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BY E-FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
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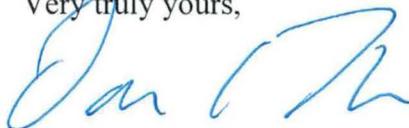
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February 14, 2014
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Re: *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(a) – Canadian National Railway Company (Docket No. FD 35743)*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find a Motion of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Compel Responses to Requests for Production of Documents.

Very truly yours,



David A. Hirsh

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

cc: Linda J. Morgan, Esquire
William H. Herrmann, Esquire

EXPEDITED CONSIDERATION 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

**MOTION OF ILLINOIS CENTRAL RAILROAD COMPANY
AND GRAND TRUNK WESTERN RAILROAD COMPANY TO COMPEL RESPONSES
TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

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TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (together, “CN”) respectfully move the Board to compel National Railroad Passenger Corporation (“Amtrak”) to produce the documents requested in CN’s Request for Production of Documents Nos. 5 and 6, seeking Amtrak’s operating agreements with, respectively, (1) other railroads that host regular Amtrak service, and (2) passenger rail service providers that Amtrak itself hosts on lines it owns or controls (such agreements, collectively, “Amtrak’s OAs”).¹ Amtrak’s OAs are relevant, indeed likely to be highly probative, evidence in this proceeding; the Board has relied on such documents in the past; Amtrak has produced such documents in the past; and there is no legitimate basis for Amtrak withholding or conditioning its production of those documents.

CN also respectfully requests, in accordance with the Joint Discovery Protocol executed by Amtrak and CN (Ex. 2), that the Board decide this motion on an expedited basis. As both

¹ Request Nos. 5 and 6 were included in the First Set of Disc. Reqs. of IC and GTW, served on October 31, 2013 (Ex. 1).

parties recognized in the Protocol, expeditious resolution of discovery motions is important to minimize further delays of the Board's schedule for this proceeding.²

FACTUAL BACKGROUND

Amtrak filed its Application in this proceeding on July 30, 2013, seeking prescription, under 49 U.S.C. § 24308(a)(2)(A)(ii), of "reasonable terms and compensation" for Amtrak's use of CN's facilities (including rail lines) and services. On October 24, 2013, the parties filed statements with the Board identifying the disputed issues in this case.

On October 31, 2013, CN served its first set of discovery requests, including Request Nos. 5 and 6. In its response served November 19, 2013, Amtrak refused to produce any documents in response to Request Nos. 5 and 6, asserting objections as to relevance, burden, and confidentiality of third parties' sensitive commercial information.³ CN's requests and Amtrak's responses were as follows:

REQUEST FOR PRODUCTION NO. 5

Please produce all of Amtrak's Operating Agreements, including amendments, attachments, exhibits, and schedules thereto, with Host Railroads, in force at any time since 1971.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5

Amtrak objects to this Request for Production on the grounds that it is overbroad as to time, unduly burdensome and oppressive. Amtrak further objects to this Request for Production to the extent it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. To the extent this Request for Production seeks operating agreements between Amtrak and CN, Amtrak further objects on the ground that these documents are equally available to, and in the possession, custody or control of, CN. To the extent this Request for Production seeks operating agreements between Amtrak and any Host Railroad other than CN, Amtrak further objects on the ground that the operating agreements contain highly confidential and commercially sensitive

² Accordingly, the parties agreed that responses to motions to compel shall be due within seven days. Joint Disc. Protocol ¶ 11, at 14 (Jan. 30, 2014) (Ex. 2).

³ Nat'l R.R Passenger Corp.'s Resps. and Objections to First Set of Disc. Reqs. of IC and GTW at 12-13 (served Nov. 19, 2013) (Ex. 3).

information of third parties. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REOUEST FOR PRODUCTION NO. 6

Please produce all agreements, including any amendments, exhibits, attachments or schedules thereto, in force at any time since 2008, relating to any hosting by Amtrak of non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

RESPONSE TO REOUEST FOR PRODUCTION NO. 6

Amtrak objects to this Request for Production on the grounds that it is compound and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Amtrak further objects on the ground that this Request for Production seeks agreements that contain highly confidential and commercially sensitive information of third parties. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

Ex. 3 at 12-13.

As broad discovery had been sought by each party,⁴ and each party had lodged a variety of objections, counsel for the parties met and conferred on December 12 and December 17 to clarify, discuss, and attempt to resolve discovery issues. CN made a proposal, which Amtrak later accepted, that most of each party's document production requests, including Request Nos. 5 and 6, be limited to documents created or in effect on or after May 1, 2011.⁵ Given the particular importance of Amtrak's OAs to the issues before the Board, CN stated at the initial meeting that it would file a motion to compel if Amtrak persisted in refusing to produce Amtrak's OAs. At the second meeting, Amtrak suggested with respect to Request No. 5 that if CN would indicate the portions of the operating agreements it particularly needed (without, however, having seen the agreements), Amtrak would consider producing only those portions. By letter dated

⁴ Amtrak's requests to CN included six requests for admission, 41 document requests, and 14 interrogatories. CN's requests included four requests for admission, 31 document requests, and 23 interrogatories.

⁵ This proposal was incorporated in the parties' Joint Discovery Protocol (Ex. 2) ¶ 2, at 2.

December 27, 2013 (attached as Ex. 4), CN explained why that would not suffice.⁶ However, conditioned on avoiding the necessity of a motion to compel, CN proposed a compromise under which Amtrak could propose redactions that would be subject to review by CN's outside counsel.

On January 31, more than a month later, and three months after CN had served its initial discovery requests, Amtrak finally responded to CN's compromise offer (Ex. 5). First, it offered only to provide portions of Amtrak's OAs with Class I carriers, thereby excluding all Amtrak operating agreements with other hosts and all Amtrak operating agreements in which Amtrak itself is a host. Second, it insisted on a unilateral right to redact the agreements prior to production, based on its own view of what is proprietary or commercially sensitive. It further provided that CN's counsel would have no access to the redacted materials to determine if those redactions were reasonable, and that in the event CN wished to challenge a redaction its recourse would be to Amtrak itself. Third, it required that CN agree in advance, sight unseen, that any portion of agreements Amtrak did produce would be classified as Highly Confidential under the Protective Order that has been entered in this proceeding,⁷ meaning that no CN employees – including in-house counsel – could see any portion of any of Amtrak's OA. *See* Protective Order, App. at 3 (¶ 6). Finally, Amtrak conditioned its entire offer on CN waiving a partial objection CN had stated two months earlier to one of Amtrak's broadest and most burdensome discovery requests.

⁶ Among other points, CN explained that (1) it cannot reliably identify which provisions of Amtrak's OAs are important without having access to those OAs and when CN does not know what Amtrak will argue in this proceeding; and (2) contracts are integrated documents, in which one provision may define the terms used in another, and concessions on one provision may be traded off for concessions on another, so efforts to isolate particular provisions, or particular aspects of the contract, are apt to paint an incomplete and misleading picture. *See* Ex. 4.

⁷ Decision served Dec. 16, 2013 ("Protective Order").

