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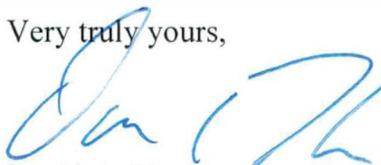
Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0012

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

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find the Motion of Grand Trunk Western Railroad Company and Illinois Central Railroad Company for Extension of Procedural Schedule.

Very truly yours,



David A. Hirsh

Counsel for Illinois Central Railroad Company and
Grand Trunk Western Railroad Company

cc: Linda J. Morgan, Esquire
William H. Herrmann, Esquire

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**MOTION OF GRAND TRUNK WESTERN RAILROAD COMPANY
AND ILLINOIS CENTRAL RAILROAD COMPANY
FOR EXTENSION OF PROCEDURAL SCHEDULE**

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*Counsel for Grand Trunk Western Railroad
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Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
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FOR EXTENSION OF PROCEDURAL SCHEDULE**

Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (together, “CN”) respectfully move the Board, pursuant to 49 C.F.R. § 1104.7(b), to extend the schedule in this matter to provide for opening submissions at least sixty (60) days from the date on which Amtrak satisfactorily completes document production in response to CN’s First Set of Discovery Requests, which CN served on October 31, 2013.

The present schedule was predicated on the parties (1) producing documents on a rolling basis, and (2) completing discovery by August 27, 2014 (one month before the current, September 26, 2014, due date for opening submissions). Neither of these predicates has been met. CN completed its production, totaling about 50,000 distinct documents, on September 4, 2014, but it is still awaiting the bulk of Amtrak’s document production. Amtrak told the Board that its production will include “hundreds of thousands of documents,”¹ but it has thus far produced fewer than 3,500 documents. CN is also still awaiting (1) meaningful responses to its interrogatories (since Amtrak’s response to most of them was to refer CN to its document

¹ See Amtrak Response to CN’s Second Motion to Compel at 3 (May 19, 2014) (“Amtrak is already in the process of providing hundreds of thousands of documents that relate to the requests CN has made.”).

production); (2) missing attachments and information about mismatched image and text files in the minimal production Amtrak has made; (3) Amtrak ridership and revenues database information that Amtrak agreed to provide over four months ago; and (4) the Board's ruling on two CN motions to compel. Yet Amtrak has now told CN that it would not agree to any extension of the filing schedule.

The schedule must be extended. Under the present schedule, even if CN were to receive all the outstanding discovery this week, CN would have only two weeks to review a massive volume of documents and prepare its opening submission. As a result, CN would be precluded from reviewing the adequacy of Amtrak's discovery responses; CN would be precluded from making meaningful use of discovery in its opening submission; Amtrak would obtain an unfair advantage due to its failure to meet its discovery obligations; and the Board would lose the benefit of a fully informed opening submission.

Instead, the Board should extend the schedule so that the discovery can be completed, and the information CN has been seeking for almost a year can be put to use. The schedule was premised on opening submissions being filed no sooner than 30 days after completion of discovery, but given the fact that rolling production has not occurred, that will be insufficient. The schedule should be amended to ensure that CN has at least sixty (60) days between the full discharge of Amtrak's discovery obligations (including those that may be imposed by the Board's rulings on CN's pending motions to compel) and the due date of CN's opening submission.

In light of the impending deadline for the initial submission, CN respectfully requests that the Board decide this motion on an expedited basis.

BACKGROUND

Initial Discovery and Basis for Schedule

After Amtrak filed its application on July 30, 2013, the Board initiated this proceeding on August 9, 2013. CN served its first (and currently only) set of discovery requests on Amtrak on October 31, 2013; Amtrak served its first (and currently only) set of discovery requests on CN on November 6, 2013. The parties served written responses to each other's discovery requests later in November 2013; for its response to twelve of CN's twenty-three interrogatories, Amtrak relied on the documents Amtrak represented it would later produce in response to CN's document requests (Ex. 1).

The parties entered a Joint Discovery Protocol on January 30, 2014 (Ex. 2). In paragraph 1 of that protocol, the parties agreed that documents shall be produced "on a rolling basis." In paragraph 3(e)(ii), the parties agreed to provide information about relevant databases and then produce them in an appropriate, cooperative manner.

The Board served an initial schedule for this proceeding on August 21, 2013, but that schedule has been extended several times, upon joint motions of the parties, to accommodate the discovery process. On page 1 of their joint motions for extension filed on January 17, 2014 and February 14, 2014, the parties agreed that "additional time" should be allowed "to complete discovery reasonably in advance of opening submissions." On page 1 of their April 29, 2014 and June 17, 2014 joint motions to extend, the parties explained that they were seeking further extensions because they had not completed discovery 30 days before the (then) due date for their opening submissions, as they had intended. As noted therein, the previous schedule requests had been based on the understanding that opening submissions would not be due until 30 days after the close of discovery. The Board granted each of those joint motions.

Before filing their most recent joint motion for extension, the parties again agreed that they needed to allow for complete production of documents by each party and to provide at least 30 days from the date of the final production to prepare opening evidentiary submissions. *See* D. Hirsh e-mail to L. Morgan of June 4, 2014 at 5:14 p.m. (Ex. 3). Pursuant to that agreement, and upon the understanding that document production would proceed on a rolling basis (as mandated by the Joint Discovery Protocol) and be completed no later than August 27, 2014, the parties proposed that September 26, 2014 be set as the date for the parties' opening submissions. By stamped order served on June 20, 2014, the Board adopted that proposal.

Discovery Status

CN completed its discovery to Amtrak on September 4, 2014 – eight days late. CN produced over 10,500 documents by the end of May; over 18,900 documents on August 22; and almost 20,000 documents on September 2 and September 4.

Amtrak's discovery obligations remain largely unfulfilled at this time. Through the end of May, Amtrak had produced 613 documents (net of documents it clawed back based on privilege claims), including a large collection of Conductor Delay Reports which, as it knew, CN already had. On August 15, Amtrak produced 2,758 additional documents, but that most recent set of documents is problematic: as CN has pointed out to Amtrak, the documents are missing multiple attachments, and there are mismatches between the image and text versions of files produced.²

Therefore, Amtrak has produced to date fewer than 3,400 documents. Yet Amtrak told the Board in May that it "is already in the process of providing hundreds of thousands of documents that relate to the requests CN has made." Amtrak's Response to CN's Second Motion to Compel at 3 (May 19, 2014). Even assuming that Amtrak grossly exaggerated the

² *See* D. Hirsh e-mail to L. Morgan, August 28, 2014 at 6:42 p.m. (Ex. 4).

volume of its production and that Amtrak's production will actually be about 50,000 documents (like CN's), over 90% of Amtrak's document production is yet to be made. (Indeed, Amtrak's counsel told CN's counsel last week that Amtrak's future production is expected to be large.) Moreover, since most of Amtrak's document production is yet to come, its interrogatory responses are similarly incomplete, since it relied on its future document production to provide the answers to the majority of CN's interrogatories.

CN is also still awaiting discovery Amtrak promised on April 23 that it would provide relating to Amtrak's internal databases. In his June 4, 2014 e-mail, counsel for CN reminded counsel for Amtrak of that outstanding commitment:

For Amtrak's production to CN, we discussed production of data regarding ridership and ticket revenue. You stated that you needed to check on the availability and type of responsive data and said you would get back to me promptly. I have not heard further from you on the issue.

Ex. 3. CN counsel again reminded Amtrak counsel of that outstanding commitment in his email of August 28. Ex. 4. Pursuant to paragraph 3(e)(ii) of the Joint Discovery Protocol, Amtrak owes CN both information about the relevant databases and then production of the responsive data that they contain.

Finally, there are two outstanding discovery motions pending before the Board, in which CN seeks important information that Amtrak has refused to produce: CN's second motion to compel, filed on May 2, 2014, and CN's appeal of the Director's partial denial of its first motion to compel (in which CN pointed out Amtrak's misleading representations concerning the agreements it is withholding), filed May 5, 2014.

Pre-Motion Consultation

On August 25, as the intended close of discovery approached, counsel for CN called counsel for Amtrak to discuss the need for an extension of the schedule to enable a full production to take place and adequate time between the close of discovery and initial briefing to review the documents, formulate and answer questions thereon, and use the produced documents in the opening submission. After a number of emails and calls between counsel in which Amtrak counsel indicated she was working with her client to respond on schedule issues, Amtrak's counsel notified CN's counsel by e-mail on September 3 that Amtrak "is not agreeable to an extension of the procedural schedule at this time," and that Amtrak's counsel was "still working through the other [discovery] issues that you have raised" (some of which date back to the June 4 e-mail and even earlier to the April 23 meeting) "and will follow up on those issues and with Amtrak's production as soon as possible." L. Morgan e-mail to D. Hirsh, Sept. 3, 2014 at 4:32 p.m. (Ex. 5). In a follow-up call on Friday September 5, Amtrak's counsel clarified that despite the prior qualification that Amtrak would not agree to an extension "at this time," Amtrak would not agree to any further extension of the schedule at all. Amtrak's counsel also stated that Amtrak expects soon to make a further large production of documents to CN and that Amtrak is still working on issues such as the missing attachments, mismatched images and text, and the longstanding database questions. As of the time of this filing, CN has not received Amtrak's further production or further information from Amtrak on any of these other outstanding discovery issues.

ARGUMENT

The parties agreed seven months ago in the Joint Discovery Protocol that discovery should occur on a rolling basis, and they agreed in multiple joint motions to extend the schedule, which the Board granted, that there should be at least thirty days between completion of

discovery and opening submissions. Those agreements were no more than common sense and justice demand. CN, at least, has gone to considerable expense over the past year to obtain and produce relevant information in discovery. It would be neither sensible nor fair to render that effort pointless by requiring the parties to file opening evidentiary submissions from behind a veil of ignorance, without the benefit of the discovery they have worked for almost a year to obtain.

Yet, having substantially failed to meet its discovery obligations, Amtrak would deny CN a fair opportunity to use the fruits of discovery in its opening submission. Indeed, by opposing an extension after CN has provided full discovery and it has provided far short of full discovery, Amtrak would enjoy an unfair advantage from its failure to meet its obligations. The Board should not accede to Amtrak's unreasonable, self-serving position.

