE**

CSX Transportation, Inc. (“CSXT”) respectfully submits this petition for leave to intervene in the Surface Transportation Board’s proceeding between Amtrak and Canadian National regarding the Amtrak Illini/Saluki route, STB Docket No. 42134 (“*Canadian National*”). CSXT seeks limited intervention to participate in the Board’s determination of the definition of On-Time Performance for the purpose of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”), 49 U.S.C. § 24308(f).

BACKGROUND

In its December 19, 2014 *Canadian National* decision, the Board denied Canadian National’s motion to dismiss Amtrak’s complaint against it regarding the performance of the Illini/Saluki route, and stated that it intends to define On-Time Performance for the purpose of Section 213 of PRIIA as part of that proceeding. *See Canadian National*, slip op. at 10 (“[The Board] conclude[s] that the invalidity of Section 207 does not preclude the Board from construing the term ‘on-time performance’”). The Board called for the parties to submit statements on the definition of On-Time Performance. *Id.* (“By January 20, 2015, the parties shall provide opening arguments on how to construe the term ‘on-time performance’ for purposes of this proceeding. Replies will be due by February 2, 2015.”).

Now-Vice Chairman Begeman dissented from the Board’s decision and, while assuming without deciding that the Board had authority to proceed, advised the Board to do so through a separate notice-and-comment rulemaking proceeding instead of through the *Canadian National* adjudication. *Id.* at 12 (Commissioner Begeman, dissenting). Canadian National moved for reconsideration of the Board’s decision on January 7, 2015.

LEGAL STANDARDS

The Board may grant intervention if it “[w]ill not unduly disrupt the schedule for filing verified statements, except for good cause shown” and “[w]ould not unduly broaden the issues raised in the proceeding.” 49 C.F.R. § 1112.4(a)(1)-(2). The petitioner seeking intervention must describe its “interest in the proceeding” and “[w]hether the petitioner supports or opposes the relief sought or the action proposed or is otherwise concerned with the issues presented in the proceeding.” *Id.* § 1112.4(b)(1)-(2).

ARGUMENT

The Board was incorrect when it decided that it has authority to define On-Time Performance for the purpose of PRIIA Section 213 and launch an investigation. It should grant Canadian National’s petition for reconsideration, which would therefore obviate CSXT’s need to intervene. But if the Board denies Canadian National’s petition for reconsideration and proceeds to define On-Time Performance, it should do so by means of a separate notice-and-comment rulemaking for the reasons set forth in CSXT’s response to Amtrak’s complaint regarding the Capitol Limited’s performance, filed on January 7, 2015 in STB Docket No. 42141.

Subject to and without waiving these objections to the Board’s authority, and if the Board proceeds to define On-Time Performance in the *Canadian National* adjudication, CSXT seeks leave to intervene for the limited purpose of participating in the Board’s definition of On-Time Performance. CSXT’s interests are implicated by the Board’s decision to define On-Time Performance—a rule that will undoubtedly have “a far-reaching impact on the entire industry.” *Canadian National*, slip op. at 12 (Commissioner Begeman, dissenting). Because Amtrak’s complaint regarding the Capitol Limited’s performance in STB Docket No. 42141 asks the Board to initiate a Section 213 investigation against CSXT and Norfolk Southern Railway (“NSR”), the definition of On-Time Performance will immediately impact CSXT.

CSXT's participation in the *Canadian National* adjudication will not unduly broaden the issues in that adjudication. The Board's definition of On-Time Performance—which will serve as the trigger for a Section 213 investigation—implicates both the *Canadian National* proceeding and the Capitol Limited proceeding. And it likely will apply to other proceedings if Amtrak requests the Board to launch additional investigations.

The Board has routinely granted parties leave to intervene in ongoing proceedings, including leave to intervene for a limited, specific purpose. *See, e.g., App. of the Nat'l. R.R. Passenger Corp. under 49 U.S.C. § 24308(A)—Can. Nat'l. Ry. Co.*, Docket No. FD 35743, 2014 STB LEXIS 94, at *7-8 (STB Apr. 15, 2014) (granting NSR's request for leave to intervene “for the limited purpose of partially opposing [a] motion to compel”).

If the Board grants this petition, CSXT joins with NSR's request in its motion for leave to intervene, filed on January 12, 2015, that the Board extend the deadline for submission of statements regarding On-Time Performance. Currently, Amtrak and Canadian National must submit “opening arguments on how to construe the term ‘on-time performance’” by January 20, 2015, with reply filings due by February 2, 2015. *Canadian National*, slip op. at 10. CSXT agrees with NSR that the Board should postpone these deadlines by a period of 20 to 30 days. A short extension would not result in a significant delay to the *Canadian National* proceeding, and good cause exists for the Board to allow for additional time in this instance. Such additional time will serve to assist the Board with developing the record, and will allow for filings regarding On-Time Performance that will be more responsive and comprehensive than if the current deadlines remain in place.

CONCLUSION

If the Board proceeds to define On-Time Performance in the *Canadian National* adjudication—an act which it lacks authority to perform—the Board should allow CSXT leave to intervene for the limited purpose of participating in the definition of On-Time Performance. If the Board grants CSXT leave to intervene, CSXT joins in NSR’s request to postpone the deadline to submit statements regarding On-Time Performance by 20 to 30 days.

Respectfully submitted,

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Counsel for CSX Transportation, Inc.

Dated: January 13, 2015

CERTIFICATE OF SERVICE

I certify that, on this 13th day of January, 2015, I have caused a true and correct copy of the foregoing Petition for Leave to Intervene for a Limited Purpose to be served upon the parties listed below by electronic mail.

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