CN responded the next business day, February 3, clarifying the minimum criteria it believed necessary for a possible agreement (Ex. 6). On February 5, Amtrak rejected CN's proposal. Accordingly, the present position of the parties is that CN has modified its Request Nos. 5 and 6 to limit them to documents created or in effect from May 1, 2011 to October 31, 2013, but Amtrak has refused to produce any documents in response to those requests.⁸

STANDARDS GOVERNING MOTIONS TO COMPEL

Parties to proceedings before the Board are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1);⁹ *Ballard Terminal R.R. – Acquisition & Operation Exemption – Woodinville Subdivision*, Docket No. FD 35731, slip op. at 3 (STB served Aug. 22, 2013) (“*Ballard*”). “The requirement of relevance means that the information might be able to affect the outcome of a proceeding.” *Waterloo Ry. – Adverse Abandonment – Lines of Bangor & Aroostook R.R. in Aroostook County, Me.*, STB Docket No. AB-124 (Sub-No. 2), slip op. at 2 (STB served Nov. 14, 2003) (“*Waterloo*”), *quoted in Ballard*, slip op. at 3. Relevant information that is in the possession of one party but not the opposing party is discoverable, notwithstanding that it might also be obtainable from a non-party. *See Ballard*, slip op. at 4-5. Moreover, subject to other (non-relevance) objections, a party is entitled in discovery to “all relevant and potentially admissible information – ... not only the information that the [opposing party] believes is

⁸ CN recounts this history in order to demonstrate that it has diligently attempted to reach a compromise, and has endured lengthy delays caused by Amtrak, before bringing this motion. And in Section IV of the Argument below, CN will discuss further the “compromise” proposal that Amtrak ultimately made in order to explain why, if Amtrak raises it or something similar again, it is plainly insufficient. However, neither party should be held to compromise offers that it made conditioned on avoiding the costs and burdens of a motion to compel. *Cf.* Fed. R. Evid. 408(a).

⁹ Further, “[i]t is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 49 C.F.R. § 1114.21(a)(2).

sufficient.” *Seminole Elec. Coop. Inc. v. CSX Transp., Inc.*, STB Docket No. 42110, slip op. at 2 (STB served Feb. 17, 2009).

If a party establishes a valid confidentiality objection, the confidential material must nonetheless be produced, without any confidentiality-based redactions.¹⁰ Instead, the proper means of protecting confidentiality is a protective order. *See, e.g., Wisc. Power & Light Co. v. Union Pac. R.R.*, STB Docket No. 42051, slip op. at 3 (STB served June 21, 2000) (“*WP&L*”) (affirming ALJ order granting subpoena at request of party arguing that “the Board routinely permits discovery of [sensitive and confidential] materials subject to a protective order”); *Grain Land Coop v. Canadian Pac. Ltd.*, STB Docket No. 41687, slip op. at 3-4 (STB served Dec. 1, 1997) (“*Grain Land*”) (reversing an ALJ order insofar as it permitted redaction based on confidentiality, and ordering unredacted production of contracts, subject to a protective order).

ARGUMENT

As discussed in Section I below, Amtrak has refused to produce requested documents – other passenger-host operating agreements – that are relevant, indeed likely to be highly probative, regarding the issues in this proceeding. Both the Board and the Interstate Commerce Commission (“ICC”) before it have discussed and relied on such documents in their decisions in cases under 49 U.S.C. § 24308(a)(2)(A)(ii) and its predecessor, section 402(a) of the Rail Passenger Service Act (“RPSA”). Further, in a previous case under 49 U.S.C. § 24308(a)(2)(A)(ii), which presented narrower issues than the present proceeding, Amtrak

¹⁰ Redactions have on rare occasion been permitted, but only when it has been established by agreement or decision that the material to be redacted is not just confidential, but also irrelevant. *See CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Decision No. 34, slip op. at 2-3 (STB served Sept. 18, 1997) (where a party sought to redact information, “[i]f both the requesting party and Judge Leventhal reject applicants’ assertion that certain material contained in a responsive document is not relevant to any matter properly at issue in this proceeding, applicants are required to produce the document in its entirety.”). As discussed below, neither of these preconditions has been met.

agreed to produce (to a host railroad's employees, as well as its outside counsel) operating agreements between itself and other host railroads.

As explained in Section II, there is no undue burden here. As narrowed, CN's Requests seek only Amtrak's operating agreements in effect during the period May 1, 2011 to October 31, 2013. Those documents are important for this case. They are modest in number (particularly in the context of the much broader and burdensome document requests served by Amtrak), and they should be easy to find and produce.

As discussed in Section III, Amtrak also seeks to withhold its operating agreements based on its claim that they contain highly confidential and commercially sensitive information of third parties. Its prior production of such agreements belies its present argument that it must withhold or redact such agreements. Even if there are valid third-party confidentiality concerns, such concerns are properly dealt with under the Board's Protective Order, not by denial of production or by redaction. In any event, no such concerns are apparent. The Board has publicly discussed, and Amtrak has produced, and itself relied upon, third party operating agreement provisions in past cases – a history that belies Amtrak's confidentiality claim. Moreover, Amtrak has not shown that the operating agreements contain third parties' proprietary commercially sensitive information, much less that third parties took any steps to preserve any confidentiality.

Finally, lest Amtrak seek to persuade the Board to adopt its earlier "compromise" proposal regarding Request No. 5, we explain in Section IV why that proposal is inconsistent with CN's discovery rights. (Amtrak offered nothing in response to Request No. 6.)

I. THE DOCUMENTS SOUGHT IN REQUEST NOS. 5 AND 6 ARE RELEVANT, INDEED LIKELY TO BE HIGHLY PROBATIVE, EVIDENCE IN THIS CASE.

Amtrak asserts that its agreements with other host railroads (Request No. 5) and its agreements with other passenger rail carriers when it serves as a host (Request No. 6) are irrelevant to this proceeding. To evaluate that assertion, it is necessary first to consider the breadth of the issues presented.

Amtrak and CN were engaged in voluntary commercial negotiations for a new operating agreement until July 30, 2013, when, in lieu of continuing those negotiations, Amtrak initiated this proceeding. Under the governing statute, the purpose of this proceeding is for the Board to serve as a substitute when the preferred method of determining the terms of an agreement between Amtrak and a host railroad – voluntary negotiation – fails. *See* 49 U.S.C.

§ 24308(a)(1)-(2); *Minn. Transfer Ry. Ordered to Provide Servs., Tracks, & Facilities for Operations of Trains of Nat'l R.R. Passenger Corp. & Establishment of Just & Reasonable Compensation for Such Servs., Tracks & Facilities*, 354 I.C.C. 769, 774 (1978) (“*Minnesota Transfer II*”) (“Under the statute the parties must be given the opportunity to resolve [operating agreement issues] among themselves before our jurisdiction to arbitrate the matter is invoked.”).

The parties having reached that point, the Board’s statutory task is to determine what would be “reasonable terms and compensation” to govern the Amtrak-CN relationship. 49 U.S.C.

§ 24308(a)(2)(A)(ii). The law offers some additional guidance. For example, the statute indicates that the host railroad should recover “the incremental costs of [Amtrak’s] using the [host’s] facilities and the [host’s] providing the services [to Amtrak],” plus potentially “greater” compensation based in part on “quality of service,” *id.* § 24308(a)(2)(B), and that the operating agreement should include some provision for “a penalty for untimely performance,” *id.*

§ 24308(a)(1). However, the statute does not specify an amount, a formula, or criteria, and it

provides no guidance on most non-compensation issues. Thus, for the most part, the Board’s task is to decide what a “reasonable” commercial agreement between the parties would look like.

As a matter of common sense, one of the most likely probative sources of evidence relevant to that inquiry must be voluntary commercial agreements reached in the marketplace by firms in similar situations, especially voluntary commercial agreements involving one of the parties.¹¹ For example, if a proposed term, or the combined effect of a proposed set of terms, is contrary to what most host railroads have voluntarily agreed with Amtrak, or if it is contrary to what Amtrak has agreed with most of the passenger rail carriers it hosts, that is evidence tending to suggest that such term is (or terms are) unreasonable.¹² On the other hand, if a proposed term is consistent with terms of most other host railroad agreements, that is evidence tending to suggest that it is reasonable.¹³

¹¹ Of course, such evidence cannot trump the specific requirements of the statute itself, such as the general entitlement of host carriers to compensation for incremental costs associated with Amtrak’s services on their lines. *See National R.R. Passenger Corp. – Application under Section 402(a) of Rail Passenger Serv. Act for Order Fixing Just Compensation*, 10 I.C.C.2d 863, 876 n.37 (1995) (“*Conrail*”) (“Incremental cost, not comparability with Amtrak’s other contracts, is the statutory standard under section 402(a).”). Moreover, what is reasonable will vary with circumstances. But for purposes of relevance and discoverability the issue is not whether the information is conclusive, but rather whether it “*might* be able to affect the outcome of a proceeding.” *See Waterloo*, slip op. at 2 (emphasis added).