Amtrak may (or may not) make a large document production this week, which may (or may not) entail production of the bulk of the documents it owes CN. But even if it does, there will remain substantial issues to resolve in order to ensure CN receives the information to which it is entitled. Amtrak needs to supply the attachments missing from the minimal production it has already made; it needs to clarify the conflicts between image and text files in its existing production; and it needs to provide its long-overdue response to CN's questions about databases, and production from those databases as appropriate. Moreover, CN's pending motions need to be resolved, with Amtrak producing such documents as the Board may require in response to those motions. CN only moved to compel production of information it considers important to its case. In order to file a fully informed opening submission, CN needs the Board's decisions, and Amtrak's production pursuant to those decisions, a reasonable time before its opening submission.

At best, prompt resolution of all of these issues would result in a flood of documents and information to CN over the next week or two, just before opening submissions are currently due. CN cannot reasonably be expected to process Amtrak's major document production on the eve of opening submissions. In order for the discovery process to be meaningful, and in order to effectuate CN's due process right to present its evidentiary case, CN must, as the parties have heretofore agreed, have a reasonable time after completion of discovery to review and consider the evidence produced before filing its opening submission.

The parties had contemplated a 30-day period for that process on the agreed premise that discovery would proceed on a "rolling basis," enabling them to review the fruits of discovery while discovery was ongoing. Since that has not occurred, thirty days will not suffice. We respectfully submit that the schedule should, therefore, be amended to afford CN at least sixty (60) days after full, satisfactory completion of initial discovery³ (including discovery pursuant to the Board's orders on motions to compel) before opening submissions are due.⁴

WHEREFORE, CN hereby moves, pursuant to 49 C.F.R. § 1104.7(b), for a modification and further extension of the procedural schedule that would require opening submissions to be filed 60 days after initial discovery is fully and satisfactorily completed (as jointly certified by the parties or as determined by the Board, upon request), and for all subsequent deadlines to be adjusted accordingly, as follows:

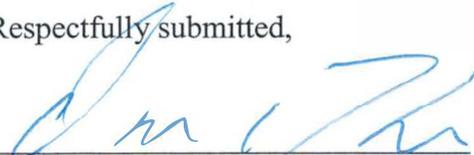
³ By "initial discovery," we mean discovery pursuant to the parties' first sets of discovery requests, served in October and November 2013, not including workpapers and any other materials that are appropriately provided with or shortly after, rather than before, the parties' evidentiary submissions.

⁴ The parties have previously sought, and the Board has previously granted, relatively short, fixed term, extensions. This has resulted in five joint motions to extend the schedule. CN respectfully submits that it serves no one's interests to fix yet another date that is unlikely to stand given delays in the discovery process. Instead fixing the date at satisfactory discovery completion plus 60 days is more realistic.

Discovery End (DE) + 60 days	Opening submissions by both parties
DE + 95	Rebuttal submissions by both parties
DE + 130	Opening briefs of both parties
DE + 150	Reply briefs of both parties.

CN also respectfully requests that this motion be decided on an expedited basis.

Respectfully submitted,



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September 9, 2014

Exhibit 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

APPLICATION OF THE
NATIONAL RAILROAD PASSENGER CORPORATION
UNDER 49 U.S.C. § 24308(a)
— CANADIAN NATIONAL RAILWAY COMPANY

**NATIONAL RAILROAD PASSENGER CORPORATION'S RESPONSES AND
OBJECTIONS TO FIRST SET OF DISCOVERY REQUESTS OF IC AND GTW**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

APPLICATION OF THE
NATIONAL RAILROAD PASSENGER CORPORATION
UNDER 49 U.S.C. § 24308(a)
— CANADIAN NATIONAL RAILWAY COMPANY

NATIONAL RAILROAD PASSENGER CORPORATION'S
FIRST SET OF REQUESTS FOR DISCOVERY

**NATIONAL RAILROAD PASSENGER CORPORATION'S RESPONSES AND
OBJECTIONS TO FIRST SET OF DISCOVERY REQUESTS OF IC AND GTW**

National Railroad Passenger Corporation ("Amtrak"), by and through its attorneys, Nossaman LLP, hereby responds, answers, and objects to the requests for admission, requests for production of documents and interrogatories (collectively, "discovery requests") set forth in the First Set of Discovery Requests of Illinois Central Railroad Company ("IC") and Grand Trunk Western Railroad Company ("GTW") (collectively, "CN"), dated October 31, 2013, as follows.

GENERAL OBJECTIONS

Each definition, instruction, request, and/or interrogatory is subject to and incorporates the following general objections, as applicable. These objections are set forth here to avoid the duplication and repetition of restating them for each interrogatory and request. Some general objections may be referred to in a given answer for purposes of clarity. The failure to list a particular general objection in a given answer should not be construed as a waiver of that objection.

Amtrak reserves the right to supplement or modify these responses and objections as the application proceeding and discovery proceed.

1. Beyond the Scope of the Surface Transportation Board's Rules of Practice:

Amtrak objects to CN's discovery requests and the definitions and instructions contained therein to the extent that they exceed the scope and requirements of the Surface Transportation Board's ("STB" or "Board") Rules of Practice ("STB Rules").

2. Privilege: Amtrak objects to CN's discovery requests to the extent they seek information protected by the attorney-client privilege, the work-product doctrine, the privilege accorded to settlement materials, or any other applicable privilege, immunity, protective order, or court rule. If any protected information or material is produced, such disclosure is not intentional and shall not be deemed a waiver of any privilege or protection. Amtrak further objects to the extent the discovery requests seek documents prepared in anticipation of or during the course of any litigation or administrative proceeding, or which otherwise constitute or disclose the mental impressions, conclusions, opinions, or legal theories of any attorney for Amtrak.

3. Premature: Discovery has only recently begun in this matter, and Amtrak's research and analysis are ongoing. The responses herein are based only on Amtrak's investigation to date and upon information and documents currently available and known to Amtrak. Amtrak objects to CN's discovery requests that are premature and thus not susceptible to answer. Amtrak further objects to the extent CN's discovery requests call for information not yet ascertained or analyzed by Amtrak, or for an opinion, contention, or legal conclusion that Amtrak will not be able to form until the completion of discovery. No response shall be construed as providing a legal conclusion. Amtrak anticipates that further discovery and

investigation will supply additional facts, add meaning to the known facts, and alter existing or establish new factual conclusions and legal contentions. Amtrak therefore provides these responses without prejudice to its right in the future to identify additional documents and information or to alter any contentions or conclusions.

4. Possession, Custody, or Control: Amtrak objects to CN's discovery requests to the extent they seek documents or information beyond those in the immediate and present possession of Amtrak. Amtrak further objects to CN's discovery requests to the extent they seek information that is primarily or exclusively within CN's knowledge or control.

5. Confidential Business Information: To the extent a discovery request requires the disclosure of secret, confidential, and/or proprietary information or any information implicating privacy interests, Amtrak's response shall be subject to a protective order entered by the Board. *See also* CN Instruction, ¶15. Amtrak further objects to the extent a discovery request seeks confidential or proprietary or personal information of a third party, the disclosure of which is not permitted by reason of contract, privacy laws, or other binding legal obligation.

6. Discoverability: Amtrak objects to CN's discovery requests to the extent they seek information not relevant to the issues in this proceeding, not calculated to lead to the discovery of admissible evidence, and neither material nor necessary to this proceeding. To the extent that Amtrak provides information in response to these discovery requests, Amtrak does not concede that the information is admissible in evidence or relevant to issues in this action.

7. Unduly Burdensome: Amtrak objects to CN's discovery requests as oppressive and unduly burdensome to the extent they seek information or documents that are unreasonably cumulative or duplicative; already in CN's possession, custody, or control; equally available to CN as to Amtrak; uniquely known or once controlled by CN; or obtainable with less burden or

expense from another source, such as public sources. Amtrak further objects to the extent that the burden or expense of proposed discovery would be disproportionate to the probative value or relevance of the material sought, and objects to the extent that the Requests for Production request voluminous information which Amtrak can locate and copy only at tremendous expense of money and/or personnel resources expenditure.

8. Reasonable Search: Amtrak objects to CN's discovery requests to the extent they purport to impose on Amtrak a duty to search for information or documents beyond a reasonable search of the locations and files where potentially responsive materials would reasonably be expected to be found. To the extent that electronically stored information is necessary to answer CN's discovery requests, Amtrak will search reasonably accessible computer files for responsive electronically stored information in a manner that balances the obligation to identify relevant information against the avoidance of undue burden or expense. Amtrak objects to the extent a request requires it to search electronically stored information on back up or legacy systems or to the extent that the request calls for the restoration of any systems, programs, or media.

9. Information That Can Be Derived From Documents To Be Produced or Other Forms of Discovery: Amtrak objects to CN's Interrogatories to the extent they are document requests posed in the form of an interrogatory or they seek deposition-type testimony. Amtrak objects to those of CN's Interrogatories that request an interpretation of documents which are readily accessible to CN and which contain terms and conditions that speak for themselves. Amtrak further objects to the Interrogatories to the extent the information requested may be determined by examining, compiling, abstracting, or summarizing business records that will be produced by Amtrak, where the burden of deriving or ascertaining the information is substantially the same for Amtrak as it is for CN.

10. Vague, Ambiguous, or Overbroad: Amtrak additionally objects to CN's discovery requests insofar as they are vague, ambiguous, indefinite, overbroad, or otherwise unclear as to the information sought. Amtrak further objects to the extent the discovery requests use terms that are not defined with sufficient clarity to permit a meaningful response.

11. Reservations Regarding Interrogatories: In responding to the Interrogatories, Amtrak does not concede that the Interrogatories are relevant to the subject matter of this action or are calculated to lead to the discovery of admissible evidence. In addition, Amtrak does not adopt by responding to the Interrogatories any definition of words or phrases or any express or implied characterizations of fact or law contained in the Interrogatories. Amtrak expressly reserves the right to object to further discovery into the subject matter of the Interrogatories and the right to object to the introduction into evidence, in this or any other litigation, of its responses to the Interrogatories. Amtrak further reserves the right, at any time, to supplement its responses should further investigation disclose additional evidence, but it declines any obligation to do so beyond those expressed in the STB Rules.

12. Reservations Regarding Requests for Production: The fact that Amtrak objects to any particular Request for Production should not be construed generally to mean that responsive documents exist. Similarly, the statement that Amtrak will produce responsive documents in response to any particular Request for Production should not be construed to mean that documents of a type or in the category described in the Request for Production in fact exist. Furthermore, the production of any documents that are otherwise subject to an objection is not a waiver of any such objection as to any other document not produced. In addition, Amtrak does not adopt by responding to these Requests for Production any definition of words or phrases or any express or implied characterizations of fact or law contained in the Requests for Production.

