

SERVICE DATE—MARCH 15, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35571

AMTRAK'S PETITION FOR DETERMINATION OF  
PRIIA SECTION 209 COST METHODOLOGY

Decided: March 13, 2012

Digest:<sup>1</sup> In accordance with the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Amtrak and various states have adopted a methodology to establish and allocate costs for state-supported Amtrak routes. Affected states, other than Indiana, have adopted the methodology. The Board finds that the methodology complies with PRIIA.

BACKGROUND

Pursuant to Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA),<sup>2</sup> the National Railroad Passenger Corporation (Amtrak) must develop and implement a single, nationwide standardized methodology for establishing and allocating operating and capital costs among the States and Amtrak in connection with the operation of certain Amtrak routes. PRIIA Sec. 209(a). The routes subject to PRIIA Sec. 209(a) include high-speed rail corridors designated by the Secretary of Transportation (other than the Northeast Corridor railroad line, which extends from Boston, Mass., to Washington, D.C.);<sup>3</sup> short-distance corridors and routes currently part of the national rail passenger transportation system that do not exceed 750 miles between their endpoints;<sup>4</sup> and intercity rail routes not included in the national rail passenger transportation system that Amtrak operates on behalf of state or local entities.<sup>5</sup> PRIIA Sec. 209(a) requires Amtrak to consult with the Secretary of Transportation, the governors of

---

<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> P.L. 110-432, Div. B, Title II, § 209, codified at 49 U.S.C. § 24101 note.

<sup>3</sup> See 49 U.S.C. § 24102(5)(B). Designated high-speed rail corridors become subject to PRIIA Sec. 209(a) only after regularly scheduled intercity service over a corridor has been established. No such corridors have as yet become subject to PRIIA Section 209(a).

<sup>4</sup> See 49 U.S.C. § 24102(5)(D).

<sup>5</sup> See 49 U.S.C. § 24702.

each affected state, and the Mayor of the District of Columbia (or their representatives). If Amtrak and the states (including the District of Columbia) in which Amtrak operates affected routes do not voluntarily adopt and implement a methodology, then the Board must determine an appropriate methodology within 120 days following submission of the dispute to the Board. PRIIA Sec. 209(c), 49 U.S.C. § 24904(c).

In a petition filed with the Board on November 21, 2011, Amtrak requests the Board, pursuant to PRIIA Section 209(c) and 49 C.F.R. § 1117.1, to: (1) determine that the methodology developed jointly by Amtrak and various states, establishing and allocating costs for state-supported Amtrak routes (Agreed Methodology), is the appropriate methodology under Section 209; and (2) require the full implementation of the Agreed Methodology pursuant to Section 209(c). In its petition and in supplemental filings made on November 23, December 5, and December 6, 2011, Amtrak represents that it engaged in extensive fact-sharing and negotiations with the 19 states affected by PRIIA Section 209 (Covered States) to develop a consensus methodology.<sup>6</sup> Amtrak states further that all but one Covered State – Indiana – have formally agreed to adopt its proposed methodology. According to Amtrak, Indiana declined to accept the consensus methodology but did not provide a reason for its decision or offer an alternative. Rather, in an email sent to Amtrak on November 17, 2011, the Indiana Department of Transportation (INDOT) stated that the Governor’s Office and INDOT “have decided to not sign [Amtrak’s] request” to accept the proposed methodology. Pet., Johnson Decl., Exh. Y.

Our rules required parties served with Amtrak’s petition to file responses within 20 days.<sup>7</sup> Neither Indiana nor any other state or other entity filed comments opposing Amtrak’s petition or the Agreed Methodology. DOT comments that “speedy resolution of Amtrak’s Petition would serve the goals of PRIIA and would benefit the passenger rail network.” Reply at 3.

---

<sup>6</sup> Pet., Decl. of Maximillian R. Johnson (Johnson Decl.), ¶ 4 (listing Covered States: California, Connecticut, Illinois, Indiana, Maine, Massachusetts, Michigan, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Virginia, Washington, and Wisconsin).

<sup>7</sup> Amtrak initially served its petition and supplements on the 19 Covered States because they have an interest in this matter. However, it did not indicate in its petition or supplements that it had served these filings upon the Secretary of Transportation and the District of Columbia. Because the Board believed that the Secretary and the District should be notified of the petition and supplements, the Board directed Amtrak to serve the petition and supplements on the Secretary and the District. Amtrak’s Pet. for Determination of PRIIA Sec. 209 Cost Methodology, FD 35571 (STB served Dec. 15, 2011). In a notice filed with the Board on December 19, 2011 (corrected December 21, 2011), Amtrak notified the Board that it had done so. After requesting and receiving an unopposed, 2-week extension of time in which to respond to Amtrak’s petition and supplements, the U.S. Department of Transportation (DOT) filed a Reply on January 23, 2012.

## DISCUSSION AND CONCLUSIONS

The Board finds that the Agreed Methodology meets the requirements of PRIIA Section 209(a) and should be implemented by Amtrak in accordance with PRIIA Section 209(c). The Agreed Methodology is a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with the trains operated on the routes subject to PRIIA Section 209(a). Upon review of the Agreed Methodology and the facts and circumstances surrounding its development, the Board concludes that the Agreed Methodology will: (1) ensure equal treatment in the provision of like services of all States and groups of States; and (2) allocate to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than one route.