¹² Analogously, the first thing federal courts look to in determining what “reasonable royalty” should be awarded in a patent suit is what royalties the patentee recovers under license agreements with third parties in the marketplace. *See, e.g., LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 69 (Fed. Cir. 2012) (“The first of the fifteen factors in *Georgia-Pacific* [the standard federal court multi-factor test for determining reasonable royalties] is ‘the royalties received by the patentee for the licensing of the patent in suit, proving or tending to prove an established royalty.’ . . . Actual licenses to the patented technology are highly probative as to what constitutes a reasonable royalty for those patent rights because such actual licenses most clearly reflect the economic value of the patented technology in the marketplace.”) (citations omitted).

¹³ In some respects, the relevance and probative value of agreements requested in CN’s Request No. 6, in which Amtrak is the host carrier on its own line for other passenger rail carriers, may be even greater. Such agreements involve all the issues regarding host costs and compensation, on-time performance, mutually caused delays, dispatching, scheduling, record-

There are also strong legal and policy reasons for valuing consistency with actual marketplace transactions. If the Board were to ignore commercial realities and prescribe terms that Amtrak could not plausibly obtain in voluntary commercial negotiations, the Board would be failing in its statutory task of serving as a substitute for voluntary negotiations. Further, Amtrak would have every incentive to skip negotiations and come straight to the Board to set the terms of all of its “agreements.”¹⁴

Precedent supports the production and use of Amtrak’s third-party operating agreements in proceedings under 49 U.S.C. § 24308(a)(2)(A)(ii). The Board, and its predecessor, the ICC, have considered and discussed evidence from Amtrak’s agreements with other host railroads in many such proceedings. *See, e.g., Application of Nat’l R.R. Passenger Corp. Under 49 U.S.C. 24308(a) – Springfield Terminal Ry.*, 3 S.T.B. 157, 163 (1998) (declining to require Amtrak to acquire additional liability insurance or other security for its indemnity obligations to host railroad, noting that there was no such requirement in operating agreements with other host railroads); *Nat’l Rail Passenger Corp. Application Under Section 402(a) of Rail Passenger Serv. Act*, Finance Docket No. 30426, slip op. at 12 (ICC served July 15, 1985) (adopting Amtrak proposal for incentive payment system similar to incentive arrangements in other operating agreements); *Minn. Transfer Ry. Ordered to Provide Servs., Tracks & Facilities for Operations*

keeping and accounting inherent in such a relationship. If Amtrak typically agrees to the same resolution of a particular issue both when it is the host and when it is the guest, that could be strong evidence that such a resolution is reasonable. If Amtrak refuses to accord passenger operators on its lines the same treatment it demands as a passenger guest on CN’s lines, that evidence could suggest that Amtrak bears a burden to justify the reasonableness of the disparity in treatment. In either case, the information sought in Request No. 6 can be expected to bear on the outcome of this proceeding.

¹⁴ As Amtrak has recognized in the past, the appropriate policy for the Board in administering the statute is “to encourage voluntary agreements between the parties.” Amtrak Resp. to Conrail Modifications to Pet. to Set Basis for Assessing Minimum Amount Due from Amtrak at 4-5, *Conrail* (Ex. 7).

of Trains of Nat'l R.R. Passenger Corp. & Establishment of Just & Reasonable Compensation for Such Servs., Tracks & Facilities, 354 I.C.C. 552, 558 & n.7 (1978) (“*Minnesota Transfer P*”) (declining to “substitute [the ICC’s] judgment for that of the marketplace” and therefore adopting (as proposed by Amtrak) specific provision for allocation of liability “used ... in virtually all [Amtrak’s] operating agreements,” and “developed through extensive arm’s length negotiations with ... various railroad’s [*sic*]”); *Nat'l R.R. Passenger Corp., Use of Tracks & Facilities & Establishment of Just Compensation*, 348 I.C.C. 926, 949 (1977) (“given the fact that Amtrak has used the ‘Amtrak formula’ in its negotiations with other railroads, any variance of that formula directed solely against [the respondent host railroad] will have to be adequately explained.”). Thus, evidence from other host railroad operating agreements not only “might be able to affect the outcome of a proceeding [under 49 U.S.C. § 24308(a)(2)(A)(ii)],” *Waterloo*, slip op. at 2, it has regularly done so.

Amtrak’s contrary position is indefensible. It may also be novel. In *Conrail*, Consolidated Rail Corporation (“Conrail”) served an interrogatory on Amtrak that asked about the contents of Amtrak’s operating agreements with other host railroads – essentially, the interrogatory equivalent of CN’s Request No. 5 here. Amtrak’s response, less than a month later, was as follows:

(a) Copies of Amtrak's contracts with other railroads and commuter authorities and their affiliates relating to Amtrak’s use of their main line tracks and in effect after January 1, 1987 are being provided herewith. Amtrak objects to the identification and production of contracts relating to the use of facilities other than main line tracks and of contracts unrelated to payments for track maintenance as irrelevant to any issue in this proceeding and as unduly burdensome.

Amtrak's Resp. to First Interrogs. & First Req. for Produc. of Docs. of Consol. Rail Corp. at 3, *Conrail* (filed Oct. 11, 1994) (Ex. 8).¹⁵ That prompt and forthcoming response sharply contrasts with Amtrak's response in the present case.

Amtrak's response in *Conrail* raises one final point about relevance. With respect to operating agreements, as with any other evidence, what is relevant depends on the scope of the issues in the case. In *Conrail*, the single substantive issue before the Board was the quantification of compensation for incremental main line maintenance-of-way costs. Despite the narrow issue presented, Amtrak recognized the relevance of operating agreements, and willingly produced its agreements that included compensation terms for the use of main line tracks,¹⁶ subject only to a confidentiality designation that permitted both outside and in-house personnel access to those documents for use in the proceeding.¹⁷

Here, the case for production is much stronger. Because Amtrak abruptly initiated this proceeding before the conclusion of negotiations, a wide array of issues was left unresolved. Moreover, according to Amtrak's Statement Identifying Disputed Issues, it proposes to present issues that were never the subject of focused discussions between the parties. If that statement is

¹⁵ Amtrak may have produced third party operating agreements in other proceedings, but CN is not in a position to know. (CN's counsel happened to be Conrail's counsel in *Conrail*.) Obtaining discovery requests and responses in old cases involving other parties is difficult, particularly for proceedings after 1996, when the Board eliminated the requirement that such documents be filed with the Board.

¹⁶ Amtrak objected on grounds of relevance and burden only to the production of agreements unrelated to compensation for costs of maintaining main line tracks. Significantly, however, Amtrak did not seek to redact agreements in order to isolate the provisions that directly addressed that issue. Redaction based on relevance is generally inappropriate, particularly in the case of contracts, which are integrated documents in which various provisions interact and may represent a trade off during negotiations. Moreover, once the universe of documents to be produced is determined, redaction only increases the burden of production and the potential for discovery disputes.

¹⁷ See Stipulation and Order Regarding Production of Confidential Documents, *Conrail* (filed May 26, 1994) (Ex. 9).

indicative, this case will present one of the broadest sets of issues the Board (or the ICC) has ever addressed in a case under 49 U.S.C. § 24308(a)(2) or section 402(a) of RPSA.