Amtrak further reserves the right, at any time, to supplement its responses should further investigation disclose additional responsive documents, but declines any obligation to do so beyond those expressed in the STB Rules or otherwise required by law. The responses below are made without waiver of, and with preservation of:

- a. all objections as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purposes in any further proceeding in this action and any other action;
- b. Amtrak's right to object on any ground and at any time to a demand or request for additional documents or other discovery procedures related to the subject matter of this case; and
- c. Amtrak's right, at any time, to revise, correct, add to or clarify any of the documents produced by Amtrak.

ADDITIONAL GENERAL OBJECTIONS TO CERTAIN INSTRUCTIONS

1. Amtrak objects to Instruction 1 to the extent CN seeks to include Amtrak's "employees, officers, agents, affiliates, subsidiaries, or counsel." This instruction is overbroad, unduly burdensome, and oppressive, and it encompasses information which is neither relevant nor calculated to lead to the discovery of admissible evidence and neither material nor necessary to the investigation. Amtrak further objects to the extent the Instruction seeks information not within the possession, custody, or control of Amtrak or otherwise purports to impose obligations beyond those imposed by the STB Rules or law.

2. Amtrak objects to Instruction 2 as unduly burdensome and oppressive and as purporting to impose obligations beyond those imposed by the STB Rules. Amtrak will answer each Interrogatory to the best of its ability in the manner that is most efficient.

3. Amtrak objects to Instructions 7 and 14 to the extent that they impose requirements beyond those required by law and the STB Rules.

4. Amtrak objects to Instruction 10 as premature to the extent that it requires a statement of inability to answer the Interrogatory fully. It may be necessary to supplement Answers to Interrogatories as information becomes available.

ADDITIONAL GENERAL OBJECTIONS TO CERTAIN DEFINITIONS

1. Amtrak objects to Definition 6 to the extent the definition of “document” is overbroad and unduly burdensome, includes irrelevant information, and purports to impose obligations beyond those imposed by the STB Rules. Amtrak will interpret the term “document” according to the customary meaning of the term and in compliance with applicable law and the STB Rules.

2. Amtrak objects to Definition 13 to the extent the definition of “identify” purports to impose obligations beyond those imposed by the STB Rules and seeks information protected by the attorney-client privilege or work-product doctrine.

3. Amtrak objects to Definition 21 on the ground that the definition of “public benefit” is not limited to subparagraph (i) of 49 U.S.C. § 22701(2)(A) as CN represents in Definition 21, but also includes subparagraph (ii) of 49 U.S.C. § 22701(2)(A) and 49 U.S.C. § 22701(2)(B).

RESPONSES TO SPECIFIC REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit that, between signing the 2011 Operating Agreement and initiating the present proceeding, Amtrak made no requests to CN or its affiliates to use facilities of or have services provided by CN or its affiliates for purposes of regularly scheduled Amtrak service on any rail

lines or segments of rail lines other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Amtrak objects to this Request for Admission on the ground that it is compound. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak denies Request for Admission No. 1.

REQUEST FOR ADMISSION NO. 2

Admit that no element of the Base Compensation under the 2011 Operating Agreement was intended by Amtrak to include compensation to IC or GTW for delays to their freight trains that would not have occurred but for Amtrak's trains.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Amtrak objects to this Request for Admission on the ground that it is compound. Amtrak further objects to this Request for Admission on the ground that the 2011 Operating Agreement is the best evidence of what the parties intended with respect to Base Compensation under the 2011 Operating Agreement and that no other evidence of such intent is relevant, calculated to lead to the discovery of admissible evidence, or admissible. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds as follows: Amtrak admits that no element of the Base Compensation under the 2011 Operating Agreement is specifically allocated to "delays to freight trains," whether or not those delays would have occurred but for Amtrak's trains. Except as expressly admitted herein, Amtrak denies Request for Admission No. 2.

REQUEST FOR ADMISSION NO. 3

Admit that Amtrak has provided no discrete funds or compensation or payments to CN for capital improvements on IC's or GTW's lines since it began operating passenger trains on those lines.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Amtrak objects to this Request for Admission on the grounds that it is compound and vague and ambiguous with respect to use of the terms "discrete funds" and "capital improvements." Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak denies Request for Admission No. 3.

REQUEST FOR ADMISSION NO. 4

Admit that Amtrak has increased the number of trains it operates on IC's and GTW's lines from 8 trains per day on IC and none on GTW in 1971, to 16 trains per day on IC and 8 trains per day on GTW at present.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Amtrak objects to this Request for Admission on the grounds that it is compound. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak admits that the number of Amtrak trains operated on GTW's lines increased from none in 1971, to 8 trains per day at present. Except as expressly admitted herein, Amtrak denies Request for Admission No. 4.

RESPONSES TO SPECIFIC REQUESTS FOR PRODUCTION OF DOCUMENTS

Amtrak states that the vast majority of documents potentially responsive to these requests are maintained on Amtrak's computer systems in electronic format. The process for identifying, gathering, uploading, reviewing and producing responsive documents is underway, but as of the

date of these responses is not completed. Amtrak expects that CN is undertaking similar steps to gather and produce documents responsive to Amtrak's requests for production. Amtrak states that it will produce its documents at a mutually agreeable date and location.

Amtrak incorporates by reference its general objections in response to each of CN's Requests for Production set forth below. Expressly reserving its right to amend and supplement its responses to any and all of these Requests for Production, Amtrak makes the following specific objections and responses while reserving the right to make additional objections as may be deemed appropriate during the course of this proceeding:

REQUEST FOR PRODUCTION NO. 1

If your response to Request for Admission ("RFA") #1 was anything other than an unqualified admission, please produce all documents relating to requests to CN or its affiliates to use facilities of or have services provided by CN or its affiliates for purposes of regularly scheduled Amtrak service on any rail lines or segments of rail lines other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 2

If your response to RFA #2 was anything other than an unqualified admission, please produce all documents relating to Base Compensation under the 2011 Operating Agreement for delays to the freight trains of CN that would not have occurred but for Amtrak's trains.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

Amtrak objects to this Request for Production on the ground that it is overbroad. Amtrak further objects to this Request for Production on the ground that the 2011 Operating Agreement is the best evidence of what the parties intended with respect to Base Compensation under the 2011 Operating Agreement, that the 2011 Operating Agreement is equally available to CN because it is in CN's possession, and that no other evidence of such intent is relevant, calculated to lead to the discovery of admissible evidence, or admissible. 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. 3

If your response to RFA #3 was anything other than an unqualified admission, please produce all documents relating to any funding by Amtrak or payment by Amtrak to CN for capital improvements on CN's lines since it began operating passenger trains on those lines.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 4

If your response to RFA #4 was anything other than an unqualified admission, please produce all documents relating to the number of trains operated by Amtrak on CN's lines in 1971 and 1972.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 5

Please produce all of Amtrak's Operating Agreements, including amendments, attachments, exhibits, and schedules thereto, with Host Railroads, in force at any time since 1971.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5

Amtrak objects to this Request for Production on the grounds that it is overbroad as to time, unduly burdensome and oppressive. Amtrak further objects to this Request for Production to the extent it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. To the extent this Request for Production seeks operating agreements between Amtrak and CN, Amtrak further objects on the ground that these documents are equally available to, and in the possession, custody or control of, CN. To the extent this Request for Production seeks operating agreements between Amtrak and any Host Railroad other than CN, Amtrak further objects on the ground that the operating agreements contain highly confidential and commercially sensitive information of third parties. 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. 6

Please produce all agreements, including any amendments, exhibits, attachments or schedules thereto, in force at any time since 2008, relating to any hosting by Amtrak of non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6

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 on the ground that this Request for Production seeks agreements that contain highly confidential and commercially sensitive information of third parties. 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. 7

Please produce all documents relating to compensation received or sought by Amtrak for delays or interference to Amtrak trains due to hosting any non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7

Amtrak objects to this Request for Production on the ground that is vague and ambiguous. Amtrak further 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. 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. 8

Please produce 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 Railroad's tracks since 2003.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

Amtrak objects to this Request for Production on the ground that is vague and ambiguous and calls for speculation, including as it relates to "potential capital expenditures." Amtrak further objects to this Request for Production on the grounds that it is compound, overbroad, including as to time, unduly burdensome and oppressive, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent Host Railroad is defined to include railroads other than IC or GTW. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to actual capital expenditures to improve, facilitate or reduce costs associated with Amtrak's service on CN's tracks for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 9

Please produce all documents from 2006 to the present relating to monies earmarked or otherwise available to Amtrak to fund, contribute to, or compensate a Host Railroad for capital expenditures or capacity or infrastructure improvements on the rail lines of any Host Railroad.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, unduly burdensome and oppressive, and vague and ambiguous with respect to use of

the terms “otherwise available” and “earmarked”. Amtrak further objects to this Request for Production on the ground that it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent it seeks information relating to Host Railroads other than IC or GTW. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to any funds allocated to Amtrak for the specific purpose of compensating CN for capital expenditures or capacity or infrastructure improvements on CN’s rail lines for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 10

Please produce all documents from 2006 to the present relating to Amtrak efforts to obtain funds from public or private sources for capital expenditures or capacity or infrastructure improvements on the rail lines of any Host Railroad.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, including as to time, unduly burdensome and oppressive, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent Host Railroad is defined to include railroads other than IC or GTW. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to any Amtrak efforts to obtain funds for capital expenditures or capacity or infrastructure improvements on CN’s rail lines for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 11

Please produce all documents from 2006 to the present relating to any determination or consideration by or within Amtrak of whether and what infrastructure investment would be necessary, appropriate, or desirable to improve the performance of or reduce costs associated with the Relevant Services, and of potential sources of funding therefor.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad, including as to time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 12

Please produce all documents from 2008 to the present relating to Amtrak's analysis or consideration of compensation terms for a future Operating Agreement with CN, including Base Compensation, Performance Payments, and Penalties.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12

Amtrak objects to this Request for Production on the ground that it is overbroad, including with respect to use of the term "compensation terms" and as to time. Amtrak further objects to this Request for Production as it seeks documents neither relevant 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 related to the renegotiation of Base Compensation, Performance Payments,

and Penalties for the 2011 Operating Agreement at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 13

Please produce all documents from 2008 to the present relating to organizational chart(s) and other documentation reflecting all employees, former employees, agents, or other representatives of Amtrak involved with (a) communications, negotiation, or contracting with, or compensating, Host Railroads, (b) scheduling of Amtrak trains on lines not entirely owned or controlled by Amtrak, (c) operating Amtrak trains on lines not entirely owned or controlled by Amtrak, (d) monitoring, recording, reporting, or evaluating the performance of Amtrak trains on lines not entirely owned or controlled by Amtrak, (e) Amtrak's budget or Amtrak's policies, analyses, reviews or deliberations relating to infrastructure investment on lines not entirely owned or controlled by Amtrak, and (f) Amtrak's relationships with IC and GTW.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, unduly burdensome and oppressive, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent it requests documents related to railroads or rail lines other than those owned, leased or operated by IC or GTW. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce organizational charts responsive to this request.