In reaching this decision, the Board notes that allocation of costs “involves judgment on a myriad of facts. It has no claim to an exact science.” United Parcel Serv., Inc. v. United States Postal Serv., 184 F.3d 827, 838 (D.C. Cir. 1999), quoting Colo. Interstate Co. v. FPC, 324 U.S. 581, 589 (1945). Thus, we could find that the Agreed Methodology was an appropriate methodology even if parties had offered a credible alternative. No alternative has been presented. The Agreed Methodology is the product of two years of arm’s length negotiations between Amtrak and the Covered States.<sup>8</sup> The only state that has not accepted the Agreed Methodology has offered no reason why the Board should not find that the Agreed Methodology meets the requirements of PRIIA Section 209.

We note that Section 209 includes the District of Columbia among the States to be consulted in development, and adoption, of a methodology for cost allocation. As required by the Board, Amtrak served the District with its petition and supplements on December 19, 2011. The District has not submitted any filings in this matter.

### Development of the Agreed Methodology

#### I. Amtrak Performance Tracking System

The Amtrak Performance Tracking (APT) system provides the foundation of the Agreed Methodology. The APT was created in 2009 pursuant to the Consolidated Appropriations Act,

---

<sup>8</sup> As detailed in the Johnson Decl., ¶¶ 6-90, between March 2010 and October 2011, Amtrak conducted a series of presentations, meetings, and discussions regarding its then-proposed methodology. Each of the Covered States, as well as certain additional states in which Amtrak currently does not operate state-supported routes, participated in these consultations. Amtrak also met with other interested groups including, but not limited to, the Federal Railroad Administration, the Surface Transportation Board (Office of Public Assistance, Governmental Affairs, and Compliance), the American Association of State Highway and Transportation Officials, the States for Passenger Rail Coalition, the John A. Volpe National Transportation Systems Center, and various regional transportation authorities. Id., ¶¶ 7, 8, 18.

2005 (P.L. 108-447), which directed the Secretary of Transportation to develop a methodology for determining the avoidable and fully allocated cost of each Amtrak route. The Federal Railroad Administration was responsible for meeting this requirement and tasked the Volpe National Transportation Systems Center to develop the cost accounting methodology in consultation with Amtrak. The APT tracks approximately 1,600 cost centers and groups all cost centers into mutually exclusive “families” of costs. According to Amtrak, APT “could, with only minor modifications . . . be an ‘appropriate methodology’ under Section 209(a) . . . .” Pet. 12. In negotiation with the Covered States, Amtrak agreed to modify various aspects of APT for incorporation into the Agreed Methodology, to address concerns and unique circumstances in certain States. See Pet. 12-19.

## II. Allocation of Costs to Routes

Relying on the APT, the Agreed Methodology groups costs into a wide range of categories (e.g., maintenance of way, equipment maintenance, general and administrative, and capital) similar to those that freight railroads report in their R-1 annual reports submitted to the Board. The Agreed Methodology links direct costs and other costs closely connected to train operations (for example, train crew labor costs, which are generally associated with operation of a specific route) to trains operating on particular routes. Thus, the Agreed Methodology meets Section 209(a)(2)’s requirement that costs associated with a specific route are fully allocated to that route.

With respect to operating and capital costs that are not attributable solely to a particular route, the Agreed Methodology allocates a proportionate share of these costs to all associated routes based on factors that reasonably reflect relative use. The Covered States organized a State Working Group (SWG), including Indiana, and developed a proposal, accepted by Amtrak, to allocate common costs (referred to as “Support Fees”) as a percentage of various direct route costs. The Agreed Methodology includes Support Fees for six broad categories of costs: train and engine crew labor; maintenance of equipment; on-board services; marketing; system-wide policing; and general and administrative costs. Amtrak and the SWG also negotiated a method to allocate maintenance of way and capital costs. All of the Support Fees are allocated using factors tied to relative use of these six cost categories. There has been no suggestion that the factors used to allocate costs in the Agreed Methodology are inappropriate. Thus, the Board finds that the Agreed Methodology meets Section 209(a)(2)’s requirement regarding the allocation of joint and common costs.

## III. Equal Treatment in the Provision of Like Services of All States and Groups of States

We addressed the cost allocation principles required by PRIIA Section 209(a)(2) before the “equal treatment” requirement of Section 209(a)(1) because, in our view, equal treatment in the provision of like services requires a cost allocation methodology that assigns equivalent costs to the provision of like services. The Agreed Methodology appears to accomplish this requirement by placing each state on an equal footing. All costs directly attributable to or closely associated with a route are fully allocated to that route. Similarly, the use of Support

Fees built on usage-based allocation factors ensures an equitable allocation of those costs that cannot easily be attributed to any single route. Significantly, 18 of the 19 Covered States concur that they will be treated equally under the Agreed Methodology. Indiana, which does not concur, has not provided any reason for us to believe that the Agreed Methodology will treat like services unequally.

Amtrak's Petition states (at 18-19) that, "where a route crosses more than one State, costs associated with that route are allocated among the affected States on a basis to be determined by the affected States themselves." The Board's decision should not be read as finding that future agreements among States regarding the allocation among them of costs assigned to the route by the Agreed Methodology meet the requirements of PRIIA Section 209(a).

The Agreed Methodology provides a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among Amtrak and the States concerning the routes covered by PRIIA Section 209. Because the Board finds that the Agreed Methodology meets the requirements of Section 209(a), the Board orders that: Amtrak and the States implement the Agreed Methodology as set forth in Amtrak's Petition, in accordance with PRIIA Section 209.

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

It is ordered:

1. Amtrak and the States shall implement the Agreed Methodology as set forth in Amtrak's Petition, in accordance with PRIIA Section 209.
2. This decision is effective on April 14, 2012.
3. A notice of this decision will be published in the Federal Register.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.