Amtrak lists as disputed issues:

- “[t]he amount of compensation CN [should] receive[.]” for providing services to and making its facilities available to Amtrak;
- “whether, and if so, under what terms, CN should receive compensation in excess of CN’s incremental costs for quality of service,” including the “formulation” and “administration” of such incentive payments;
- “under what terms CN should be subject to penalties for untimely performance, including the formulation of such penalties and the administration thereof”;
- the “geographic scope” of any new operating agreement between CN and Amtrak, including a potential extension to the rail lines of non-party affiliates; and
- the “date and terms for expiration or termination of the Operating Agreement.”

Statement by Nat’l RR. Passenger Corp. Identifying Disputed Issues at 2 (filed Oct. 24, 2013). If this case encompasses “compensation,” “incremental costs,” incentives, “penalties,” “geographic scope,” “date and terms for expiration” and “termination,” there will be few, if any, aspects of a host railroad-passenger rail carrier operating agreement that it does not encompass. Amtrak’s relevance objection is without basis.

II. AMTRAK’S “UNDUE BURDEN” OBJECTION SHOULD BE REJECTED.

Amtrak’s objections to Request No. 5 include an assertion that responsive production would be “unduly burdensome and oppressive.” This appears to be boilerplate, and it is unclear whether Amtrak intended this to be an objection independent of its relevance objection or whether Amtrak will persist with this objection after CN’s concession limiting the applicable date range (which moots Amtrak’s further objection that the Requests as originally stated were “overbroad as to time”). In any event, there is no substance to it.

First, whether the burden of discovery is undue depends substantially on the relevance and probative value of the materials sought. Here, as demonstrated in Section I above, the materials sought are relevant and likely to be highly probative.

Second, CN's request is narrow. Amtrak has been using other host railroads' lines since 1971. Although current agreements are more probative, since they reflect current economic realities, a complete history of Amtrak's operating agreements could be probative as to what has been accepted and worked in the marketplace, and how terms have evolved, over time. Moreover, since it appears that most operating agreements historically had long terms, it would likely not be very burdensome for Amtrak to produce such a history. In *Conrail*, according to Amtrak's discovery response quoted above, Amtrak apparently produced more than seven years' worth of operating agreements (from January 1, 1987 to its response in October 1994). Here, however, CN voluntarily agreed to limit its request to agreements created or in effect in the 30 months from the execution of the most recent CN-Amtrak operating agreement to the date of CN's document requests.

Third, any burden of production here is likely to be minimal. Amtrak's operating agreements with host railroads are a distinct and easily identifiable category of documents. Since they govern important commercial relationships, typically over a term of years, they are likely to be maintained in readily accessible files in the ordinary course of business. And because they are, by definition, documents executed by an independent counterparty, they cannot raise any issues of attorney-client privilege or work product protection that might necessitate legal review before production.

Nor is the requested production likely to be voluminous. To be sure, commercial agreements can be lengthy, and to understand the bargain between the parties and to see individual terms in context, CN needs and has requested complete agreements, including

exhibits, addenda, schedules, and amendments. (Much of the substance of the most recent CN-Amtrak agreement was contained in appendices.) But the quantity of agreements covered by Request No. 5 is likely small. Without limiting that Request, CN notes that Amtrak's monthly Host Railroad Performance Reports identify only 19 host railroads. So, even if some relationships were covered by two or three distinct agreements during the 30-month period of CN's Requests, there are likely fewer than 40 agreements in total.

Finally, any burden objection should be viewed in context. Amtrak initiated this proceeding and has stated an extraordinarily broad range of issues. Amtrak has so far served 41 requests for document production on CN, including numerous requests that are far broader, more burdensome and less relevant than CN Request No. 5, as well as 14 interrogatories and six requests for admission.¹⁸ In that context, the burden of responding to CN's Request No. 5, which is likely to require production of fewer than 40 discrete agreements, is relatively minimal.¹⁹

III. AMTRAK'S CLAIMS OF THIRD-PARTY COMMERCIAL SENSITIVITY AND CONFIDENTIALITY PROVIDE NO BASIS FOR WITHHOLDING PRODUCTION.

Amtrak's responses to Request Nos. 5 and 6 included an objection that the requested agreements "contain highly confidential and commercially sensitive information of third parties." That is not a proper basis for refusing production (as Amtrak did in its responses, and has consistently done with respect to Request No. 6), or for redaction (as Amtrak suggested,

¹⁸ Nat'l R.R. Passenger Corp.'s First Set of Reqs. for Disc. (served Nov. 6, 2013) (Ex. 10).

¹⁹ Amtrak has not raised a specific burden objection to Request No. 6, although in its response to CN's discovery requests it stated a general burden objection that it might claim applies to Request No. 6. CN is aware of only five carriers providing passenger service on Amtrak's lines, however, so it would appear that Request No. 6 calls for no more than 10 or so additional agreements.

along with other unreasonable conditions, in its final “compromise” proposal). Moreover, Amtrak’s third-party confidentiality claim is unsubstantiated and implausible.

A. Any Confidentiality Concerns Implicate the Protective Order, Not Withholding of Production.

Issues of commercial confidentiality are common in Board proceedings, and there is a well established way to address them: by full production subject to an appropriate protective order. *See, e.g., Grain Land*, slip op. at 4 (“Even in situations where rail carriers object to a complainant’s access to unredacted material due to its extraordinary commercial sensitivity, we have found that protective orders provide adequate safeguards from unauthorized or unintended disclosure.”).²⁰ Confidentiality is not a proper basis for refusing or redacting production. Accordingly, the Board has ordered a party that produced a document with confidentiality-based redactions to produce it in unredacted form, *Ill. Railnet, Inc. – Acquisition & Operation Exemption – BNSF Ry.*, STB Finance Docket No. 34549, slip op. at 2 (STB served Apr. 15, 2005), and when an ALJ permitted redaction on confidentiality grounds, the Board reversed that ruling, *Grain Land*, slip op. at 3-4.

At the joint request of Amtrak and CN, the Board entered a Protective Order in this case on December 16, 2013. That order provides ample protection and detailed rules for the handling

²⁰ The Board’s strong preference for using protective orders to protect confidentiality rather than permitting withholding of relevant information is consistent with the approach of the federal courts. *See, e.g., Fed. Open Market Comm. v. Merrill*, 443 U.S. 340, 362 n.24 (1979) (“[O]rders forbidding any disclosure of trade secrets or confidential commercial information are rare. More commonly, the trial court will enter a protective order restricting disclosure to counsel.”). As reflected in federal court practice, it should not matter in this regard whether a producing party asserts its own confidentiality rights or duties of confidentiality to third parties. *See, e.g., Robert Bosch LLC v. ADM 21 Co.*, 2011 U.S. Dist. Lexis 102639, at *3-*4 (D. Nev. Sept. 12, 2011) (“Because the Settlement Documents are relevant, and there is a Stipulated Protective Order in place, Bosch’s third-party confidentiality obligations should not bar production of these documents.”).

of “Confidential” and “Highly Confidential” materials.²¹ It allows the producing party to make those designations, subject to review by the Board if the receiving party objects. If and insofar as Amtrak has a valid basis for asserting confidentiality, the Protective Order provides all the protection it needs. Here, consistent with Amtrak’s agreed production of its operating agreements to Conrail’s in-house personnel as well as outside counsel in the *Conrail* proceeding, and in order to avoid any unnecessary future dispute or delay, CN asks the Board to provide that Amtrak may not categorize the requested operating agreements (or any part thereof) as “Highly Confidential” pursuant to the Protective Order.

B. Amtrak’s Confidentiality Claim Is Unsubstantiated and Implausible.

Amtrak’s discovery responses did not base its refusal to produce on protecting any information of its own, but instead on unidentified “highly confidential and commercially sensitive information of third parties.”