REQUEST FOR PRODUCTION NO. 14

Please produce 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 HRD or for purposes of any Operating Agreement.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14

Amtrak objects to this Request for Production on the grounds that it is overbroad and potentially 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 related to any Amtrak communications pertaining to the classification or coding of delays to Amtrak trains on CN's lines for HRD or for purposes of the 2011 Operating Agreement at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 15

Please produce all documents from 2008 to the present relating to instructions, training, procedures, manuals, guidelines, or policies, for completing CDRs or for conductors, engineers, or assistant engineers otherwise to record information relating to delays to Amtrak trains for the Relevant Services, including the Service Standards Manual for Train Service and On-Board Service Employees, Amtrak's Delay Data Recording Policy, and like instruction, training, or policy guides or manuals.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15

Amtrak objects to the Request for Production on the grounds that it is compound, overbroad and unduly burdensome. Subject to and without waiving Amtrak's foregoing general 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. 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.

REQUEST FOR PRODUCTION NO. 20

Please produce all documents from 2007 to the present relating to analyses, projections, or quantifications of the Public Benefit of Amtrak's services or any aspect thereof, including changes in Public Benefit due to changes in OTP.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20

Amtrak objects to this Request for Production on the grounds that it is overbroad particularly as to time, vague and ambiguous, includes the improper and objectionable term "Public Benefit" as described above, 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 responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 21

Please produce all documents from 2008 to the present relating to (a) any consideration or analysis by, within, or for Amtrak of any measures that Amtrak, CN, Amtrak and IC together, or Amtrak and GTW together might take to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services, (b) any measures taken or proposed by Amtrak to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services, and/or (c) any measures taken or proposed by CN, or by CN and Amtrak together, to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad. 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. 22

Please produce all documents from 2008 to the present relating to any consideration or analysis by, within, or for Amtrak of any measures that any third party (other than Amtrak or IC or GTW) might take to improve the OTP of, and reduce delays to the Amtrak trains for, the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22

Amtrak objects to this Request for Production on the ground that it is overbroad. 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. 23

Please produce all documents from 2008 to the present relating to (a) any request made by IC or GTW for correction of CDRs, including Amtrak's internal analyses and responses, and (b) Amtrak's procedures, criteria, protocols, instructions, directions, and guidance for handling requests made by Host Railroads for correction of CDRs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad and seeks documents that are equally available to, and in the possession of, CN. 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. 24

Please produce all documents from 2008 to the present relating to any consideration or analysis by, within, or for Amtrak of (a) the accuracy, reliability, definition, or significance of

the PRIIA Metrics, (b) the criteria used by Amtrak to identify and categorize delays as FTI or other HRD, and/or (c) whether to revise the aforementioned metrics or criteria.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24

Amtrak objects to this Request for Production on the ground that it is vague and ambiguous. Amtrak further objects to this Request for Production on the grounds that it is compound and overbroad. 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. 25

Please produce all documents from 2008 to the present relating to any disagreements or relief items, whether resolved or not, between Amtrak and IC or GTW, regarding the OTP of, or delays to, or the classification of or attribution of responsibility for delays to, Amtrak trains included in the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, and seeks documents that are equally available to, and in the possession of, CN. 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. 26

Please produce all documents from 2008 to the present relating to the costs or burdens, to Amtrak and to IC and GTW, of administering the contractual system for determining Performance Payments and Penalties for the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26

Amtrak objects to this Request for Production on the ground that it is vague and ambiguous, including as it relates to the term "burdens". Amtrak further objects to this Request for Production on the grounds that it is compound and overbroad, and seeks documents that are equally available to, and in the possession of, CN. 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. 27

Please produce all documents from 2008 to the present relating to the costs or burdens, to Amtrak, to FRA, and to CN, of administering the PRIIA Metrics for the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27

Amtrak objects to this Request for Production on the ground that it is vague and ambiguous, including as it relates to the term "burdens". Amtrak further objects to this Request for Production on the grounds that it is compound, overbroad as to time, and seeks documents that are equally available to, and/or in the possession, custody or control of, CN. 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. 28

Please produce all documents discussing or analyzing changes in the OTP of the Relevant Services since October 1, 2010, and the reasons for or causes of such changes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad. 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. 29

Please produce all documents relating to the decision or determination by Amtrak or FRA not to publish PRIIA Metrics for Host Railroad rail segments shorter than 15 miles.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29

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 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. 30

Simultaneous with the filing or submission of written testimony by a witness relied upon by Amtrak in this proceeding, please produce all Workpapers of, all materials relied upon by, and all materials used or consulted in the course of the preparation of such testimony.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30

Amtrak objects to this Request for Production to the extent it seeks documents or information protected by the attorney-client privilege or the work-product doctrine or beyond what is required by the STB Rules to be served on CN with Amtrak filings. Amtrak further objects to this Request for Production on the ground that it is premature and thus not susceptible to answer. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that, consistent with Board regulations, it will serve on CN non-privileged

material relied upon at the time of the filings or submission of written testimony by a witness relied upon by Amtrak in this proceeding.

REQUEST FOR PRODUCTION NO. 31

Please produce all documents identified in response to the Interrogatories below, and all documents used or consulted in the course of the preparation of your response to each of those Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31

Amtrak objects to this Request for Production to the extent it seeks documents or information protected by the attorney-client privilege or the work-product doctrine. Amtrak further objects to this Request for Production on the ground that it is overbroad with respect to its request for “documents used or consulted” in the course of preparing responses to the Interrogatories identified below. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce the responsive, non-privileged documents described in the responses to the Interrogatories below at a time and place and in a format mutually agreed upon by Amtrak and CN.

SPECIFIC ANSWERS AND OBJECTIONS TO INTERROGATORIES

Amtrak incorporates by reference its general objections in response to each of CN’s interrogatories set forth below. To the extent an interrogatory permissibly calls for the production of documents, CN is directed to the documents which will be produced in response to CN’s Requests for Production at a mutually agreeable time and place. Amtrak states that the following responses are true and complete to the best of its knowledge at this time, while reserving the right to identify additional facts or documents, amend or supplement any answer, or raise additional objections during the course of this proceeding.

INTERROGATORY NO. 1:

Identify each person who supplied information for, who was consulted in connection with, or who participated in preparation of the answers to these interrogatories. As to each such person, identify the answer(s) for (or in which) he or she was consulted, supplied information, or participated.

RESPONSE TO INTERROGATORY 1:

Subject to and without waiving Amtrak's foregoing general objections, Amtrak responds as follows:

William Auve, Jr.
Assistant Controller Capital & Costing
Interrogatory No. 19

Rory Beelek
Senior Director Grant Administration
Interrogatory No. 19

James Blair
Senior Director Host Railroad Contract Management
Interrogatory No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

Jane Brophy
Senior Officer, Host Railroads
Interrogatory No. 19

Robin Buonopane
Director Finance Accounts Payable
Interrogatory No. 19

Kelly Cunningham
Senior Officer, Host Railroad Development
Interrogatory No. 13, 14, 15, 18, 21

Charles Farmer, III
Assistant Vice President Financial Planning
Interrogatory No. 19

Michael Franke
Chief, State Government Contracts
Interrogatory No. 11, 12, 19

George Genge
Manager Operations Support
Interrogatory No. 13, 18

Ronald Gonzalez
Operations Supervisor
Interrogatory No. 13, 23

Bruce Hillblom
Senior Director State Partnerships
Interrogatory No. 11, 12

Rich Hyer
Senior Officer, Host Railroad Invoice Administration
Interrogatory No. 18

Thomas Kirk
Deputy General Manager Southeast
Interrogatory No. 14, 16

James Klaiber
Principal Host Railroad Management
Interrogatory No. 11, 12

David Klouda
Division Engineer Central
Interrogatory No. 19

Don Kushto
Principal Host Railroad Development
Interrogatory No. 19

Jason Maga
Director Host Railroads
Interrogatory No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23

Jacklyn Meredith-Batchelor
Associate General Counsel – Corporate Affairs
Interrogatory No. 11

Robert Ripperger
Principal Officer, Technical Writing & Comm Sup
Interrogatory No. 20

Richard Salmon, Jr.
Senior Director Scheduling

Moe Savoy
Deputy General Manager Central
Interrogatory No. 13, 14, 16

Benjamin Sheets
Assistant Superintendent Rd Ops
Interrogatory No. 13, 14

Christine Suchy
Principal Officer Capital Investment Program Management
Interrogatory No. 19

James Sundman
Senior Director Rider Analysis
Interrogatory No. 18

Paul Vilter
Assistant Vice President Host Railroads
Interrogatory No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23

Albert Walton, Jr.
Director Contract Operations
Interrogatory No. 13, 14, 15, 16, 21, 23

John Wojciechowski
Director Customer Relations
Interrogatory No. 17

INTERROGATORY NO. 2:

Identify each person who has, claims to have, or is likely to have knowledge, information, or documents relevant to the proceeding. Describe with particularity the knowledge, information, or documents that Amtrak believes each such person possesses.

RESPONSE TO INTERROGATORY 2:

Amtrak objects to this Interrogatory on the grounds that is overbroad, unduly burdensome and oppressive and calls for speculation. Amtrak further objects to this Interrogatory to the extent it seeks information that is redundant and duplicative of other Interrogatories. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak states that, based on its investigation up to the present time, persons who are likely to have knowledge, information or documents relevant to this proceeding other than those listed in response to Interrogatory No. 1 are:

William Sheridan
Chief, Market Research & Analysis

Nancy Miller
Director Finance

Jason Harrell
Assistant Superintendent Rd Ops

Morgan Connell
Program Analyst

Dick Salmon
Senior Director, Scheduling

Barbara Bruce
Director Scheduling

Ronald Blaine
ARRA Program Director Stations & Facilities Construction

Timothy Berg
Accounting Director, Host Railroads

Joyce Dolan
Manager, Records Management

INTERROGATORY NO. 3:

Identify all witnesses Amtrak may rely upon or refer to in the course of this proceeding and describe with particularity the subject matter and the substance of each witness's anticipated testimony.

