

EXPEDITED TREATMENT 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

JOINT MOTION TO AMEND PROTECTIVE ORDER

 GRANTED	DECISION ID NO.: <u>44881</u>
	DECIDED DATE: <u>11/4/15</u>
	SERVICE DATE: <u>10/5/15</u>
	APPROVED: <u>Rachid D. Carpentier</u> Director
Office of Proceedings <input type="checkbox"/>	_____

Linda J. Morgan
Kevin M. Sheys
Nossaman LLP
1666 K Street, N.W., Suite 500
Washington, D.C. 20006
(202) 887-1400

Counsel for National Railroad Passenger Corporation

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

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

November 3, 2015

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Applicant National Railroad Passenger Corporation (“Amtrak”), together with Illinois Central Railroad Company and Grand Trunk Western Railroad Company (together, “CN”), hereby request that the Board amend the protective order entered in this proceeding by stamp order served December 16, 2013 (“Protective Order”), so as to incorporate the modifications described below.

Amtrak has requested that CN permit the disclosure to certain Amtrak employees of selected portions of CN’s Opening Evidence that were designated as “HIGHLY CONFIDENTIAL” under the Protective Order. Amtrak employees would ordinarily not be permitted to review materials so designated, but CN is willing to permit disclosure of those portions to Amtrak employees, provided that they remain shielded from disclosure to employees of other parties, if any, that may intervene in this proceeding.¹ Accordingly, CN and Amtrak have agreed to amend the Protective Order, as shown in the Appendix to this Joint Motion, to

¹ At an earlier state of this proceeding, certain railroads intervened for the limited purpose of responding to CN’s first Motion to Compel, and it is possible that they or other parties might seek to intervene for other purposes.

provide for, in addition to the “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” categories of documents and information provided for in the original Protective Order, a third category of “Amtrak Confidential” materials, which will be treated as if “CONFIDENTIAL” with respect to in-house Amtrak personnel, but will be treated as if “HIGHLY CONFIDENTIAL” with respect to any third parties.

WHEREFORE, Amtrak and CN respectfully request that the Board amend the Protective Order as shown in the Appendix to this Joint Motion. In addition, Amtrak and CN respectfully request that the Board handle this request expeditiously, so as not to delay this proceeding unnecessarily.

Respectfully submitted,



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

Linda J. Morgan
Kevin M. Sheys
Nossaman LLP
1666 K Street, N.W., Suite 500
Washington, D.C. 20006
(202) 887-1400

Counsel for National Railroad Passenger Corporation

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

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APPENDIX

The Protective Order adopted by the Board by stamp order served December 16, 2013, is amended as follows:

1. The following new paragraph 17 is inserted, and the paragraphs currently numbered 17 through 19 are redesignated as paragraphs 18 through 20:

17. Notwithstanding the designation by respondents Illinois Central Railroad Company and Grand Trunk Western Railroad Company (together, "CN") of any document submitted to the Board as "HIGHLY CONFIDENTIAL," CN may, at its sole option, designate any materials or information contained in such document as "Amtrak Confidential." Materials and information so designated may be disclosed to employees of applicant National Railroad Passenger Corporation ("Amtrak") who, before receiving access to those materials and information, have been given and have read a copy of this Protective Order, as amended, and have agreed to be bound by its terms by signing confidentiality undertakings substantially in the form set forth at Exhibit C to this Order. A copy of each such confidentiality undertaking shall be kept on file for the duration of these Proceedings by counsel for Amtrak. Neither Amtrak nor any of its employees shall disclose materials or information designated as Amtrak Confidential to any person other than to the Board or to (a) an employee of Amtrak who, before receiving access to such materials or information, has been given and has read a copy of this Protective Order and who has agreed to be bound its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit C, or (b) an outside counsel or outside consultant for a party to these Proceedings, or an employee of such outside counsel or outside consultant, who, before receiving access to such materials or information, has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B. Except as provided in this paragraph, materials and information designated as Amtrak Confidential shall be subject to all provisions of this Order relating to information and documents designated as "HIGHLY CONFIDENTIAL."

2. Exhibit C, as attached to this Appendix, is inserted following Exhibit B.

EXHIBIT C

UNDERTAKING – AMTRAK CONFIDENTIAL MATERIAL

I, _____, am an employee of National Railroad Passenger Corporation (“Amtrak”). I have read the Protective Order served in STB Docket No. 35743, as amended, governing the production and use of Confidential Information and Confidential Documents (as defined in that Protective Order) in Docket No. FD 35743, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any materials or information designated by Illinois Central Railroad Company and Grand Trunk Western Railroad Company (together, “CN”) as “Amtrak Confidential” pursuant to paragraph 17 of the Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such materials or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. FD 35743, any judicial review proceeding arising out of that proceeding, and/or any proceeding on remand from such judicial review proceeding. I further agree not to disclose any Amtrak Confidential material, or any methodologies, techniques, or data obtained from such material, except to other employees of Amtrak who are bound by the terms of the Protective Order and have executed Undertakings in the form hereof, or (b) outside counsel or outside consultants for parties to this Proceeding, or to employees of such outside counsel or outside consultants, who are bound by the terms of the Protective Order and have executed Undertakings in the form of Exhibit B thereof. I agree that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, appeal, or remand), I will promptly destroy any documents containing or reflecting materials designated as Amtrak Confidential.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using

copies of any materials or information designated as Amtrak Confidential, that I will take all necessary steps to assure that said materials or information be kept on a confidential basis by any persons working with me, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials or information designated as Amtrak Confidential.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that CN shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____