A party that shares its commercial information with an independent entity – for example, in a contract -- generally thereby waives any claim to confidentiality unless it takes affirmative steps to protect confidentiality, such as entering into a confidentiality agreement. In general, it is the existence of such an agreement or other affirmative duty to protect third-party confidential information that is the basis for an objection to the production of such information.²² And even

²¹ “Highly Confidential” materials cannot be shared with the parties’ in-house counsel or other employees. That designation represents a severe restriction on the ability of the parties to consult with their outside counsel, and it could potentially constrain parties’ counsel to file redacted submissions and briefs that their client could not see in unredacted form. Accordingly, particularly for highly probative material – such as the evidence at issue here – it is important that the “Highly Confidential” designation not be abused.

²² In the absence of such an agreement or duty, a party generally lacks standing to assert the rights of an independent third party. *See, e.g., Warth v. Seldin*, 422 U.S. 490, 499 (1975). In *Diamantis v. Milton Bradley Co.*, 772 F.2d 3 (1st Cir. 1985), for example, the First Circuit dismissed for lack of standing a party’s claim that a subpoena infringed on “the right of a nonparty to keep confidential his own financial affairs,” *id.* at 4.

then, any such agreement or duty to protect the third-party confidential information can be overcome by a Board order compelling production of that information subject to the provisions of a protective order. *E.g., Grenada Ry. – Abandonment Exemption – In Montgomery, Carroll, Holmes, Yazoo & Madison Counties, Miss.*, Docket No. AB 1087 (Sub-No. 1X), slip op. at 5 (STB served Dec. 16, 2013) (ordering parties to produce, subject to protective order, “rail transportation contracts or other documents or information” containing third-party confidentiality provisions that could not otherwise be produced); *Paulsboro Refining Co. – Adverse Abandonment – In Gloucester County, N.J.*, Docket No. AB 1095 (Sub-No. 1), slip op. at 6 (STB served July 26, 2012) (providing for “production, disclosure and use” pursuant to protective order of documents subject to protection from disclosure under 49 U.S.C. § 11904).

Three months and many communications after CN’s discovery requests, Amtrak has done nothing to establish that it is under any contractual or other duty to protect from disclosure third-party information in Amtrak’s OAs, much less establish a basis for withholding that information if ordered by the Board to produce it. Amtrak has not claimed – much less shown – that its agreements with third parties include a duty of confidentiality.

In fact, there is every reason to believe that Amtrak’s operating agreements with third party railroads are not, and were not intended to be, confidential. Upon its creation in 1971, Amtrak negotiated a common Basic Agreement with the collective representatives of its host railroads. *See Nat’l R.R. Passenger Corp., Use of Tracks & Facilities & Establishment of Just Compensation*, 348 I.C.C. 926, 926-27 (1977); James A. Bistline, et al., *The Negotiation of the Amtrak Contract* (1971). The basic terms of that first operating agreement, which has served at least in part as a model for subsequent operating agreements, were a matter of public record. *See, e.g., Bistline, et al. supra*, at 26-141.

Like the Basic Agreement, CN's operating agreement with Amtrak does not include any duty or other indicia of confidentiality. And the same is true of the two previous Amtrak-CN operating agreements, which were in effect between 1995 and 2011, and of two Amtrak operating agreements with other carriers that CN has discovered on the internet.²³ (Of course, the availability of those agreements on the internet further undermines any general claim of confidentiality for those or similar agreements.)

Moreover, both the Board and Amtrak have treated the provisions of Amtrak's OAs as subject to disclosure. As we have already noted, the Board has discussed third-party operating agreements in its public decisions.²⁴ Moreover, the Board has prescribed specific terms and discussed specific costs in those decisions.²⁵ Meanwhile, Amtrak did not raise a confidentiality objection as a basis to resist production of its operating agreements to Conrail in 1994, notwithstanding that there was no provision in the protective order in that case for withholding any documents from employees of the parties.²⁶ And Amtrak itself has relied on third-party operating agreements in open submissions to the Board.²⁷ Of course, it would be quite unfair to

²³ See Agreement Between National Railroad Passenger Corporation and CSX Transportation, Incorporated (June 1, 1999, amended through Apr. 29, 2002), *available at* <http://corporate.sunrail.com/uploads/docs/149.pdf>; Agreement Between National Railroad Passenger Corporation and the Florida Department of Transportation (Dec. 30, 2010), *available at* <http://business.sunrail.com/uploads/allprojectdocs/751.pdf>.

²⁴ See, e.g., *Amtrak – Use of Tracks & Facilities & Establishing Just Compensation*, Finance Docket No. 31062, slip op. at 1 (ICC served Apr. 15, 1988) (referring to provision in operating agreement with host railroad's predecessor, under which host railroad received compensation of \$1,696.54 for permitting operation of two special trains); see also cases cited on pages 10-11, above.

²⁵ See, e.g., *Conrail*, 10 I.C.C.2d at 894 (prescribing compensation for maintenance-of-way costs at a rate of \$1.445 per 1000 gross ton-miles); *Minnesota Transfer II*, 354 I.C.C. at 774-79 (prescribing specific monetary compensation for use of tracks, maintenance of tracks, and use of roundhouse).

²⁶ See Ex. 7.

²⁷ See, e.g., Nat'l R.R. Passenger Corp's Opening Evidentiary Submission, V.S. James L.

allow Amtrak to use cherry-picked provisions from third-party operating agreements when they help its case, but hide behind claims of third-party confidentiality with respect to specific provisions or broader context when it may hurt its case.²⁸

Finally, Amtrak's premise that the operating agreements contain "commercially sensitive information of third parties" that should be kept from CN is implausible. With respect to Request No. 5, Amtrak claims that those third parties "are direct competitors to CN" (Ex. 5 at 1).²⁹ But that is certainly not true with respect to passenger service, which is the subject of the Amtrak OAs. CN is a freight railroad with an obligation to host Amtrak; it does not compete with other railroads to host Amtrak's or other passenger rail business. Moreover, no other rail carriers host or have the right (*e.g.*, through trackage rights) to host Amtrak trains over the routes

Larson at 19-21 & Attachment 1 (filed Apr. 15, 1997), *Application of Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a) – Springfield Terminal Ry.*, STB Finance Docket No. 33381 (filed Apr. 15, 1997) (detailed evidence regarding liability allocation provisions, and provisions for monetary payments to host railroad for increased liability risk resulting from Amtrak operations, in 13 operating agreements; proposing prescription of similar allocation by Board) (Ex. 11); Nat'l R.R. Passenger Corp.'s Statement of Evidence, Tab A (V.S. Elizabeth C. Reveal) at 4, *Conrail* (filed Aug. 29, 1994; errata filed Sept. 29, 1994) (arguing that Amtrak's preferred cost model "is the basis for the incremental track maintenance payments Amtrak makes to every railroad other than Conrail over which it operates") (Ex. 12); *see also id.*, Tab A at 6-7 (criticizing Conrail as a unique hold-out against the terms Amtrak agreed with all its other hosts); *id.*, Tab B (V.S. William W. Whitehurst) at 6 ("Amtrak has used [its preferred costing] formula in its contract negotiations with U.S. railroads since it was developed.") (Ex. 13); Application, V.S. James L. Larson at 4-9, *Nat'l Rail Passenger Corp. Application Under Section 402(a) of Rail Passenger Serv. Act*, Finance Docket No. 30426 (filed Feb. 28, 1984) (describing, and proposing that the ICC prescribe, "[t]he basic elements of Amtrak's incentive performance arrangements" with other host railroads) (Ex. 14).

²⁸ *Cf. Permian Corp. v. United States*, 665 F.2d 1214, 1221 (D.C. Cir. 1981) ("The client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others, or to invoke the privilege as to communications whose confidentiality he has already compromised for his own benefit.") (citations omitted).

²⁹ Amtrak does not and cannot make such a claim with respect to Request No. 6, which concerns passenger rail providers running on Amtrak's tracks.

Amtrak runs over CN's lines, and most passenger rail stations served by Amtrak from CN's lines cannot be served from the lines of other freight carriers.