RESPONSE TO INTERROGATORY 3:

Amtrak objects to this Interrogatory on the ground that is overbroad and premature. Amtrak further objects to this Interrogatory to the extent it seeks information that is redundant and duplicative of other Interrogatories. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not provide any answer to this Interrogatory at this time.

INTERROGATORY NO. 4:

Describe with particularity all of Amtrak's records management and retention policies affecting documents and information potentially relevant to this proceeding.

RESPONSE TO INTERROGATORY 4:

Subject to and without waiving Amtrak's foregoing general objections, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY NO. 5:

Identify and describe with particularity all Amtrak record management systems that may contain any documents or information potentially relevant to this proceeding.

RESPONSE TO INTERROGATORY 5:

Amtrak objects to this Interrogatory on the ground that it is overbroad, vague and ambiguous with respect to use of the terms “record management systems” and “information potentially relevant to this proceeding”, and redundant and duplicative of other Interrogatories. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak states that it has identified the following databases and document management systems that may contain documents relevant to the issues in dispute:

ARROW

On-Time Performance Monitoring System

Microsoft Outlook

FileSite

Documentum

SalesForce

Enterprise Data Warehouse

Customer Service Performance Metrics Integrator (CSPMI)

Remedy database

INTERROGATORY NO. 6:

Identify all current or former employees or other representatives of Amtrak who created, edited, authorized, or may presently be in possession of any documents related to this proceeding. As to each employee or other representative, identify the time period during which he or she participated, the role he or she served, the functions he or she performed, and the records he or she possesses or is likely to possess.

RESPONSE TO INTERROGATORY 6:

Amtrak objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, including to the extent that it would require the identification of individuals whose participation in "this proceeding" might have been negligible, immaterial or of no probative value.. Amtrak also objects to this Interrogatory on the grounds that it is vague and calls for speculation regarding "any documents related to this proceeding." Amtrak further objects to this Interrogatory to the extent it seeks information that is redundant and duplicative of other Interrogatories and which can be ascertained by examining the face of the documents that will be produced to CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak incorporates by reference its Responses to Interrogatory Nos. 1 and 2 above. Additionally, Amtrak will produce business records in response to CN's requests for discovery from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11. To the extent that specific document(s) are produced for which this information is relevant to this proceeding and not otherwise ascertainable from the documents produced, Amtrak will consider specific requests by CN for the identity of the author(s) of that document.

INTERROGATORY NO. 7:

State and describe with particularity your position with respect to the first issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013, including what, if any role, HRD should play in determining compensation, and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 7:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY NO. 8:

State and describe with particularity your position with respect to the second issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013, including what, if any role, HRD should play in determining Penalties, and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 8:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY NO. 9:

State and describe with particularity your position with respect to the third issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013 and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 9:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general

and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY NO. 10:

State and describe with particularity your position with respect to the fourth issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013 and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 10:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY 11:

Identify and describe with particularity all efforts you have made from May 1, 2011, to the present to make an agreement with CN or its affiliates to use facilities of, and have services provided by, CN or its affiliates, on any rail lines, or segments of rail lines, other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO INTERROGATORY 11:

Amtrak objects to this Interrogatory on the ground that it makes requests previously made and responded to. Subject to and without waiving Amtrak's foregoing general and specific objections. Amtrak responds as follows: Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 12:

Identify and describe with particularity all passenger rail services you propose to operate, and all your plans relating to such proposals, that would use facilities of, and have services provided by, CN or its affiliates, on any rail lines, or segments of rail lines, other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO INTERROGATORY 12:

Amtrak objects to this Interrogatory on the ground that it makes requests previously made and responded to. Amtrak also objects to this Interrogatory on the grounds that it is overbroad and vague, and calls for speculation. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 13:

Describe with particularity Amtrak's policies, procedures, and practices relating to (a) communications with dispatchers and other employees of CN, (b) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as HRD or for purposes of any Operating Agreement, and (c) the recording, coding, measurement, and reporting of OTP.

RESPONSE TO INTERROGATORY 13:

Amtrak objects to this Interrogatory on the grounds that it is compound, vague, ambiguous, and overbroad, including with respect to use of the term "practices", and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding with respect to its request for information relating to "any Operating Agreement" rather than the 2011 Operating Agreement. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce the relevant business records from which

this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 14:

Describe with particularity how the policies, procedures, and practices described in response to Interrogatory No. 13 above are communicated to Amtrak’s conductors, assistant conductors, engineers, and second engineers.

RESPONSE TO INTERROGATORY 14:

Amtrak objects to this Interrogatory on the grounds that it is vague, ambiguous, and overbroad, including with respect to use of the term “practices.” Subject to and without waiving Amtrak’s foregoing general and specific objections, and with the limitation noted in Interrogatory No. 13 above, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 15:

Identify all changes to any policies, practices, or procedures described in response to Interrogatory No. 13 and describe with particularity the nature of each such change.

RESPONSE TO INTERROGATORY 15:

Amtrak objects to this Interrogatory on the grounds that it is vague, ambiguous and overbroad, including with respect to use of the term “practices”. Subject to and without waiving Amtrak’s foregoing general and specific objections, and with the limitation noted in Interrogatory No. 13 above, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 16:

State whether any Amtrak employees are or have been evaluated, compensated, supervised, or disciplined based in whole or part on information they recorded or failed to record in CDRs, and if so, identify the basis for this statement.

RESPONSE TO INTERROGATORY 16:

Amtrak objects to this Interrogatory on the grounds that it is compound and vague and ambiguous with respect to use of the term “supervised.” Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak responds as follows: Amtrak conductors are tested, and receive counseling and/or coaching by their supervisors based on those tests and other observations, with respect to completion of CDRs in accordance with the policies and procedures identified in the Response to Interrogatory No. 14 above. Conductors are not compensated or disciplined based in whole or in part on the information they recorded or failed to record in CDRs.

INTERROGATORY 17:

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.

RESPONSE TO INTERROGATORY 17:

Amtrak objects to this Interrogatory on the ground that it is compound. Amtrak further objects to this Interrogatory on the grounds that it is vague, ambiguous and overbroad, including with respect to use of the term “assessment.” Subject to and without waiving Amtrak’s foregoing general and specific objections, for (a) and (b) Amtrak will produce the relevant

business records in connection with the Relevant Services from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 18:

Identify all sources and stores of data maintained by Amtrak relating to the performance of the Relevant Services, including but not limited to data regarding delays to Amtrak trains and OTP. For each data set, describe what it contains, how it was collected, when it was collected, and who collected it.

RESPONSE TO INTERROGATORY 18:

Amtrak objects to this Interrogatory on the grounds that it is compound and vague and ambiguous with respect to use of the terms “stores” and “performance.” Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak responds as follows: The primary sources and stores of data maintained by Amtrak relating to the operational performance of the Relevant Services is the OTP Monitoring System. At the end of each conductor’s trip, the conductor faxes a CDR to Amtrak’s Consolidated National Operations Center in Wilmington (CNOC), DE for entry into the OTP Monitoring System. Unless otherwise arranged, the conductor also faxes the CDR to the host railroad(s) for review. CNOC personnel have up to seven calendar days from a train origin date to finalize the CDR information in the OTP Monitoring System. During this seven-day window, any discrepancies found with the CDR data can be corrected in accordance with Amtrak’s Delay Data Recording Policy.

Amtrak train arrival and/or departure times at stations or at a non-station reporting point (OS) are kept for seven days in Amtrak’s transaction based mainframe system called ARROW. The majority of the train OS times are transmitted electronically into ARROW through the

National Train Activity Monitoring System (NTAMS) and Electronic Data Interchange (EDI) messages. For locomotives equipped with a Train Communication Data (TCD) unit, the TCD unit communicates with the Global Positioning Satellite (GPS) system to determine the train's location to process and transmit arrival and departure times to NTAMS. In the event the electronic OS times are unavailable or in error, manual adjustment is made to the OS times in ARROW. Station agents with the proper authority enter the observed station arrival or departure times manually into ARROW or, in the event there is not a station agent, the station caretaker or conductor notifies the appropriate off-site Amtrak agent of the actual arrival or departure time. The conductor records station arrival, station departure and passing point times on the CDR. If there is no electronic data recorded in ARROW for a reporting point, CNOC personnel will enter the conductor's recorded times into ARROW either after phone communication with the conductor (while on the train) or when the CDR is received by CNOC. OS reporting times can be corrected by authorized station agents or CNOC personnel if found to be in error.

Amtrak will produce the relevant business records from which this and additional responsive information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 19:

Identify and describe with particularity all sources of funding available or potentially available to Amtrak for infrastructure investment on Relevant Services or on lines traversed by Relevant Services.

RESPONSE TO INTERROGATORY 19:

Amtrak objects to this Interrogatory on the grounds that it calls for speculation with respect to funding "potentially available." Subject to and without waiving Amtrak's foregoing

general objections, Amtrak responds as follows: There is no source of funding available to Amtrak specifically for infrastructure investment on track or facilities owned by CN.

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) established a new “Intercity Rail Policy” under Title III of the Act. Sections 301, 302, and 501 created a new framework for states and inter-state compacts to apply for federal funding for high speed and intercity passenger rail improvement projects (known as the HSIPR program). The program was funded initially through \$8 billion under the American Recovery and Reinvestment Act (Pub.L. 111-5) (ARRA), and then under the FY10 Appropriations Act for an additional \$2.4 billion.

Amtrak, by itself, was an eligible applicant only under Section 501, the “High-Speed Rail Corridor Program”. Other than for projects on Amtrak-owned infrastructure, Amtrak has not applied for any funding specifically for infrastructure investment on track or facilities owned by CN under this program. Amtrak has actively supported states in their efforts to obtain funding under the HSIPR grant program, primarily by providing Letters of Support (LOSs) and Agreements in Principle (AIPs) that were submitted by (some) states as part of their application process. Part of the application and approval process required host railroads whose infrastructure would benefit from the expenditure of applied-for funds to enter into agreements with the relevant state and/or Amtrak ensuring the realization of the anticipated benefits to intercity passenger rail service, including commitment to an enforceable standard of on-time performance of passenger trains.

