



ATTORNEYS AT LAW

1666 K Street, NW  
Suite 500  
Washington, DC 20006  
T 202.887.1400  
F 202.466.3215

Linda J. Morgan  
D 202.887.1429  
lmorgan@nossaman.com  
Unknown document property name.

**VIA E-FILING**

February 10, 2015

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423

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ENTERED  
Office of Proceedings  
February 10, 2015  
Part of  
Public Record

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

Dear Ms. Brown:

This letter is in response to the Surface Transportation Board (“STB” or “Board”) Decision served February 3, 2015 in the above referenced proceeding. *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company*, FD 35743 (STB served Feb. 3, 2015). The Board asked that National Railroad Passenger Corporation (“Amtrak”) and Canadian National Railway Company (“CN”) “inform the Board of the extent to which discovery regarding the issues raised in CN’s third motion to compel has progressed since Amtrak’s December 10 reply.” Slip op. at 2. The Board also ordered CN to “indicate how, in light of any such progress, CN requests that the Board proceed with the pending motion.” *Id.* Amtrak’s response to the Board’s request for an update on the discovery process is set forth in the paragraphs that follow.

**A. Amtrak’s Status Report Regarding CN’s Third Motion to Compel**

CN’s Third Motion to Compel sought an order compelling Amtrak to “produce ridership and revenue database information pertaining to passenger services Amtrak operates on CN’s lines.” *Third Motion of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Compel Responses to Discovery Requests*, 1 (Dec. 2, 2014) (“*Third Motion to Compel*”). In Amtrak’s response to the Third Motion to Compel, Amtrak explained, “Amtrak has already provided CN with significant relevant ridership and revenue data, and has objected on the grounds of breadth and relevance to producing anything more. Nevertheless, despite its objection to CN’s request, in the interest of moving the case forward, Amtrak is willing to produce substantially all of the additional information CN has requested in its Third Motion to Compel, which is narrowed from earlier requests to which Amtrak objected.” *National Railroad Passenger Corporation’s Reply to Third Motion of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Compel Responses to Discovery Requests*, 2 (Dec. 10, 2014).

Specifically, Amtrak agreed to provide “in native format, the ridership and revenue fields of its database identified by Amtrak in Exhibit 3 of the Third Motion to Compel for the services it runs (in whole or in part) on CN lines within the agreed-upon discovery range (May 1, 2011, to October 31, 2013), excluding any individual ticket pricing data. . .” *Id.* at 7-8. Amtrak has produced ridership and revenue data for the Amtrak lines that run on CN’s lines for the relevant time period. Amtrak has withheld three fields that would disclose pricing and ticket-specific revenue, as per Amtrak’s objections to CN’s Requests for Production 16 and 17 (ridership and revenue data), and Request for Production 18 (pricing data).<sup>1</sup> Amtrak has designated the data that it has produced as “Highly Confidential” because of its proprietary and commercially sensitive nature. This production is consistent with what Amtrak offered to produce in its reply to CN’s Third Motion to Compel. *See Id.* at 7-8.

B. Status of Discovery Pursuant to the Board’s September 23, 2014 Decision

In order to further assist the Board, Amtrak is also providing a status report regarding the Board’s September 23, 2014 decision on the operating agreements and CN’s Second Motion to Compel. Attached as Exhibit 3 is a letter that Amtrak has sent to CN’s outside counsel summarizing where we are on discovery matters. Amtrak has produced all the operating agreements the Board has directed, and it is preparing its production related to delay coding documents also in accordance with the Board’s decision. The attached letter to CN’s Counsel also addresses certain other discovery matters that CN has raised and to which we believe we have satisfactorily responded in accordance with our answers to CN’s requests for documents and interrogatories.

Respectfully submitted,



Linda J. Morgan  
*Attorney for National Railroad Passenger Corporation*

Enclosures

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<sup>1</sup> Exhibit 1 is \_\_\_\_\_ [REDACTED] \_\_\_\_\_. Exhibit 2 is a copy of CN’s Requests for Production 16, 17 and 18 with Amtrak’s Responses.

EXHIBIT 1  
[REDACTED]

# EXHIBIT 2

**REQUEST FOR PRODUCTION NO. 16**

Please produce all documents relating to the number of passengers loading and unloading on particular trains at each station on the Relevant Services, any analyses or projections of the number of passengers on particular trains of the Relevant Services and between particular segments of the Relevant Services and any analyses of ridership trends or factors affecting ridership for the Relevant Services.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16**

Amtrak objects to this Request for Production on the grounds that it is compound and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Amtrak further objects to this Request for Production to the extent it seeks documents, analyses or projections that contain highly confidential and commercially sensitive information. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

**REQUEST FOR PRODUCTION NO. 17**

Please produce all documents relating to passenger ticket revenue generated by Amtrak on the Relevant Services, and on each segment thereof, including but not limited to any data, measurements, analyses, estimates, or projections of revenue on particular trains and between particular segments and any analyses of revenue trends or factors affecting revenue.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17**

Amtrak objects to this Request for Production on the grounds that it is overbroad and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Amtrak further objects to this Request for Production to the extent

it seeks documents that contain highly confidential and commercially sensitive information. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

**REQUEST FOR PRODUCTION NO. 18**

Please produce all documents relating to Amtrak's pricing of passenger tickets on the Relevant Services, including for individual segments, and including any documents relating to the relationship, if any, between ticket price and ridership.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18**

Amtrak objects to this Request for Production on the grounds that it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

**REQUEST FOR PRODUCTION NO. 19**

Please produce all documents relating to any federal subsidies or state subsidies sought or received by Amtrak from 2010 to the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19**

Amtrak objects to this Request for Production on the grounds that it is overbroad and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents sufficient to reflect any federal or state funding it has sought since 2010 for Amtrak services operated on CN's rail lines at a time and place and in a format mutually agreed upon by Amtrak and CN.