Further, disclosure of Amtrak's OAs' terms would not affect freight service competition. For example, CN's business strategy for *freight* traffic will not be affected if it discovers the formulas for the incentives and penalties that other railroads receive based on Amtrak *passenger* train performance on their lines. And similarly, the provisions of other host railroads' operating agreements, which give effect to the statutory right to recover the incremental cost of hosting *Amtrak*, are unlikely to reveal anything of substance about the costs of carrying *freight* traffic.³⁰

In short, there is no evidence that Amtrak's counterparties want, have taken measures to secure, or need, any confidentiality protection against disclosure to CN. It is much more plausible that Amtrak is using its unsupported claim of third party confidentiality in an effort to retain for litigation purposes its monopoly over the body of relevant agreements governing like circumstances it has with other entities.

IV. AMTRAK'S "COMPROMISE" OFFER WITH RESPECT TO REQUEST NO. 5 WAS IMPRACTICAL, BURDENSOME, AND UNFAIR TO CN, AND IT FELL FAR SHORT OF MEETING AMTRAK'S DISCOVERY OBLIGATIONS.

As demonstrated above, CN is entitled to the materials encompassed by its Request Nos. 5 and 6, and there are no valid grounds for objecting to their production. Accordingly, the

³⁰ For many categories of costs compensated pursuant to operating agreements, no cost data are reflected in the agreements themselves; the agreements merely provide that the host railroad shall be entitled to whatever "actual" costs it can demonstrate. And where specific costs are provided, the costs tend to be highly aggregated (*e.g.*, an overall train-mile charge for maintenance costs), and/or relate to facilities specific to an individual host (*e.g.*, charges for the use of specific facilities), and/or provide incremental costs of minor items or items specific to passenger operations or services (*e.g.*, station rental or utility costs, locomotive rental costs). Moreover, costs identified in operating agreements would in any event be inherently unreliable for determining competing freight costs, as those costs are always potentially subject to modification through negotiation and trade-off, and are in many or most cases stale, having been established many years ago, then adjusted using general industry indices.

appropriate relief is to require Amtrak to produce those documents forthwith, with no greater confidentiality designation than is appropriate under the Protective Order.

It would be insufficient and improper to adopt Amtrak's belated January 31, 2013 "compromise" proposal regarding the operating agreements subject to Request No. 5 (Ex. 5).³¹

The substance of Amtrak's proposal was as follows:³²

- Amtrak's offer was limited to agreements regarding Amtrak operations over lines of Class I host railroads; it offered nothing with respect to agreements regarding Amtrak operations over lines of other hosts, and nothing with respect to agreements with other carriers in which Amtrak is the host.
- Amtrak demanded that CN agree to treat as "Highly Confidential" whatever portions of Amtrak's OAs it deigns to produce, despite the lack of any established basis for claiming confidentiality (*see* Section III.B, above), which treatment would prevent CN's in-house counsel and other employees assisting with the proceeding from seeing or understanding Amtrak's OAs.
- Amtrak insisted on a unilateral right to redact operating agreements prior to production as Amtrak "believes ... appropriate," based on Amtrak's view of what is proprietary and commercially sensitive to third parties.
- Amtrak also insisted that its redactions be done prior to production, with the effect that no one would ever see the actual material Amtrak might choose to redact, even for the limited purpose of considering the propriety of the redactions.
- The only recourse for CN provided by Amtrak would be for CN's outside counsel (the only ones who would be permitted to review any aspect of Amtrak's OAs, although even they could not see what had been redacted) to "raise ... concerns [regarding redactions] with Amtrak's outside counsel."

In sum, after months of delay, Amtrak's final "compromise" proposal was that Amtrak would produce whatever portions it "believes ... appropriate" of a handful of Amtrak's OAs, while barring CN counsel from reviewing those redactions and requiring CN to agree that its in-

³¹ Amtrak made no compromise offer with respect to Request No. 6.

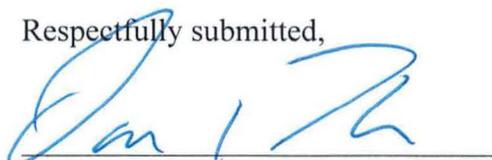
³² We focus here only on the structural inadequacies of Amtrak's offer, leaving aside its unreasonable effort to tie its agreement to produce anything in response to Request No. 5 to a demand that CN waive its partial objections to an unrelated Amtrak document request. CN has stated its willingness to discuss that and other outstanding issues with Amtrak, *see* Ex. 6, but they are irrelevant to CN's entitlement to production in response to CN's Request Nos. 5 and 6.

house counsel and other employees cannot see any portion of those documents. Because all the documents are relevant, confidentiality has not been established, and, in any event, confidentiality is not a basis for withholding or redaction, Amtrak's proposal falls far short.

CONCLUSION

The Board should order Amtrak to produce in full Amtrak's operating agreements as requested in CN's Request Nos. 5 and 6, insofar as they were created, in force, or in effect at any time during the period from May 1, 2011 to October 31, 2013. Further, consistent with Amtrak's production of such agreements in the *Conrail* proceeding, the Board should prohibit Amtrak from designating those documents, or any portion of them, as "Highly Confidential."³³ Finally, the Board should give expedited consideration to this motion, in accordance with the Joint Discovery Protocol agreed to by Amtrak and CN.

Respectfully submitted,



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February 12, 2014

³³ CN acknowledges that under the Protective Order, the normal course is for the producing party to make confidentiality designations, subject to Board review. But in this instance, Amtrak's confidentiality claims are already before the Board, their lack of merit is apparent, and precluding over-designation of Amtrak's OAs as "Highly Confidential" would avoid a potential further dispute. CN is not requesting that the Board's order preclude Amtrak from designating Amtrak's OAs as "Confidential," however, as Amtrak doing so would not impair CN's ability to develop and present its case.

EXHIBIT 1

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

FIRST SET OF DISCOVERY REQUESTS OF IC AND GTW

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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

FIRST SET OF DISCOVERY REQUESTS OF IC AND GTW

Pursuant to the Board's Stamp Order in this proceeding dated August 21, 2013 (hereinafter "August 21, 2013 Order") and 49 C.F.R. Part 1114, subpart B, Illinois Central Railroad Company and Grand Trunk Western Railroad Company (collectively, "CN") hereby serve their First Set of Discovery Requests upon Applicant National Railroad Passenger Corporation ("Amtrak" or "you"). Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof. You are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

INSTRUCTIONS

1. These Discovery Requests ("Discovery Requests" or "Requests," and each of them a "Discovery Request" or "Request") call for all documents and information in the possession, custody, or control of Amtrak or its employees, officers, agents, affiliates, subsidiaries, or counsel.
2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request shall clearly indicate the subdivision, part, or portion of the Request to which it is directed.

3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.

4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as “and,” “or,” “any,” “all,” or “including” shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to bring into the scope of each Discovery Request all information which might otherwise be construed as outside the scope of the Request.

5. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all responsive information that might otherwise be construed to be outside the scope of the Request.

6. References to years in defining date ranges for Requests shall be construed broadly, to include the entire year, such that, for example, a Request for documents “from 2008 to 2012” would include all documents from January 1, 2008 to December 31, 2012, and a Request for documents “since 2008” would include all documents from January 1, 2008 to the present. Unless otherwise stated in an individual Request, the following Requests encompass all documents created and all events that occurred from January 1, 2011 to the present.

7. If you believe that any Request or definition or instruction applicable thereto is ambiguous, set forth the language that you believe is ambiguous and the interpretation that you are using in responding to the Request.

8. If any document covered by a Request is withheld for whatever reason, including any privilege, furnish a written document identifying all withheld documents in the following manner:

- (a) the specific Request to which the document is responsive;
- (b) the date of the document;
- (c) the name of each author or preparer;
- (d) the name of each person who received the document and the name of such person's employer at the time the person received the document;
- (e) a brief description of the subject matter of the document and any withheld attachments or appendices;
- (f) the specific factual and legal basis for withholding; and
- (g) the number of pages withheld.