With respect to freight infrastructure within the State of Illinois, Amtrak is a member of CREATE, a partnership between the U.S. Department of Transportation, the State of Illinois, City of Chicago, Metra, Amtrak, and freight railroads (BNSF, CN, Canadian Pacific, CSX, Norfolk Southern, and Union Pacific) formed to invest in capital improvements intended to

increase the efficiency of the region's rail infrastructure and thereby reduce delays to passenger and freight traffic. Both ARRA and TIGER grants have been awarded to CREATE for various projects such as the Englewood flyover, intended to reduce conflicts between Amtrak, Metra, and Norfolk Southern trains. In 2010 Amtrak contributed \$2 million out of its general capital funds for certain CREATE projects, including Project P-6, which involves construction of a double-tracked bridge to carry two CN main tracks over or under the Indiana Harbor Belt, and associated signal work.

INTERROGATORY 20:

Identify and describe with particularity all documents relating to communications between Amtrak (including its employees, representatives or agents) and Government agencies, Members of Congress, congressional committees, state governors, and their staffs regarding the Relevant Services or Amtrak's funding, funding needs, or funding priorities. For each such document, identify all employees, representatives, former employees, and former representatives of Amtrak who participated in or contributed to it or who may have knowledge or documents relating to it.

RESPONSE TO INTERROGATORY 20:

Amtrak objects to this Interrogatory on the grounds that it is compound, overbroad, unduly burdensome and oppressive. Amtrak further objects to this Interrogatory on the ground that it seeks information that is equally available to CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce relevant business records relating to communications between Amtrak and Government agencies, Members of Congress, Congressional Committees, State Governors, and their staffs regarding the Relevant

Services from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 21:

Describe the processes, procedures, and criteria employed by Amtrak to determine (a) how an individual delay to an Amtrak train or a type of delay to an Amtrak train should be categorized for purposes of the PRIIA Metrics, (b) whether a CDR should be corrected, and (c) how an individual delay to an Amtrak train or type of delay to an Amtrak train or cause of failure of OTP should be treated for purposes of Performance Payments and Penalties under the CN Operating Agreement.

RESPONSE TO INTERROGATORY 21:

Amtrak objects to this Interrogatory on the grounds that it is compound and vague and ambiguous, including with respect to use of the terms “processes”, “corrected” and “criteria.” Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 22:

Identify by name, title, and corporate affiliation all persons, including Amtrak employees, consultants, contractors, and any non-Amtrak employees, who authored, contributed to, or were otherwise responsible, in whole or in part, for any of the documents produced in response to the foregoing Document Requests, and identify, for each person, the document(s) for which they were responsible.

RESPONSE TO INTERROGATORY 22:

Amtrak objects to this Interrogatory on the ground that the phrase “all persons, including Amtrak employees, consultants, and any non-Amtrak employees, who authored, contributed to,

or were otherwise responsible, in whole or in part” is overbroad, vague and ambiguous because it may be construed to require the identification of individuals whose participation in the relevant matters might have been negligible, immaterial, or of no probative value. Amtrak further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak responds that CN should review the relevant business records to be produced and from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11. To the extent that specific document(s) are produced for which this information is relevant to this proceeding and not otherwise ascertainable from the documents produced, Amtrak will consider specific requests by CN for the identity of the author(s) of that document.

INTERROGATORY 23:

Identify by name and title the persons who review or consider, or who have reviewed or considered (a) potential changes to or corrections to CDR data, or (b) relief items related to billing, for purposes of the 2011 Operating Agreement (including insofar as the 2011 Operating Agreement or its terms have remained in effect by order of the STB).

RESPONSE TO INTERROGATORY 23:

Amtrak objects to this Interrogatory on the grounds that it is compound, vague and ambiguous with respect to use of the term “relief items,” and calls for speculation to the extent it seeks the identities of persons who might have considered “potential changes or corrections” to CDR data. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak states that the Amtrak employees who primarily review or consider potential changes to

or corrections to CDR data, or relief items related to billing, for purposes of the 2011 Operating Agreement, are:

Jane Brophy
Senior Officer, Host Railroads

James Blair
Senior Director Host Railroad Contract Management

Ronald Gonzalez
Operations Supervisor

Rich Hyer
Senior Officer, Host Railroad Invoice Administration

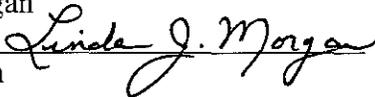
Jason Maga
Director Host Railroads

Paul Vilter
Assistant Vice President Host Railroads

Albert Walton, Jr.
Director Contract Operations

Respectfully submitted,

/s/Linda J. Morgan



Linda J. Morgan
Kevin M. Sheys
Paul L. Knight
David J. Farkas
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
(202) 887-1400

Counsel for National Railroad Passenger Corporation

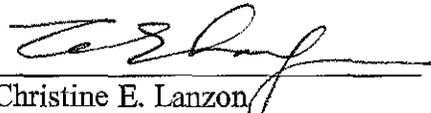
/s/William H. Herrmann

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

Dated: November 19, 2013

VERIFICATION OF CORPORATE EMPLOYEE

On behalf of the National Railroad Passenger Corporation ("Amtrak"), I have read the foregoing responses to First Set of Discovery Requests of IC and GTW. The responses were prepared with the assistance of Amtrak employees and with the assistance and advice of counsel. The answers are based on Amtrak's review of the records and information currently available. I reserve the right to make changes in or additions to any of these responses if at any time it appears that errors or omissions have been made or if more accurate or complete information becomes available. Subject to these limitations and reservations, these responses are true to the best of my present knowledge, information, and belief.


Christine E. Lanzon
Senior Associate General Counsel
National Railroad Passenger Corporation

Sworn to before me this
19th day of November, 2013


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I certify that I have this 19th day of November, 2013, served the foregoing Responses and Objections to First Set of Discovery Requests of IC and GTW by sending a copy by e-mail, as indicated below, to the following:

David A. Hirsh
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600

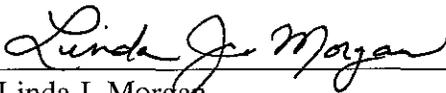

Linda J. Morgan
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
(202) 887-1400

Exhibit 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

APPLICATION OF THE
NATIONAL RAILROAD PASSENGER CORPORATION
UNDER 49 U.S.C. § 24308(a)
— CANADIAN NATIONAL RAILWAY COMPANY

JOINT DISCOVERY PROTOCOL

The following Joint Discovery Protocol (“Protocol”), dated this 30th day of January 2014, shall apply to all documents, including but not limited to electronically stored information and other electronically stored discovery materials (hereinafter “ESI”), maintained and/or exchanged by the Parties (“Parties” or “Party”) in this proceeding, and to certain other issues relating to discovery in this proceeding. The obligations in this Protocol are in addition to those set forth in the Protective Order entered by Surface Transportation Board (“Board”) on December 16, 2013. The purpose of this Protocol is to facilitate the conduct of discovery and the resolution of disputes. Compliance with this Protocol may be considered by the Board in resolving discovery disputes.

I. **Searches for Responsive Documents.** In response to a request for document production, a Party shall search both the paper files and the reasonably accessible ESI of custodians who are reasonably likely to possess responsive documents that are not duplicative of documents that would be possessed by other custodians already being searched. In order to search such reasonably accessible ESI, each Party shall apply the relevant time frame and search terms reasonably necessary to satisfy all non-objectionable parts of document production requests. Each Party shall produce on a rolling basis non-privileged, relevant, and responsive

documents and information, including ESI, in the format provided for under Paragraph 3 and within a time frame agreed by the Parties or otherwise ordered by the Board.

(a) Search Dates and Methodology.

(i) The Parties have agreed that the starting date for selection of responsive documents will be May 1, 2011 (encompassing documents created, revised, sent, in force, in effect, or in operation from that date forward), with the exception of: (1) documents relating to actual and potential capital expenditures and investments in rail lines and infrastructure/capacity funding issues with respect to rail lines; and (2) documents relating to general discussions or analyses of public policy issues or PRIIA metrics. The ending date for selection of responsive documents will be October 31, 2013 (the date of the first document request in this proceeding).

(ii) The use of search terms appears to be reasonably necessary to identify emails and email attachments, and may be reasonably necessary to identify other ESI, likely to contain discoverable information. Prior to document production, the Parties shall exchange search terms and try to reach agreement on them, but agreement shall not be a precondition to searching for and producing documents. The Parties shall fully document their use of search terms, including which search terms are used for which custodians and for which ESI sources. If a Party discovers that the search terms it is using are failing to collect non-privileged documents that are within the non-objectionable scope of document requests, it shall broaden its search to the extent reasonably necessary to collect such documents.

(b) Custodians. Prior to document production, the Parties shall exchange initial lists of custodians whose files they propose to search, including the custodian's title, the date the custodian assumed the position, and the names of any persons within the company who,

at any time after May 1, 2011, had prior responsibility for one or more of the custodian's present responsibilities respecting an area or subject of the other party's discovery requests. The Parties shall supplement and update their list of custodians as their search and production progresses.

(c) Disputes. Either before or after production, the Parties after conferring may seek resolution at the Board of any remaining disputes regarding search terms, custodians, or other discovery issues. Each party agrees to promptly raise concerns with the producing party concerning its list of search terms or list of custodians.

2. **ESI Not Reasonably Accessible.** ESI may not be reasonably accessible where the requirements in order to search that ESI involve undue burden and costs. For purposes of this Protocol, ESI available from a live, readily accessible source shall be considered "reasonably accessible." ESI maintained on voicemail systems and mobile phones, and ESI which cannot be retrieved without great effort and cost, including ESI maintained on obsolete or "legacy" systems no longer in use, or on backup tapes and other archival media, shall be considered "not reasonably accessible." Neither Party shall have an affirmative obligation to investigate whether ESI that is not reasonably accessible contains potentially responsive and non-duplicative information.

(a) Each Party shall provide the opposing Party with a list and description of any ESI that a Party considers not reasonably accessible, setting forth (i) a description of the nature of the ESI (*e.g.*, email communications, account payable information, etc.); (ii) the type of media in which the not reasonably accessible data is contained, to the extent it is known or can reasonably be ascertained; and (iii) the reasons the ESI is considered not reasonably accessible. If, after conferring, the Parties are unable to resolve their disagreement as to whether the ESI is

or is not reasonably accessible, the Party contesting the designation of the ESI as not reasonably accessible may seek resolution of that issue from the Board.

(b) Each Party shall promptly notify the other Party if it learns of responsive, non-privileged documents that are not duplicative of documents already being produced that are contained in ESI that is not reasonably accessible. Upon such notification, the Parties shall promptly meet and confer to determine what steps, if any, should be taken with respect to such not reasonably accessible ESI. If, after conferring, the parties are unable to agree on what steps should be taken with respect to such ESI, then the Party seeking the search and production of such ESI may seek resolution from the Board.

