

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42134

NATIONAL RAILROAD PASSENGER CORPORATION—SECTION 213 INVESTIGATION
OF SUBSTANDARD PERFORMANCE ON RAIL LINES OF CANADIAN NATIONAL
RAILWAY COMPANY

Decided: January 16, 2015

On January 19, 2012, the National Railroad Passenger Corporation (Amtrak) filed a petition requesting that the Board initiate an investigation into service issues (including on-time performance) affecting Amtrak trains on rail lines owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railway Company and Illinois Central Railroad Company (collectively, CN), pursuant to Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. § 24308(f).

On December 19, 2014, the Board (with Board Member Begeman dissenting) granted Amtrak's motion to amend its complaint and denied CN's motion to dismiss the proceeding. The Board concluded that, even if the standard for "on-time performance" under PRIIA Section 207 is inoperative due to the ongoing court challenge to the constitutionality of that section, an investigation of on-time performance problems can be initiated because the less-than-80-percent "on-time performance" trigger in Section 213 is severable from the mechanism for promulgating an "on-time performance" standard under Section 207. Accordingly, the Board sought the parties' views regarding how to construe the term "on-time performance" in this case. The December 19 decision provides that opening arguments regarding on-time performance are due by January 20, 2015, and that replies are due by February 2, 2015.

On January 7, 2015, CN filed a petition for reconsideration of the Board's December 19 decision. Also, as provided by the procedural schedule in the Board's December 19 decision, CN answered the amended complaint on January 8, 2015. On January 12 and 13, 2015, Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT), respectively, filed petitions to intervene in this proceeding for the limited purpose of determining the definition of "on-time performance" under PRIIA Section 213. Both NSR and CSXT requested that the Board revise the procedural schedule set by the December 19 decision to provide parties additional time to prepare comments. On January 14 and 15, 2015, CN and Amtrak, respectively, replied to the petitions to intervene. Finally, on January 15, 2015, the Association

of American Railroads petitioned the Board in a separate docket¹ to initiate a rulemaking to define “on-time performance” under PRIIA Section 213 if the Board does not grant CN’s petition for reconsideration or the pending NSR and CSXT motions to dismiss the complaint in National Railroad Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd., Docket No. NOR 42141.

The January 20 and February 2 deadlines for filing arguments and replies concerning the definition of “on-time performance” under PRIIA Section 213 will be postponed pending further order to provide the Board with sufficient opportunity to consider the issues raised in these various pending pleadings. The January 27, 2015 deadline² to reply to CN’s petition for reconsideration, however, will not be postponed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The January 20 and February 2 deadlines established in the Board’s December 19 decision for filing arguments and replies, respectively, concerning the definition “on-time performance” under PRIIA Section 213 are postponed pending further order of the Board.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ On-Time Performance Under Section 213 of the Passenger Rail Investment & Improvement Act of 2008, Docket No. EP 726.

² See 49 C.F.R. § 1104.13(a).