9. Identify all persons who provided information and/or documents for each response.

10. For any part of an Interrogatory for which you cannot provide a full answer, after exercising due diligence to secure the information needed to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have responsive to such part.

11. Where an Interrogatory seeks identification or information as to the existence or content of any document or study, producing or furnishing a copy of the document or study will be accepted as an adequate response to the Interrogatory.

12. Please make legible, complete, and exact copies of documents responsive to each Document Request and transmit them to the undersigned counsel. The originals of responsive documents should be retained in the files of you, your counsel, or the consultants or others who have assisted you in connection with this proceeding and have documents in their possession, and made available if requested.

13. If and to the extent that documents responsive to any Document Request are in electronic form, produce them in a format that can be read by widely available Windows-based software.

14. Documents responsive to each document request should be produced separately with a clear indication of which request they are responsive to, save that documents responsive to multiple requests need only be produced once. Subject to the foregoing, documents should be produced in the groupings in which they are maintained in the ordinary course of business.

15. Information and documents may be provided subject to the terms of an applicable protective order. CN has provided a draft protective order to Amtrak and proposed that Amtrak and CN file a joint motion seeking its adoption. CN is willing to discuss any concerns Amtrak may have with the draft protective order or joint motion, with a view to obtaining a protective order expeditiously so as not to impede the discovery process.

DEFINITIONS

1. “2011 Operating Agreement” means the Operating Agreement dated May 1, 2011, between Amtrak on the one hand and IC and GTW on the other.

2. “Base Compensation” means all compensation to a Host Railroad, as provided for in an Operating Agreement or proposed to be provided for in an Operating Agreement, for provision of services to Amtrak by the Host Railroad or use by Amtrak of facilities of the Host Railroad, excluding any adjustments to compensation based on Performance Payments or Penalties.

3. “Board” or “STB” means the United States Surface Transportation Board.

4. “CDR” means Conductor Delay Report.

5. “CN Operating Agreement” means any Operating Agreement between Amtrak, on the one hand, and IC or GTW, on the other.

6. “Document” means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, analyses, projections, forecasts, summaries, or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term “document” includes

(a) both basic records and summaries of such records (including computer runs);

(b) both original versions and copies that differ in any respect from original versions; and

(c) both documents in your possession, custody, or control and documents in the possession, custody or control of consultants or others who have assisted you in connection with this proceeding.

7. “FRA” means the “Federal Railroad Administration” of the U.S. Department of Transportation.

8. “FTI” means Freight Train Interference, as determined, recorded, or reported by Amtrak.

9. “GTW” means Grand Trunk Western Railroad Company and, to the extent relevant, any predecessor company.

10. “Host Railroad” means any railroad, or any State or State entity, with which Amtrak has entered an agreement pursuant to 49 U.S.C. § 24308(a)(1) or section 402(a) of RPSA providing for use by Amtrak of facilities of, or provision to Amtrak of services by, such railroad, State, or State entity

11. “HRD” means “Host-Responsible Delay,” as determined, recorded, or reported by Amtrak.

12. “IC” means Illinois Central Railroad Company and, if relevant, its predecessor companies.

13. “Identify,” when used in relation to an individual, corporation, partnership, or other entity, means to state the name, address, and telephone number thereof. “Identify,” when used in relation to a document, means to

(a) state the nature of the document (*e.g.*, letter, memorandum, etc.);

(b) state the author, each addressee, each recipient, date, number of pages, and title of the document; and

(c) provide a brief description of the contents of the document.

14. “Operating Agreement” means an agreement made pursuant to 49 U.S.C. § 24308(a)(1) or section 402(a) of RPSA, between Amtrak and a railroad or regional transportation authority, regarding the provision to Amtrak of services by, or the use by Amtrak of facilities of, the railroad or authority

15. “OTP” means “On-Time Performance,” as determined, recorded, or reported by Amtrak , including, where relevant, timeliness of trains of the Relevant Services, as measured, recorded, or reported for purposes of determining compensation owed to CN under any CN Operating Agreement.

16. “Penalties” means any payment, adjustment to compensation, or offset or debit against other compensation for a Host Railroad, provided for in an Operating Agreement or proposed to be provided for in an Operating Agreement, based in whole or in part on the timeliness or quality of performance by the Host Railroad or Amtrak trains running on the Host Railroad.

17. “Performance Payments” means any compensation, adjustment to compensation, or credit against Penalties for a Host Railroad, provided for in an Operating Agreement or proposed to be provided for in an Operating Agreement, based in whole or in part on the timeliness or quality of performance by the Host Railroad or Amtrak trains running on the rail lines of the Host Railroad.

18. A document is within the “possession, custody, or control” of a person or entity if it is within the possession, custody, or control of an entity or any of its employees, agents, or any of its affiliates or subsidiaries or their employees.

19. “PRIIA” means the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4907.

20. “PRIIA Metrics” means those metrics and standards that were promulgated by Amtrak and the FRA pursuant to PRIIA.

21. "Public Benefit" means public benefit as defined by Section 303 of PRIIA (codified at 49 U.S.C. § 22701(2)(A)(i)).

22. “Relating to” shall be construed broadly such that a document or piece of information shall be deemed to relate (a) to a claim or assertion if it tends to support, tends to undermine, or is otherwise relevant to that claim or assertion, or if it was considered when making that claim or assertion, and (b) to a subject if it refers to, discusses, describes, or deals with that subject, if it consists of, or constitutes, in whole or in part the matter to which that subject refers.

23. “Relevant Service” or “Relevant Services” means all Amtrak services that run over lines owned, leased, or operated by IC or GTW.

24. “RPSA” means (1) the Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327, including all amendments thereto (codified at 49 U.S.C. §§ 24101 *et seq.*).

25. “Workpapers” means documents that directly support the facts stated in the document submitted to the STB and that demonstrate how the factual statements and conclusions in the submitted document were reached or calculated.

26. “You” or “your” refers to Amtrak and to its employees, officers, directors, and agents.

REQUESTS FOR ADMISSION

1. Admit that, between signing the 2011 Operating Agreement and initiating the present proceeding, Amtrak made no requests to CN or its affiliates to use facilities of or have services provided by CN or its affiliates for purposes of regularly scheduled Amtrak service on any rail lines or segments of rail lines other than the Rail Lines as defined in the 2011 Operating Agreement.

2. Admit that no element of the Base Compensation under the 2011 Operating Agreement was intended by Amtrak to include compensation to IC or GTW for delays to their freight trains that would not have occurred but for Amtrak's trains.

3. Admit that Amtrak has provided no discrete funds or compensation or payments to CN for capital improvements on IC's or GTW's lines since it began operating passenger trains on those lines.

4. Admit that Amtrak has increased the number of trains it operates on IC's and GTW's lines from 8 trains per day on IC and none on GTW in 1971, to 16 trains per day on IC and 8 trains per day on GTW at present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. If your response to Request for Admission ("RFA") #1 was anything other than an unqualified admission, please produce all documents relating to requests to CN or its affiliates to use facilities of or have services provided by CN or its affiliates for purposes of regularly scheduled Amtrak service on any rail lines or segments of rail lines other than the Rail Lines as defined in the 2011 Operating Agreement.

2. If your response to RFA #2 was anything other than an unqualified admission, please produce all documents relating to Base Compensation under the 2011 Operating Agreement for delays to the freight trains of CN that would not have occurred but for Amtrak's trains.

3. If your response to RFA #3 was anything other than an unqualified admission, please produce all documents relating to any funding by Amtrak or payment by Amtrak to CN for capital improvements on CN's lines since it began operating passenger trains on those lines.

4. If your response to RFA #4 was anything other than an unqualified admission, please produce all documents relating to the number of trains operated by Amtrak on CN's lines in 1971 and 1972.

5. Please produce all of Amtrak's Operating Agreements, including amendments, attachments, exhibits, and schedules thereto, with Host Railroads, in force at any time since 1971.