3. **Production.** Unless the Parties agree otherwise, the provisions set forth in this Section shall govern the format for the production of all documents. To the extent that issues arise in the course of productions that are not fully addressed in this Protocol, the parties shall immediately confer to resolve them. In all instances, the producing Party shall make all reasonable efforts to insure that documents are produced in a manner that is easily reviewable and not inconsistent with modern e-discovery techniques.

(a) Bates Numbering and Confidentiality Designations. Each Tagged Image File Format (“TIFF”) image of a produced document (see Subsection 3(b), below) shall contain a legible Bates number that: (i) is unique across the document production; (ii) has a constant length across the production; and (iii) is sequential within a given document. Each page shall be numbered such that it can be uniquely identified and will include before the Bates number an acronym identifying the producing Party (*e.g.*, “CN” or “ATK”) followed by the zero-filled sequential number (*e.g.*, CN0000000987 or ATK0000019931). Rather than skipping Bates numbers within the range of production, the Parties shall use placeholders (marked “No

Document For This Bates Number”). In addition, a producing Party designating a document for confidential treatment shall place the appropriate confidentiality designation – “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” – on each TIFF image of that document. Both the Bates number and confidentiality designation shall be placed on the page image in a manner that does not conceal or interfere with any information contained on the page. The producing Party shall not place any stamp or information on a document it produces that is not on the original, other than the Bates number, any confidentiality designation, or an indication of any redactions. The provisions of this Subsection 3(a) notwithstanding, Bates numbering and the confidentiality designations of documents produced in native format shall be in accordance with Subsections 3(b) and 3(i).

(b) Format for Production.

(i) Except for ESI produced in native format, the Parties shall electronically produce any non-privileged, relevant, and responsive document in electronic format as a single-page black and white Group IV TIFF image with a minimum resolution of 300 dpi. Receiving Parties shall have the right to request that a document be produced in color if they have a reasonable basis to believe that color will significantly improve their understanding of the document, and such a request shall not be unreasonably denied.

(ii) For each document produced, the Parties shall provide a document level or multipage text file containing Optical Character Recognition (“OCR”) text (for documents without extractable text) or extracted text (where available). Each such text file shall be named to correspond with the beginning Bates number of the produced document from which the text was obtained. All text files shall be provided in separate folder titled “Text.” For each produced document, the Concordance .DAT file (or similar load file if provided in another

format) shall contain a field named "OCR PATH," which shall be populated with the path to the corresponding OCR/Extracted text file.

(iii) The producing Party shall also provide both a metadata load file and an image load file. Those load files shall be produced in Concordance format (.DAT file using Concordance standard delimiters for the metadata load files, and .OPT file using Concordance standard fields for the image load files). The producing Party shall also provide image load files in a format viewable in or readily convertible to the IPRO Image Viewer, with extracted text files at the document level having the same file name as its corresponding image file, unless a document has otherwise been redacted. The image load file shall provide image and document break information for the TIFF files produced that correspond to the beginning Bates numbers contained in the metadata load file. Every TIFF file in each production must be referenced in the production's corresponding image load file, and the total number of TIFF files referenced in a production's image load file shall match the number of TIFF files in the production. The metadata load file for each production shall provide the Bates numbers and the Bates number attachment range for email or other documents containing attachments and any applicable confidentiality designation.

(iv) The producing Party shall also provide a multipage searchable OCR text file for the unredacted portions of each redacted document as well as for the entirety of each document that does not contain redactions. The OCR text files and image load files should indicate page breaks, to the extent possible.

(v) Paper documents shall be imaged and produced in digital form, including an OCR file and a TIFF file for each document. When scanning paper documents, distinct documents shall not be merged into a single record, and single documents shall not be

split into multiple records. The Parties shall use physical bindings as document boundaries, such that the smallest binding shall be the document, and the largest binding shall be the attachment group.

(vi) In order to minimize any delays that may arise from conflicts or incompatibilities between the software used by each Party, the parties shall exchange sample image load files, metadata load files, OCR text files, and TIFF files within seven (7) calendar days of the date of this Protocol, which shall be representative of the principal file formats in which the Parties expect to produce documents.

(c) Metadata.

(i) ESI. During the process of converting ESI from the electronic format of the application in which the ESI is normally created, viewed and/or modified to TIFF, metadata values shall be extracted and produced in a metadata load file, unless one or more of the metadata fields would reveal information that has otherwise properly been redacted, in which case that specific information may be redacted from the pertinent metadata field. To the extent they are available in collected data, the metadata values that are to be extracted and produced in the metadata load files are:

1. BEGBATES
 - (a) Starting production number
2. ENDBATES
 - (a) Ending production number
3. BEGATTACH
 - (a) Starting production number of attachment range
4. ENDATTACH
 - (a) Ending production number of attachment range
5. CUSTODIAN
 - (a) Name of individual custodian. Where not reasonably available, identify company custodian (e.g., "CN" or "ATK")
6. ATTACHMENT COUNT
 - (a) Number of attachments
7. ATTACHMENT NAMES
 - (a) Names of attachments, delimited by ";"
8. MD5 HASH
9. ELECTRONIC DOCUMENT TYPE/FILE EXTENSION

10. FILE SIZE
11. FILE NAME
12. FILE LOCATION
13. NATIVE FILE PATH
14. DATE SENT/CREATED
15. TIME SENT/CREATED
16. DATE LAST MODIFIED
17. TIME LAST MODIFIED
18. FROM/AUTHOR(S)
19. TO
20. CC
21. BCC
22. SUBJECT
 - (a) Subject line of email
23. COMMENTS
 - (a) Any comments recorded in document properties (not internal comments within the document)
24. IMPORTANCE FLAG
 - (a) Marked as YES if an email was sent with high importance
 - (b) Marked as NO if not

(ii) Attachments. In addition, for every document that includes an attachment, to the extent available, the following fields should be produced and populated as part of the metadata load file record for both parents and attachments to provide the parent/child or parent/sibling relationship:

- 1) BEGBATES
 - a) Starting production number
- 2) ENDBATES
 - a) Ending production number
- 3) BEGATTACH
 - a) Starting production number of attachment range
- 4) ENDATTACH
 - a) Ending production number of attachment range

(iii) Paper Documents. With respect to images of paper files, the producing Party shall provide in the metadata load file information corresponding to items 1-5 in the list in subparagraph (i) above and information relating to attachments in accordance with subparagraph (ii) above.

(d) Logical Unitization for Images. The producing Party shall make reasonable efforts to split image-based electronic files (scanned PDFs and multi-page TIFFs) into logical files (known in the information technology industry as logical unitization).

(e) Spreadsheets and Database Data.

(i) Spreadsheets are defined as MS-Excel and other application programs whose primary function is the organization, display and processing of data in a row/column format. Each spreadsheet shall be produced in native format unless the spreadsheet is to be redacted and redacting the spreadsheet in native format would be unduly burdensome as compared to redaction not using native format. The producing Party shall retain for the duration of this proceeding (including any appeals, judicial review and or proceedings on remand) unredacted originals of any spreadsheets that are produced with information redacted. When producing redacted spreadsheets in other than their native formats, the producing Party shall legibly display all unredacted data including all hidden rows, columns, cells, worksheets, comments, formulas, and metadata, as well as any associated headers or footers.

(ii) The Parties shall identify any databases containing non-duplicative relevant and responsive information. If any such information exists, the Parties shall confer to determine what data is contained in each database, and to agree upon the method and format for producing any such relevant and responsive information. The Parties shall also confer with respect to the most reasonable form of production for any other data contained in any other format that cannot reasonably be produced and understood in single-page TIFF format or where the review of native data by the receiving Party would require the use of a proprietary or non-standard file viewer or media player.

(iii) If after conferring the Parties are unable to resolve a production issue discussed in this Subsection 3(e), the Party seeking production may seek resolution of that issue from the Board.

(f) Media Files. Media files shall be produced in the native media file format in which they were maintained in the ordinary course of business, unless redactions are needed. If redactions are needed, the redacted media file may be produced in either the original native format or a standard media format.

(g) System and Program Files. System and program files defined as such in the National Software Reference Library need not be processed, reviewed, or produced. Additional files may be added to the list of excluded files by mutual agreement of the Parties.

(h) Native File Production. Any file produced in its native format shall be assigned a single Bates number and shall be named with its Bates number and producing Party acronym, and shall be assigned any applicable confidentiality designation, following the format conventions of Subsection 3(a). The load file entry for any file produced in native format shall include a field containing the file's original file name and a link to the produced file. For every file produced in native format there shall be a single TIFF image containing the words "File Produced in Native Format," the name of the file as produced, and the corresponding Bates number and any confidentiality designation for the file. The Parties reserve the right to request production of additional ESI in native format after review of data produced as TIFF images rather than in native format. The Party from whom native files are requested shall not unreasonably deny a request to produce the native files if the other Party has shown a particularized and substantial need for such information. Should the Parties not reach agreement after conferring, the requesting Party may file with the Board a motion to compel the production of such ESI in native format.

(i) Physical Production of Documents. The Parties shall produce all documents in electronic format to the requesting Party on CD, DVD, flash drive, via secure ftp,

or hard drive, as appropriate for the size of the production. Multiple small media (*e.g.*, several CDs) shall not be provided where one larger medium (*e.g.*, a DVD) can reasonably be produced.

(j) Redactions. If the producing Party redacts a document, such redaction shall be clearly marked on the TIFF image of the document. For each redacted document, the producing party shall also either (i) provide a list identifying by Bates number those pages that have been redacted or that contain redactions and the reason(s) for such redactions or (ii) a database field populated with an indicator of redaction and the reason(s) for redaction. A failure to redact information shall be subject to the provisions of Section 10.

(k) De-duplication. A Party is only required to produce a single copy of any responsive document. A Party may de-duplicate ESI across each Party's custodians or sources, but is not required to do so. A Party may only de-duplicate "exact duplicate" documents as identified by MD5 hash and not de-duplicate "near duplicate" documents. Hard copy documents may not be eliminated as duplicates of responsive ESI if the hard copy document contains any distinguishing writings, markings, or other features not evident from an otherwise duplicate version of the document.

4. **Costs**. The costs of discovery, including ESI, shall be borne by each respective Party. However, the Board may, upon application by a Party, consider apportioning the costs of discovery where appropriate and upon a showing of good cause.

