

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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April 14, 2015
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STB FINANCE DOCKET NO. 35851

**GREAT CANADIAN RAILTOUR COMPANY LIMITED d/b/a ROCKY MOUNTAINEER
PETITION FOR EXEMPTION FROM SUBTITLE IV**

**REPLY OF BNSF RAILWAY COMPANY
TO PETITION TO INTERVENE AND COMMENTS OF
NATIONAL RAILROAD PASSENGER CORPORATION**

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BNSF Railway Company (“BNSF”) hereby replies to the March 25, 2015 Petition to Intervene and Comments filed in this proceeding by the National Railroad Passenger Corporation (“Amtrak”). For the reasons set forth below, BNSF submits that the Board need take no action in response to Amtrak’s Petition and Comments.

I. Background

This proceeding arises from an October 31, 2014 Petition for Exemption (“Petition”) filed by Great Canadian Railtour Company Limited d/b/a Rocky Mountaineer (“Rocky Mountaineer”) seeking an exemption from Board regulation so as to allow the operation of Rocky Mountaineer passenger tourist trains during the 2015 summer tourist season over BNSF’s Bellingham Subdivision between Seattle and Vancouver, BC. In a November 20, 2014 Reply, BNSF argued that in the absence of any agreement between BNSF and Amtrak providing for the operation of those trains, Rocky Mountaineer was not entitled to an exemption granting it the operating authorization it purported to be seeking with respect to those trains. At the time that BNSF filed its reply, Amtrak had made no request to BNSF to operate trains for Rocky Mountaineer on BNSF’s tracks during the 2015 tourist season. However, as Amtrak notes at

page 2, footnote 1 of its Comments, while BNSF's statement was correct when made, "as of this date Amtrak requested, and BNSF has granted, authorization" to operate trains on behalf of Rocky Mountaineer in 2015. In other words, an agreement between Amtrak and BNSF under which BNSF has authorized the trains Rocky Mountaineer seeks to operate this year with Amtrak has now been reached.

On March 4, 2015, the Board (having previously initiated a proceeding in this matter on January 29, 2015), directed Rocky Mountaineer to respond to BNSF's November Reply and specifically asked Rocky Mountaineer to address a series of questions: "(1) why an exemption permitting Rocky Mountaineer's proposed operations should be granted when Rocky Mountaineer has no contract with BNSF to operate over the line, BNSF argues that its agreement with Amtrak does not allow for Rocky Mountaineer's use of the line, and BNSF opposes the petition for exemption; (2) if BNSF were to contractually agree to permit Rocky Mountaineer's service for the 2015 season only, what expectation would Rocky Mountaineer have to continue seasonal service over BNSF's line beyond 2015; and (3) whether BNSF would have any means of removing Rocky Mountaineer from the line if the Board were to authorize Rocky Mountaineer to provide rail passenger service and exempt it from all Subtitle IV requirements permitted by the statute, including exit licensing."

Rocky Mountaineer responded to the Board's order on April 10, 2015. BNSF does not object to the Rocky Mountaineer response, and specifically concurs in that response to the extent that Rocky Mountaineer acknowledges that its trains can operate over BNSF tracks under the broad regulatory exemption Rocky Mountaineer now requests, only to the extent that it has BNSF's concurrence for the operation by Amtrak of those trains. That concurrence between BNSF and Amtrak now having been achieved, the concerns that led BNSF to file its November

Reply in response to Rocky Mountaineer's 2015 tourist train proposals have been resolved and BNSF does not object to the regulatory exemption now sought by Rocky Mountaineer.¹

II. Response to Amtrak

BNSF submits that in view of the fact that the issues which prompted it to file its November Reply have now been resolved, there is no need for the Board to prolong this proceeding by addressing Amtrak's Comments. BNSF notes in this regard that Amtrak explicitly "takes no position" on the merits of Rocky Mountaineer's Petition. Amtrak Comments at 1. Because there is no dispute remaining to be addressed on the merits of the relief at issue, the matter is now ripe for the Board's consideration of Rocky Mountaineer's exemption petition.

Moreover, Amtrak has not raised any issues that warrant further Board consideration in light of the current status of this matter. Amtrak states that it has an interest here "in having its rights to operate charter and special trains over the tracks of host freight railroads acknowledged and reflected in the record, and given due consideration to the extent they are at issue in this matter." Amtrak Comments at 1. However, Amtrak's rights to operate Rocky Mountaineer's trains in 2015 are no longer at issue in this proceeding given that Amtrak has now requested and BNSF has authorized the operation of those trains in accord with BNSF's overall service agreement with Amtrak.

Amtrak specifically appears to question the assertion at page 4 of BNSF's November Reply that Rocky Mountaineer would have no basis to operate on BNSF's line even with a Board-issued regulatory exemption "absent BNSF agreement for Amtrak to operate" the Rocky Mountaineer trains on the BNSF lines. BNSF submits that the statement that Amtrak questions

¹ BNSF, however, has not agreed to date to the operation of Rocky Mountaineer trains beyond 2015, a matter that (as Rocky Mountaineer acknowledges) remains for future consideration. As noted in BNSF's November Reply, it is anticipated that there will be congestion on the Bellingham Subdivision in 2016 and beyond.

is fully supported by the statute that both BNSF and Amtrak cite in their respective submissions, 49 U.S.C. §24308. As BNSF noted in the paragraph of its November Reply that immediately follows the statement cited by Amtrak, that statute “provides that if Amtrak wishes to operate ‘additional trains’ over the line of another rail carrier, it must either come to an agreement with the other (freight) carrier regarding the operation of the additional trans or apply to the Board for an order under the statute.” That statement essentially paraphrases 49 U.S.C. §§24308(a) and (e), both of which statutory provisions reference Amtrak operation of trains either under an agreement with a freight railroad or, in the absence of agreement, pursuant to Board order.² Here, as Amtrak acknowledges in its Comments, the parties have reached such an agreement, and thus the question of a Board order under Section 24308 does not arise and the decisional law that Amtrak asks the Board to take into account need not be addressed.

In short, the Board need take no action in response to Amtrak’s Petition and Comments because there is no dispute to be resolved between any of the parties in this proceeding.

Respectfully submitted,



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² Amtrak proceeds to cite to two cases in which the Interstate Commerce Commission ordered a freight railroad to allow Amtrak operation of special trains. Those cases, and the question of a Board order, are not at issue here. An agreement exists to operate the Rocky Mountaineer trains consistent with that party’s request.

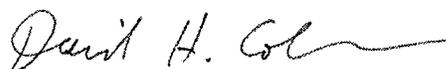
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April 2015, I caused a copy of the foregoing to be served by first-class mail, postage prepaid, upon all parties of record in this case as follows:

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