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ENTERED

Office of Proceedings

February 24, 2014

Part of

Public Record

February 21, 2014

Ms. Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0012

Re: Application of the National Railroad Passenger Corporation
Under 49 U.S.C. § 24308(a) - Canadian National Railway Company
(Docket No. FD 35743)

Dear Ms. Brown:

I am writing you this letter to memorialize the Union Pacific Railroad Company's position regarding the Illinois Central Railroad Company and Grand Trunk Western Railroad Company's Motion to Compel Responses to Requests for Production of Documents in the above-captioned matter. Union Pacific understands that Amtrak has taken the position that Union Pacific's operating agreement is irrelevant. Union Pacific disagrees. Union Pacific agrees with CN that an unredacted version of Amtrak's operating agreements with its Host Railroads, including Amtrak's operating agreement with Union Pacific, are relevant, and indeed, of great importance in this proceeding. Union Pacific further agrees with CN that the typical method for addressing relevant but confidential documents in an STB proceeding is production of that material subject to a protective order. See, e.g., *Texas Mun. Power Agency v. Burlington Northern and Santa Fe Ry. Co.*, STB Docket No. 42056, slip op. at 2-3 (STB served February 9, 2001). Union Pacific has no objection to production of its operating agreement with Amtrak subject to a "Highly Confidential" designation under the terms of the Protective Order in this proceeding.

The Protective Order in this proceeding provides a clear procedure for the designation of a document as "Highly Confidential." The Protective Order permits any party to the proceeding that in good faith determines that a discovery response contains "individual personnel information, shipper-specific rate or cost data, trackage rights compensation levels, certain other confidential financial or cost information, or other competitively sensitive or proprietary information [to] designate or stamp such document, discovery request, discovery response, transcript, or pleading or other paper as 'Highly Confidential.'" Protective Order at 2 (Paragraph 3). In turn, "[a]ny party to these Proceedings may challenge the [confidential] designation by any other party. . .by



Ms. Cynthia T. Brown
Surface Transportation Board
February 21, 2014
Page 2 of 2

filing a motion with the Board or with an administrative law judge . . ." *Id.* at 8 (Paragraph 8).

The Protective Order follows the typical procedure approved by the Board in which the receiving party, or outside counsel, initially directs concerns regarding documents designated either "Confidential" or "Highly Confidential" to the disclosing party. If the parties disagree on the confidential designation, the recipient may file a challenge or objection with the Board.

Union Pacific does not object to Amtrak producing Union Pacific's unredacted operating agreement, designated and stamped "Highly Confidential," under the terms of the Protective Order. After this designation and production, Union Pacific would agree to meet and confer with CN's outside counsel and Amtrak to discuss redesignating as "Confidential" certain specific provisions of the Union Pacific/Amtrak operating agreement. Such a process would be very similar to the process CN itself offered Amtrak to avoid this dispute. See Motion to Compel at p. 4 (discussing offer by which "Amtrak could propose redactions that would be subject to review by CN's outside counsel."). This process would best effectuate both the spirit and the letter of the Protective Order.

Very Truly Yours,



Mark C. Hansen
Counsel for Union Pacific Railroad Company

CERTIFICATE OF SERVICE

Letter filed by Union Pacific Railroad Company on February 24, 2014 regarding the Application of the National Railroad Passenger Corporation Under 49U.S.C. § 24308(a) - Canadian National Railway Company (Docket No. FD 35743).

I, Mark C. Hansen, certify that on February 24, 2014, I served the Union Pacific Railroad Company's letter regarding the Application of the National Railroad Passenger Corporation Under 49U.S.C. § 24308(a) - Canadian National Railway Company (Docket No. FD 35743) to all parties of record in this proceeding.



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