5. **Applicable Provisions**. Except as otherwise expressly addressed in this Protocol, each Party's discovery and ESI production obligations shall be subject to the obligations, limitations, and protections contained in the Board's rules governing discovery, 49 C.F.R. Part 1114, Subpart B, and in the Protective Order entered by the Board on December 16, 2013.

6. **Expert Materials**. The Parties agree not to seek discovery of any experts' notes, drafts of expert reports or communications with counsel, unless that expert had involvement with

the factual issues in this proceeding (outside that expert's role in preparing to advise or testify) and such materials are otherwise discoverable. However, counsel may inquire at any expert's deposition about any facts provided to the expert by counsel and upon which the expert is relying in formulating the expert's opinions.

7. **Meet and Confer.** The Parties shall meet and confer to agree upon the timing for beginning and completing the rolling production of relevant and responsive documents and information.

8. **Confidential Documents.** Documents that contain Confidential Information (as defined in the Protective Order) shall be handled according to the procedures set forth in that Order. If a Party converts native files or other ESI designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" under the Protective Order to hard copy form, it shall mark the hard copy with the appropriate designation.

9. **No Privilege Logs, Absent Order.** Except as the Board may provide by specific order in this proceeding, no privilege logs shall be required in this proceeding, and the failure to provide a privilege log shall not be relied upon in any way in support of any claim of waiver of attorney client privilege or of attorney work product protection. The Parties reserve the right, however, to challenge before the Board any claims of privilege or work product protection.

10. **Handling of Privileged Documents.**

(a) Each Party shall make reasonable efforts to identify and withhold from production all information that it claims to be privileged or subject to work product protection. If information subject to a claim of attorney-client privilege or work product protection or otherwise immune from discovery is inadvertently or mistakenly disclosed or produced by a Party (such information hereinafter referred to as "Inadvertently Disclosed Information"), such disclosure or production shall in no way constitute a waiver or forfeiture of, or estoppel as to, any claim of privilege or work product protection or immunity for such information and its subject matter.

(b) If a Party intends to produce a document marked as privileged or as subject to work product protection, the producing Party shall so notify the receiving Party, identifying the document by Bates number, at the time of production. Subparagraphs (c) and (d) below shall not apply to such documents. In the event that a receiving Party discovers that a producing Party has produced a document that is marked as privileged or otherwise bears indicia of attorney-client privilege or work product protection the receiving Party shall promptly cease reading the document and so notify the producing Party through its counsel, specifically identifying such document by its Bates number. The producing Party shall promptly respond to any such notification, stating whether it claims attorney-client privilege or work product protection with respect to the document. If the producing Party states that it makes such a claim, the document shall be treated as Inadvertently Disclosed Information in accordance with subparagraph (e) below. If the producing Party does not state within seven (7) days that it makes such a claim, any such claim with respect to that document shall be deemed waived, and the receiving Party shall be free to retain and resume reading and otherwise use the document, subject to such confidentiality restrictions as may apply.

(c) No receiving Party shall assert that the fact that it has been permitted to review or receive Inadvertently Disclosed Information constitutes a waiver of any right, privilege, or other protection that the producing Party had or may have had. In thereafter seeking production of the Inadvertently Disclosed Information, the receiving Party shall not assert waiver or estoppel as a ground for such production. Nor shall the producing Party use the Inadvertently Disclosed Information as a basis for arguing for disqualification of counsel for the receiving Party.

(d) If the producing Party asserts that Inadvertently Disclosed Information was privileged or otherwise protected from discovery, the receiving Party shall destroy all copies of, and any electronic records, notes or memoranda that reflect the substance of, such Inadvertently Disclosed Information within ten (10) business days of such request, except that portions of backup tapes may instead be destroyed in accordance with standard retention

policies. The receiving Party shall promptly provide a certification of counsel that all such Inadvertently Disclosed Information has been destroyed. If Inadvertently Disclosed Information to be destroyed was not produced to the receiving party in a format permitting destruction of the Inadvertently Disclosed Information without also destroying other documents or data that have been produced, then the producing party shall provide a replacement set for such other documents or data and the receiving party need not destroy the Inadvertently Disclosed Information until that replacement set has been received. The producing Party will maintain copies of all Inadvertently Disclosed Information until the later of (1) 60 days following its request to the receiving Party for the destruction or return of the Inadvertently Disclosed Information, or (2) the resolution by the Board of any and all challenges to the producing Party's assertions of privilege regarding such Inadvertently Disclosed Information that are brought within those 60 days.

11. **Motions.** The Parties agree that all discovery-related motions in this proceeding should be determined on an expedited basis. To that end, unless otherwise agreed to by the Parties or ordered by the Board, replies to discovery-related motions shall be due within seven (7) days of the filing and service of the motion.

Read and approved by:

1/30/14
Date:

Linda J. Morgan

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1/30/14
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Paul A. Cunningham

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*Counsel for Grand Trunk Western
Railroad Company and Illinois
Central Railroad Company*

Exhibit 3



Amtrak/CN - Discovery and Schedule Issues

David A. Hirsh to: Imorgan

Bcc: Marissa A. Robertson

06/04/2014 05:14 PM

Linda,

The present schedule calls for us to complete discovery by June 13, which is a week from Friday. Given outstanding discovery matters, it seems likely that an extension of that deadline will be necessary.

(1) On April 23, we met to discuss production from our respective databases.

(a) For Amtrak's production to CN, we discussed production of data regarding ridership and ticket revenue. You stated you needed to check on the availability and type of responsive data and said you would get back to me promptly. I have not heard further from you on the issue.

(b) With respect to data collected in CN's SRS database, I explained that CN is willing to provide information covering the full time period within our discovery range (5/1/11 to 10/31/13), and include information not just for the CN lines on which Amtrak operates, but full data for every subdivision that Amtrak runs on, even when Amtrak runs over only a portion of the subdivision. As I noted, this would effectively cover most of CN's U.S. network. Further, I provided you with data dictionaries (essentially a list and description of data fields) for the available information (Highly Confidential Bates #s CN0000007688-94), and noted that we can produce the data in Comma Separated Value (CSV) form, which readily converts to Excel. Based on this information, you were to let me know the scope, dates, data fields and form for any of this database information that Amtrak wants. Again, I have heard nothing back from you on this. As I stated at the meeting, depending on the volume of information Amtrak might request, it could easily require two weeks to produce the information.

(c) Finally, I asked you to let me know if there was a particular date you want to specify (within our discovery date range, of course) for us to provide the TSPs (schedules) then in effect. So far, you have not specified a date. Please provide one so we can proceed with our production of the TSPs.

(2) With respect to ongoing production, in its May 9, 2013 Reply in Opposition to the Second Motion to Compel Amtrak stated (at page 3) that it is "in the process of providing hundreds of thousands of documents." With the deadline for discovery approaching, however, we have so far received only 660 documents. Given our agreement to produce documents on a rolling basis, this suggests that Amtrak has a significant way to go before it completes discovery. Likewise, although we expect to produce more documents next week, we will still have a significant volume of additional documents for review and production.

(3) In addition to the above, CN's appeal of the Director's denial of our first motion to compel is pending, as is our second motion to compel. Even if these pending matters are decided prior to next Friday, if the Board orders Amtrak to produce additional documents or information, it will presumably require some time for Amtrak to do so.

In light of the above, I suggest we set a time tomorrow or Friday to discuss the schedule with a view to requesting an extension, as appropriate, this upcoming Friday or Monday. Please let me know if that would work for you or if you have other thoughts on the schedule.

Thanks,

David

Exhibit 4

From: David A. Hirsh/Harkins Cunningham/US
To: "Morgan, Linda J." <lmorgan@nossaman.com>
Cc: grollins@morganlewis.com
Date: 08/28/2014 06:42 PM
Subject: Re: Our Recent Conversation

Linda,

Thanks for the update. Please let me know when you're ready to talk about the schedule.

As you know, we were supposed to complete discovery yesterday. Obviously that did not happen as neither of us completed our initial document production and we are still awaiting the Board's decision on two outstanding motions to compel. For our part, we expect to complete our production early next week, most likely Tuesday.

As a reminder, in addition to completing Amtrak's initial production, Amtrak has yet to provide the missing operating agreement referenced in my August 22 email or the information we have been awaiting since late April concerning Amtrak's ridership and revenue databases.

In our last call, I also mentioned that we have found some apparent problems with Amtrak's recent production. You asked me to identify the problems as soon as possible. Accordingly, although our review continues, I want to raise two issues that we have identified to date:

(1) Missing Attachments

We have identified so far at least 100 instances in which attachments referenced in the metadata and in the text of a document are missing from the production. Examples include:

- ATK0000024809 and ATK0000024830 (no Begin Attach or End Attach Bates numbers despite the metadata giving names to attachments and the e-mails themselves referencing attachments)
- Document 303-09OCT12-CHI-STL.tif (identified as the attachment to ATK0000024809) does not exist independently in the database

We have also identified several instances in which some but not all of the identified attachments were produced. Examples include:

- ATK0000027335 (email attaching 2 files, but only 1 attachment in the production)
- ATK0000027363 (email attaching 2 files, but only 1 attachment in the production)
- ATK0000031343 (email attaching 16 files, but only 14 attachments in the production)

Please have your document vendor check your production, identify all such incomplete files, and send us replacement files that include all attachments for production.

(2) Missing Text

We have noticed (without any exhaustive search) several instances in which the image version of a document is missing content that appears in the text (or html) version of the document. Examples include ATK0000029674 and ATK0000029677. Please look into this discrepancy generally within your production and provide images or native versions of the documents with complete text.

Also, if possible, we ask that you be sure these issues do not recur in your future production(s).

Thanks,

David

David A. Hirsh

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Exhibit 5

From: "Morgan, Linda J." <lmorgan@nossaman.com>
To: "dhirsh@harkinscunningham.com" <dhirsh@harkinscunningham.com>
Date: 09/03/2014 04:32 PM
Subject: Schedule and Discovery Issues

David,

Following up on my call, I wanted to let you know that Amtrak is not agreeable to an extension of the procedural schedule at this time. Regarding outstanding discovery issues, Amtrak will not be producing the Hudson Line Agreement as you have requested. This agreement is not an operating agreement with another host railroad. We are still working through the other issues that you have raised and will follow up on those issues and with Amtrak's next production as soon as possible.

Linda

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CERTIFICATE OF SERVICE

I certify that I have this 9th day of September, 2014, caused a true copy of the foregoing Motion of Grand Trunk Western Railroad Company and Illinois Central Railroad Company for Extension of Procedural Schedule to be served by e-mail upon:

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Marissa A. Robertson