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SERVICE DATE - FEBRUARY 16, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33697

NATIONAL RAILROAD PASSENGER CORPORATION—PETITION FOR  
DECLARATORY ORDER—WEIGHT OF RAIL

Decided: February 12, 1999

By petition filed December 11, 1998, the National Railroad Passenger Corporation (Amtrak) seeks a declaratory order to resolve a dispute over the appropriate weight of continuous welded rail that must be installed on a specified line in order to ensure safe operation of Amtrak trains at speeds of up to 79 miles per hour.

BACKGROUND

In a decision in Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)--Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company, STB Finance Docket No. 33381 (STB served May 29, 1998), the Board prescribed the terms and compensation for Amtrak's access to facilities of railroads within the Guilford Rail System (Guilford).<sup>1</sup> Amtrak proposed to operate passenger rail service over Guilford lines between Plaistow, NH, and Portland, ME, in order to reintroduce passenger rail service between Boston, MA, and Portland. Amtrak proposed to operate the Boston-to-Portland service pursuant to an agreement with the Northern New England Passenger Rail Authority (NNEPRA). In its decision, the Board determined that it would not require the parties to submit subsequent disputes to arbitration. Rather, the Board stated that it would resolve any future disputes in an appropriate manner.

On or about July 10, 1998, NNEPRA and Guilford entered into a "Rehabilitation Agreement" and Amtrak and Guilford entered into a "Terms and Conditions" agreement. The Rehabilitation Agreement contains a "Scope of Work" provision for rehabilitating the involved lines to permit operation of Amtrak trains at speeds up to 60 miles per hour (Federal Railroad Administration (FRA) Class 3). Amtrak and NNEPRA want to amend the Rehabilitation Agreement and the Terms and Conditions to provide for the operation of Amtrak trains at speeds of up to 79 miles per hour (FRA Class 4). Amtrak, NNEPRA, and Guilford have agreed upon certain changes to the Scope of Work, but they have been unable to reach an agreement as to the

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<sup>1</sup> The Guilford Rail System is comprised of Springfield Terminal Railway Company, the Portland Terminal Company, and the Boston and Maine Corporation.

appropriate weight of rail required for the “safe, consistent, and continuous” operation of Amtrak trains at speeds of up to 79 miles per hour. Amtrak and NNEPRA assert that 115-pound rail is needed while Guilford asserts that 132-pound rail is required. Accordingly, Amtrak asks the Board to resolve the dispute by determining the appropriate weight of continuous welded rail to be installed on the line.<sup>2</sup> Finally, Amtrak avers that it is authorized to state that NNEPRA and Guilford agree with its statement of the issue and with a procedural schedule proposed by Amtrak.

#### DISCUSSION AND CONCLUSIONS

Under the Board’s authority in 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted to resolve the question Amtrak has raised. Because the issue of weight of rail implicates the jurisdiction of the FRA, the Board will request that agency to participate in this proceeding and assist us in addressing the issue raised.<sup>3</sup> The Secretary will be directed to serve a copy of this decision on the Administrator of FRA.

The procedural schedule set forth below reflects the parties’ requested time frames.

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

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.
2. The FRA is requested to participate in this proceeding. A copy of this decision will be served on that agency.
3. Simultaneous opening statements of Amtrak and Guilford are due April 2, 1999.
4. Simultaneous reply statements are due April 22, 1999.
5. The parties must serve copies of their pleadings on the FRA.

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<sup>2</sup> In its petition, Amtrak refers to engineering standards agreed to by NNEPRA and Guilford in the Rehabilitation Agreement. In their pleadings, the parties should present these standards to the extent necessary to enable us to reach an informed decision.

<sup>3</sup> Board staff has discussed this matter with FRA staff.

6. FRA's analysis is due May 24, 1999.
7. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary