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May 27, 2013

Office of Proceedings

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

May 27, 2014
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 – Illinois Central Railroad Company and Grand Trunk Western Railroad Company’s Response to the National Railroad Passenger Corporation’s Reply In Opposition to Second Motion to Compel Responses to Requests for Production by the Illinois Central Railroad Company and Grand Trunk Western Railroad Company

Dear Ms. Brown:

On May 19, 2014, the Illinois Central Railroad Company (“IC”) and the Grand Trunk Western Railroad Company (“GTW”) (together and hereinafter referred to as “CN”) asked the Board for leave to file a response to the National Railroad Passenger Corporation’s (hereinafter “Amtrak”) May 9, 2014 reply to CN’s Second Motion to Compel Responses. Amtrak opposes accepting CN’s response into the record in this proceeding, as it restates arguments CN has already made. However, if the Board chooses to include CN’s response as a part of the record, Amtrak requests that the Board consider this limited letter response and include it in the record as well.

CN indicates that it is willing to narrow the requests being made in Requests for Production (RFP) Nos. 8 and 14, and Interrogatory 17(b). A close review of the original requests and the restated requests indicates, however, that the serious questions about relevance and breadth raised by Amtrak in its May 9, 2014 reply still remain.

a. RFP No. 8

In RFP No. 8, CN originally asked for “all documents relating to any consideration of, or communications regarding, actual or potential capital expenditures (whether by Amtrak or by the Host Railroad or by other entities or jointly) or

contributions to capital expenditures to improve, facilitate, or reduce costs associated with Amtrak service on any Host Railroads' track since 2003.”¹

In response to RFP No. 8, Amtrak has agreed to produce all such documents that pertain to CN for the time period from 2008 forward. Additionally, in response to RFP No. 8, Amtrak offered in its May 9 reply to provide CN with documents about capital expenditures Amtrak has actually made for other host rail lines over which it operates. Otherwise, Amtrak indicated in its reply that it opposes the rest of CN's request based on lack of relevance and unreasonable burden.

In its May 19 filing, CN indicates that, “[n]ow, in order to meet Amtrak's concern, CN is willing unilaterally to limit RFP No. 8 to documents that ‘propose, analyze, approve or disapprove’ of potential capital investments.” CN also states that “it is not requesting, as Amtrak suggests, every document that ever considered any possible capital investment, but rather only those documents pertaining to capital investments that were made or proposed by or to Amtrak.” In addition, CN said that it was willing to limit RFP No. 8 to the lines of the other Class I carriers.

Although CN has altered the wording of its request, the only real change in effect offered by CN is to limit the data sought in RFP No. 8 to other Class I carriers. While limiting the request to only the Class I host railroads does reduce the scope of the request, the amount of data that RFP No. 8 still calls for is considerable. CN's offer also does not render the requested data relevant because they relate to potential non-CN capital investments, as Amtrak pointed out in its May 9 reply. To be clear, the use of the words “propose, analyze, approve, or disapprove,” would include any document that makes an investment suggestion for consideration even if it does not proceed further. Incorporating words such as “propose” or “analyze” will capture any discussion Amtrak might have had on any potential non-CN infrastructure request and will not narrow the scope to relevant investment decisions.

b. RFP No. 14 and Interrogatory 17(b)

The other change offered by CN in the May 19 filing is to combine the requests contained in RFP No. 14 and Interrogatory 17(b).

RFP No. 14 originally sought “all documents from 2008 to the present relating to communications between and among Amtrak employees, or between and among Amtrak employees and former employees relating to the classification or coding of delays to Amtrak trains for the HRD [Host Railroad Delay] or for purposes of any Operating agreement.” On December 27, CN limited this request to Class I carriers and

¹ Subsequent to the original discovery request, CN clarified that it is not seeking information or documents relating to expenditures on or funding for the Northeast Corridor or other rail lines owned or controlled by Amtrak.

the time period, subsequently agreed to between the parties, of May 1, 2011 forward. Amtrak agreed to produce documents related to CN.

Interrogatory 17(b) originally asked Amtrak to “identify all documents related to complaints, grievances, Ombudsman files, whistleblower disclosures, reports, and any other documents including criticism or an assessment regarding (a) Amtrak’s operation of the Relevant Services, or (b) Amtrak’s promulgation or implementation of policies, practices, or procedures for the monitoring, recording, coding, reporting, measurement, or description of delays to Amtrak trains.” Amtrak agreed to produce documents requested in connection with Interrogatory 17(a), which pertain to CN, but objected to producing documents in response to 17(b). On March 31, CN offered “guidance” in connection with Interrogatory 17(b), stating that it was “particularly interested in documents relating to criticisms and assessments of (i) the way Amtrak has interpreted and deployed its various delay codes, (ii) Amtrak’s internal processes for and inconsistencies in reviewing coding issues, and (iii) Amtrak decisions regarding reporting, publication, or correction of delay coding (e.g. imposing time limits on carriers seeking to identify coding errors).”

CN’s May 19 filing references that guidance and further indicates on pages 7 and 8 that: “CN is willing to address Amtrak’s purported burden concerns by formally limiting RFP No. 14 and Interrogatory 17(b) to:

Documents relating to criticism and assessments of (i) the way Amtrak has interpreted and deployed its various delay codes, (ii) Amtrak’s internal processes for and inconsistencies in reviewing coding issues, and (iii) Amtrak decisions regarding reporting publication, or correction of delay coding (e.g. imposing time limits on carriers seeking to identify coding errors).

CN also restated the offer it made in its Second Motion to Compel to limit RFP No. 14 to the other Class I carriers.

The changes that CN has proposed in combining RFP No. 14 and Interrogatory 17(b) do not negate the arguments Amtrak made in its May 9 reply concerning relevance and burden. Even with the Class I carrier limitation, these delay coding documents would not be relevant to consideration of the terms of the specific operating agreement between CN and Amtrak. Furthermore, a close reading of the two requests as originally presented illustrates that, although CN has combined the two requests into one, the language is still expansive in scope. Although this revised request does not include the portion of RFP No. 14 that sought communications between or among Amtrak employees, the revised request is broad enough that it would by its words, in fact, include such documents. CN’s request remains overly broad, despite the alteration in wording.

Even with CN's proposals to narrow its requests in RFP Nos. 8 and 14 and Interrogatory 17(b), the question of relevance concerning non-CN data remains, as Amtrak outlined in its May 9 reply. Furthermore, the requests are still overly broad and burdensome.

Respectfully submitted,



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