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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 19, 2013
Part of
Public Record

Docket No. FD 35743

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

REPLY OF ILLINOIS CENTRAL RAILROAD COMPANY AND GRAND TRUNK
WESTERN RAILROAD COMPANY TO APPLICATION

 GRANTED Office of Proceedings	DECISION ID NO.: <u>43296</u>
	DECIDED DATE: <u>8/20/13</u>
	SERVICE DATE: <u>8/21/13</u>
	APPROVED: <u>Richard Armstrong</u> Acting Director
	<input checked="" type="checkbox"/> <u>Amtrak's procedural schedule is adopted but discovery may not begin until 60 days after the service date of this decision.</u>

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Dated: August 19, 2013

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APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
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WESTERN RAILROAD COMPANY TO APPLICATION**

Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (together, “CN”)¹ hereby reply to the Application filed by National Railroad Passenger Corporation (“Amtrak”) in this proceeding on June 30, 2013. As discussed below, CN does not object to the Board’s institution of this proceeding, but CN and Amtrak have reached agreement on a modification to Amtrak’s proposal, in its Application, regarding discovery in this proceeding.

BACKGROUND

Amtrak requests (1) initiation of a proceeding under 49 U.S.C. § 24308(a), (2) establishment of a procedural schedule to govern that proceeding, and (3) issuance of an interim order requiring that CN continue to make available to Amtrak the facilities and services necessary for Amtrak to continue to operate on CN’s rail lines under the same terms and compensation as provided under the Operating Agreement between Amtrak and CN dated May 1, 2011 (“Operating Agreement”), which by its terms expired on August 11, 2003.

¹ By letter to the Board dated August 2, 2013, Amtrak’s counsel acknowledged that IC and GTW are the appropriate respondents to its Application, and stated that references to “CN” in its Application should be read as referring to IC and GTW rather than to Canadian National Railway Company.

CN addressed Amtrak's request for interim relief in its letter of August 1, 2013. CN clarified that it was not responsible for the supposed impending disruption that was the basis of Amtrak's request for interim relief and, without waiving any of CN's legal rights or objections, CN agreed to make its facilities and services available to Amtrak under the terms of their current Operating Agreement, pending a further order of the Board or agreement of the parties.

By decision served August 9, 2013 ("August 9 Decision"), the Board (i) ordered CN to continue to make its facilities and services available to Amtrak on that basis, and (ii) granted Amtrak's request to institute a proceeding under 49 U.S.C. § 24308(a). Accordingly, this Reply is limited to Amtrak's second request, which is for establishment of a procedural schedule.²

DISCUSSION

CN has no objection to Amtrak's basic proposed procedural schedule, which is set forth below (with "D" referring to the date of decision adopting the schedule):³

D+ 60 days	Due date for joint submission by Amtrak and CN of statement identifying disputed issues;
D + 130 days	Due date for opening submissions by both parties;
D + 165 days	Due date for rebuttal submissions by both parties;
D + 195 days	Due date for opening briefs of both parties;
D + 215 days	Due date for rebuttal briefs of both parties.

² As CN at no time refused Amtrak continued access to its facilities and services and negotiations between the parties continue, CN does not believe an order of the Board has been shown to be "necessary to carry out [49 U.S.C. §§ 24101-24910]." *See* 49 U.S.C. § 24308(a)(2)(A). Nonetheless, since the Board has now instituted a proceeding and Amtrak's proposed schedule would provide a reasonable period for the parties to seek to narrow or eliminate issues prior to their filing a joint statement identifying disputed items, CN sees no practical reason at this time to contest the initiation of this proceeding.

³ CN understands that the parties, together or individually, may request modification of the schedule if it later appears that modification is warranted by future developments.

This proposed schedule provides a reasonable initial period for the parties to continue their negotiations toward a settlement or to refine or eliminate issues prior to the first required filing – the joint submission identifying disputed items.⁴

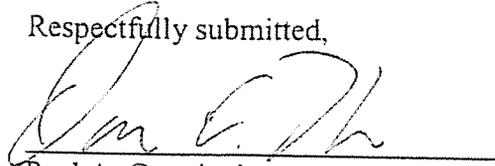
Consistent with these goals, CN requests, and Amtrak has authorized CN to represent that it consents and agrees, that discovery be deferred in this proceeding until after submission of the joint statement of disputed issues (D + 60 days). The Application suggested that discovery commence upon the Board's issuance of an order adopting a procedural schedule. Application at 4. After consultations, however, the parties have agreed that it is more appropriate in this proceeding for discovery to be deferred until after the initial joint filing, which will permit the parties to focus for a reasonable further period on settlement negotiations, rather than on preparing and responding to discovery requests or related motions. In addition, should discovery eventually prove necessary, it can be appropriately tailored to the specified issues in dispute identified by the parties, thereby conserving the time and resources of the parties as well as of the Board. Accordingly, and with Amtrak's consent and agreement, CN requests that the Board's procedural order specify that discovery be so deferred.

⁴ Amtrak noted in its Application (at 3) that it was "prepared to continue to negotiate during the pendency of the proceeding it has requested," and CN intends likewise to continue the current negotiations.

CONCLUSION

The Board should issue an order (1) adopting a procedural schedule for this proceeding as proposed by Amtrak and as described above, and (2) authorizing discovery in this proceeding, pursuant to the Board's discovery rules (49 C.F.R. §§ 1114.21-.31), to begin after submission of the joint statement of disputed issues provided for in the procedural schedule.

Respectfully submitted,



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August 19, 2013

CERTIFICATE OF SERVICE

I certify that I have this 19th day of August, 2013, caused a true copy of the foregoing Reply of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Application, to be served by e-mail upon:

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