# EXHIBIT 3



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1666 K Street, NW  
Suite 500  
Washington, DC 20006  
T 202.887.1400  
F 202.466.3215

Linda J. Morgan  
D 202.887.1429  
lmorgan@nossaman.com

February 10, 2015

David A. Hirsh, Esq.  
Harkins Cunningham LLP  
1700 K Street, N.W.  
Suite 400  
Washington, DC 20006-3804

*Re: STB Finance Docket 35743 - Application of the National Railroad  
Passenger Corporation under 49 U.S.C. § 24308(a)*

Dear David,

This letter reviews where we stand with respect to discovery in this case. CN and Amtrak have met a number of times since the STB's September 23, 2014 decision and Amtrak has produced a large volume of documents in addition to what it had already produced. Following up on our meet and confer on December 18, 2014, Amtrak is preparing productions related to delay reporting to comply with the September 23<sup>rd</sup> decision. With respect to previous productions, Amtrak has supplemented them in response to CN's requests insofar as CN's requests have been within the scope of what we agreed to produce in our responses to CN discovery requests and Board orders. During our meetings, CN has made numerous additional requests not encompassed in the Board's September 23<sup>rd</sup> decision that are duplicative, unduly burdensome, and/or outside the scope of our agreed upon discovery. To clarify Amtrak's position with respect to these requests, we summarize below what Amtrak has produced and what further it intends to produce.

1. Operating Agreements

Amtrak has made several productions of operating agreements to comply with the Board's April 15, 2014, and September 23, 2014 decisions. CN indicates that it believes there are additional amendments to these agreements, in particular for agreements with Conrail and Buckingham Branch. Amtrak has completed an extensive search to identify additional amendments to all the agreements and has produced those additional materials. CN now has all the documents within this category that Amtrak has been able to locate.

## 2. Ridership and Revenue Data

Pursuant to Amtrak's Reply to CN's Third Motion to Compel, filed December 10, 2014, Amtrak has produced ridership and revenue data for the Amtrak trains that run on CN's lines. As discussed during our December 18 meet and confer, Amtrak has withheld three fields that would disclose pricing and ticket-specific revenue, as per Amtrak's objections to CN's Requests for Production 16 and 17 (ridership and revenue data), and Request for Production 18 (pricing data). Amtrak has designated the data that it has produced as "Highly Confidential" because of its proprietary and commercially sensitive nature. In your email of February 2, 2015, you complain about the lack of revenue information in what Amtrak has produced. However, Amtrak has produced exactly the data for the relevant time period that it said it would produce in its Reply and as discussed in our follow up meet and confer. Related to this production, you have also asked for the definition of certain codes, which we will be producing forthwith.

## 3. Delay Reporting Documents

As already mentioned, Amtrak is preparing productions to comply with the Board's September 23, 2014 decision, based on the custodians and search terms agreed upon by CN and Amtrak and also based upon our discussions of specific data sources, including TDRS (Transportation Department Review System).

## 4. Email Attachments

Amtrak has produced several thousand email attachments that were initially withheld as non-responsive from its previous productions. At CN's request and at Amtrak's expense, Amtrak re-reviewed and produced the approximately 3,000 previously withheld attachments. CN has now identified a small number of additional as yet unproduced attachments that they believe to be responsive. Amtrak is preparing these documents for production to the extent that they are responsive as it did with the other previously unproduced attachments.

## 5. Stubbed Attachments

As discussed during our December 18 meet and confer, the email stubs that are part of Amtrak's production are the result of a data migration process that was underway within Amtrak at the time of the collection. Amtrak has confirmed that it has not lost any of these documents, but re-collecting them individually or performing a large-scale re-collection for purposes of producing these 147 documents is unduly burdensome. The former would be time and resource intensive for Amtrak personnel, and the latter would incur substantial processing costs to re-process large amounts of data a second time. When we discussed this issue, you agreed to review the list of stubbed attachments to identify files you would like produced. In your email dated January 21, 2015, you asked that we produce all 147 of them. As discussed above, this would require a substantial effort by Amtrak to produce a relatively small number of

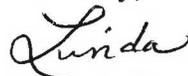
documents. Amtrak does not intend to produce the balance of these documents as a result.

## 6. Other Documents and Data Sources

As summarized in your email from February 2, 2015, CN has continuously made new requests for additional production of documents and from data sources. These include documents related to the “host railroad issue log,” Amtrak’s Intranet, a policy and procedures manual, notes from several meetings, business plans, monthly performance reports, and operating forecasts. Amtrak views any further production on these topics as duplicative and burdensome. In connection with Amtrak’s earlier productions, Amtrak will not pursue any further production on these topics. Amtrak and CN agreed upon a list of custodians and searches to be run against those custodians’ documents, and Amtrak has produced the results of those searches. In addition, Amtrak has supplemented its productions at CN’s request and at Amtrak’s expense, as discussed in the foregoing sections.

In summary, Amtrak’s intent is to comply with its discovery obligations in this proceeding and to move the matter forward to resolution. Amtrak has sought to cooperate with CN by supplementing its productions and investigating questions as they arise, but your most recent requests for additional supplemental productions suggest that you view Amtrak’s duty as an open-ended commitment to be extended *ad infinitum* with serial supplemental requests. Amtrak does not view its discovery obligations this way. Amtrak will complete its productions as outlined above.

Sincerely,



Linda J. Morgan

*Attorney for National Railroad Passenger Corporation*