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VIA HAND DELIVERY

234604

July 30, 2013

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

ENTERED
Office of Proceedings

JUL 30 2013

Part of
Public Record



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

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are the original and ten copies of the Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a). Also enclosed is a disc containing the enclosed filings and a check in the amount of \$250 for the filing fee for the Application.

Please time and date stamp the extra copy of the filings and return it with our messenger. If you have any questions, please contact me.

Respectfully submitted,

Linda J. Morgan
Attorney for National Railroad Passenger Corporation

Enclosures



FILED

JUL 30 2013

SURFACE
TRANSPORTATION BOARD

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35743

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

APPLICATION

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SURFACE
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Dated: July 30, 2013

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35743

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

APPLICATION

Pursuant to 49 U.S.C. § 24308(a)(2), Section 402(a) of the Rail Passenger Service Act (the “Act”), the National Railroad Passenger Corporation (“Amtrak”) hereby applies to the Surface Transportation Board (the “Board”) for:

- (1) the institution of a proceeding and the establishment of a procedural schedule that will lead to the entry of an order prescribing new terms and compensation for the use by Amtrak of Canadian National Railway Company (“CN”) facilities (including rail lines) and services, making those new terms and compensation retroactively effective to August 12, 2013; and
- (2) during the pendency of such proceeding, an interim service order, effective by August 12, 2013, requiring CN to continue to make available to Amtrak the facilities and services necessary for Amtrak to continue to operate on CN rail lines under the same terms and compensation for using the facilities and providing the services that currently govern the Amtrak-CN relationship (the “Contract”).¹

¹ This Contract is formally referred to as the “Operating Agreement between National Railroad Passenger Corporation and Grand Trunk Western Railroad Company (GTW) and Illinois Central Railroad Company (IC), dated May 1, 2011”. The Contract provides that GTW and IC are to be collectively referred to as CN.

REQUEST FOR EXPEDITED CONSIDERATION

Amtrak requests expedited consideration by the Board of this application in light of the impending Contract expiration date of August 11, 2013. Amtrak's application is entirely consistent with the Board's authority, and the issuance of an interim order will prevent disruption in intercity rail passenger service.

DISCUSSION

In order to carry out its responsibility under the law to provide intercity rail passenger service, Amtrak utilizes rail lines and other facilities owned by other railroads (collectively "facilities") and is provided with various services (the "services") by these railroads. CN provides to Amtrak these services and access to its facilities pursuant to the existing Contract. The Contract will expire on August 11, 2013.

Amtrak and CN are currently negotiating a new contract. Negotiations have been ongoing for roughly 8 months, but significant issues remain unresolved, and there is no prospect that a resolution will be reached before the expiration date. The parties have extended the Contract twice, but still have not been able to reach an agreement on a new contract.²

Granting Amtrak's application is consistent with the Board's authority to ensure the provision by Amtrak of rail passenger service. "Congress has directed the Board to enforce Amtrak's rights to use the freight railroads' facilities to conduct its operations." *Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)—Union Pac. R.R. Co. & S. Pac. Transp. Co.*, STB Finance Docket No. 33469 (STB served May 29,

² The original Contract expired on April 30, 2013. The Contract expiration date was extended by agreement to June 30, 2013, and then again to August 11, 2013.

1998). Section 24308(a)(1) provides that “Amtrak may make an agreement with a rail carrier . . . to use facilities of, and have services provided by, the carrier . . . under the terms on which the parties agree.” Section 24308(a)(2) provides that, “[i]f the parties cannot agree and the [] Board finds it necessary to carry out [Part C, Subtitle V of Title 49 of the U.S. Code], the Board shall (i) order that the facilities be made available and the services provided to Amtrak; and (ii) prescribe reasonable terms and compensation for using the facilities and providing the services.”

Action by the Board at this time is required by Section 24308(a)(2). Amtrak and CN have not yet agreed to new terms and conditions governing Amtrak’s use of CN rail lines and other facilities, and an agreement will not be reached by August 11, 2013, the current Contract expiration date. While Amtrak is prepared to continue to negotiate during the pendency of the proceeding it has requested in this Application, it is important that the new terms and compensation are in place as soon as possible, and invoking the Board's authority at this point is appropriate to that end.

PROCEDURAL SCHEDULE

Amtrak requests the Board to adopt the following procedural schedule for the proceeding it has asked the agency to institute and requests that the proposed procedural schedule be adopted in the initial order as follows.

1. STB Decision Date + 60 days - Joint submission by Amtrak and CN setting forth the issues in dispute
2. STB Decision Date + 120 days - Simultaneous opening submissions
3. STB Decision Date + 165 days - Simultaneous rebuttals
4. STB Decision Date + 195 days - Simultaneous filing of briefs
5. STB Decision Date + 215 days - Simultaneous rebuttal briefs

6. Discovery to be available to the parties as of the STB decision date and as provided for under the Board's discovery rules at 49 C.F.R. Part 1114, Subpart B.³

CONCLUSION

The Board has the authority to prescribe new terms and compensation for the provision of intercity rail passenger service where as here Amtrak and the freight railroad involved cannot agree to terms and compensation. While Amtrak is willing to continue to negotiate, the parties have reached an impasse and institution of a proceeding is required at this time. An interim order requiring CN to continue to make available to Amtrak facilities and services under existing terms and compensation prevents disruption in the provision of rail passenger service. Amtrak's proposed procedural schedule allows for the development of a thorough record on the issues in the most timely manner possible. Amtrak's request that any order by the Board prescribing new terms and compensation be made retroactively effective to August 12, 2013, ensures fairness for both parties. Amtrak believes that its application is reasonable and consistent with the Board's authority, and should be granted.

³ 49 U.S.C. §24308 (a) (2) (C) provides that the Board shall decide a dispute submitted by Amtrak not later than 90 days after submission. Amtrak has previously argued and the Board has agreed that "[t]he 90-day decisional requirement merely requires that Amtrak be given interim access to tracks and facilities within 90 days," and "[t]he Board's determination of the terms and compensation may be issued at a later date." Application of the National R.R. Passenger Corp. under 49 U.S.C. 45308 (a) -- Springfield Terminal Ry., Boston & Maine Corp., & Portland Terminal Co., STB Finance Docket No. 33381, slip. op at 3 (STB served May 6, 1997). *See also Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)*, STB Finance Docket No. 32911 (STB served May 7, 1996). The schedule proposed by Amtrak recognizes Congressional intent that access issues like those to be raised in this proceeding are to be promptly resolved, while affording the parties the time necessary for complete development of the record related to those issues in this matter.

Respectfully submitted,

By: *Linda J. Morgan*

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Dated: July 30, 2013

VERIFICATION

I, William H. Herrmann, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

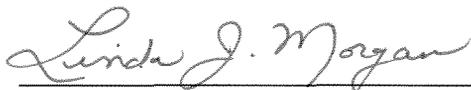
Executed on July 30, 2013

A handwritten signature in cursive script, appearing to read "William H. Herrmann", written over a horizontal line. The signature is in black ink and includes a small flourish at the end.

William H. Herrmann
Managing Deputy General Counsel
National Railroad Passenger Corporation

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2013, I served the foregoing **Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a)** upon Canadian National Railway Company.

A handwritten signature in cursive script that reads "Linda J. Morgan". The signature is written in black ink and is positioned above a horizontal line.

Linda J. Morgan
Counsel for National Railroad Passenger Corporation