6. Please produce all agreements, including any amendments, exhibits, attachments or schedules thereto, in force at any time since 2008, relating to any hosting by Amtrak of non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

7. Please produce all documents relating to compensation received or sought by Amtrak for delays or interference to Amtrak trains due to hosting any non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

8. Please produce all documents relating to any consideration of, or communications regarding, actual or potential capital expenditures (whether by Amtrak or by the Host Railroad or by other entities or jointly) or contributions to capital expenditures to improve, facilitate, or reduce costs associated with Amtrak service on any Host Railroad's tracks since 2003.

9. Please produce all documents from 2006 to the present relating to monies earmarked or otherwise available to Amtrak to fund, contribute to, or compensate a Host Railroad for capital expenditures or capacity or infrastructure improvements on the rail lines of any Host Railroad.

10. Please produce all documents from 2006 to the present relating to Amtrak efforts to obtain funds from public or private sources for capital expenditures or capacity or infrastructure improvements on the rail lines of any Host Railroad.

11. Please produce all documents from 2006 to the present relating to any determination or consideration by or within Amtrak of whether and what infrastructure investment would be necessary, appropriate, or desirable to improve the performance of or reduce costs associated with the Relevant Services, and of potential sources of funding therefor.

12. Please produce all documents from 2008 to the present relating to Amtrak's analysis or consideration of compensation terms for a future Operating Agreement with CN, including Base Compensation, Performance Payments, and Penalties.

13. Please produce all documents from 2008 to the present relating to organizational chart(s) and other documentation reflecting all employees, former employees, agents, or other representatives of Amtrak involved with (a) communications, negotiation, or contracting with, or compensating, Host Railroads, (b) scheduling of Amtrak trains on lines not entirely owned or controlled by Amtrak, (c) operating Amtrak trains on lines not entirely owned or controlled by Amtrak, (d) monitoring, recording, reporting, or evaluating the performance of Amtrak trains on lines not entirely owned or controlled by Amtrak, (e) Amtrak's budget or Amtrak's policies, analyses, reviews or deliberations relating to infrastructure investment on lines not entirely owned or controlled by Amtrak, and (f) Amtrak's relationships with IC and GTW.

14. Please produce all documents from 2008 to the present relating to communications between and among Amtrak employees, or between and among Amtrak employees and former employees, relating to the classification or coding of delays to Amtrak trains for HRD or for purposes of any Operating Agreement.

15. Please produce all documents from 2008 to the present relating to instructions, training, procedures, manuals, guidelines, or policies, for completing CDRs or for conductors, engineers, or assistant engineers otherwise to record information relating to delays to Amtrak

trains for the Relevant Services, including the Service Standards Manual for Train Service and On-Board Service Employees, Amtrak's Delay Data Recording Policy, and like instruction, training, or policy guides or manuals.

16. Please produce all documents relating to the number of passengers loading and unloading on particular trains at each station on the Relevant Services, any analyses or projections of the number of passengers on particular trains of the Relevant Services and between particular segments of the Relevant Services and any analyses of ridership trends or factors affecting ridership for the Relevant Services.

17. Please produce all documents relating to passenger ticket revenue generated by Amtrak on the Relevant Services, and on each segment thereof, including but not limited to any data, measurements, analyses, estimates, or projections of revenue on particular trains and between particular segments and any analyses of revenue trends or factors affecting revenue.

18. Please produce all documents relating to Amtrak's pricing of passenger tickets on the Relevant Services, including for individual segments, and including any documents relating to the relationship, if any, between ticket price and ridership.

19. Please produce all documents relating to any federal subsidies or state subsidies sought or received by Amtrak from 2010 to the present.

20. Please produce all documents from 2007 to the present relating to analyses, projections, or quantifications of the Public Benefit of Amtrak's services or any aspect thereof, including changes in Public Benefit due to changes in OTP.

21. Please produce all documents from 2008 to the present relating to (a) any consideration or analysis by, within, or for Amtrak of any measures that Amtrak, CN, Amtrak and IC together, or Amtrak and GTW together might take to improve the OTP of, and reduce

delays to Amtrak trains for, the Relevant Services, (b) any measures taken or proposed by Amtrak to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services, and/or (c) any measures taken or proposed by CN, or by CN and Amtrak together, to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services.

22. Please produce all documents from 2008 to the present relating to any consideration or analysis by, within, or for Amtrak of any measures that any third party (other than Amtrak or IC or GTW) might take to improve the OTP of, and reduce delays to the Amtrak trains for, the Relevant Services.

23. Please produce all documents from 2008 to the present relating to (a) any request made by IC or GTW for correction of CDRs, including Amtrak's internal analyses and responses, and (b) Amtrak's procedures, criteria, protocols, instructions, directions, and guidance for handling requests made by Host Railroads for correction of CDRs.

24. Please produce all documents from 2008 to the present relating to any consideration or analysis by, within, or for Amtrak of (a) the accuracy, reliability, definition, or significance of the PRIIA Metrics, (b) the criteria used by Amtrak to identify and categorize delays as FTI or other HRD, and/or (c) whether to revise the aforementioned metrics or criteria.

25. Please produce all documents from 2008 to the present relating to any disagreements or relief items, whether resolved or not, between Amtrak and IC or GTW, regarding the OTP of, or delays to, or the classification of or attribution of responsibility for delays to, Amtrak trains included in the Relevant Services.

26. Please produce all documents from 2008 to the present relating to the costs or burdens, to Amtrak and to IC and GTW, of administering the contractual system for determining Performance Payments and Penalties for the Relevant Services.

27. Please produce all documents from 2008 to the present relating to the costs or burdens, to Amtrak, to FRA, and to CN, of administering the PRIIA Metrics for the Relevant Services.

28. Please produce all documents discussing or analyzing changes in the OTP of the Relevant Services since October 1, 2010, and the reasons for or causes of such changes.

29. Please produce all documents relating to the decision or determination by Amtrak or FRA not to publish PRIIA Metrics for Host Railroad rail segments shorter than 15 miles.

30. Simultaneous with the filing or submission of written testimony by a witness relied upon by Amtrak in this proceeding, please produce all Workpapers of, all materials relied upon by, and all materials used or consulted in the course of the preparation of such testimony.

31. Please produce all documents identified in response to the Interrogatories below, and all documents used or consulted in the course of the preparation of your response to each of those Interrogatories.

INTERROGATORIES

1. Identify each person who supplied information for, who was consulted in connection with, or who participated in preparation of the answers to these interrogatories. As to each such person, identify the answer(s) for (or in which) he or she was consulted, supplied information, or participated.

2. Identify each person who has, claims to have, or is likely to have knowledge, information, or documents relevant to the proceeding. Describe with particularity the knowledge, information, or documents that Amtrak believes each such person possesses.

3. Identify all witnesses Amtrak may rely upon or refer to in the course of this proceeding and describe with particularity the subject matter and the substance of each witness's anticipated testimony.

4. Describe with particularity all of Amtrak's records management and retention policies affecting documents and information potentially relevant to this proceeding.

5. Identify and describe with particularity all Amtrak record management systems that may contain any documents or information potentially relevant to this proceeding.

6. Identify all current or former employees or other representatives of Amtrak who created, edited, authorized, or may presently be in possession of any documents related to this proceeding. As to each employee or other representative, identify the time period during which he or she participated, the role he or she served, the functions he or she performed, and the records he or she possesses or is likely to possess.

7. State and describe with particularity your position with respect to the first issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013, including what, if any role, HRD should play in determining compensation, and identify all facts and documents that you contend support that position.

8. State and describe with particularity your position with respect to the second issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013, including what, if any role, HRD should play in determining Penalties, and identify all facts and documents that you contend support that position.

9. State and describe with particularity your position with respect to the third issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013 and identify all facts and documents that you contend support that position.

10. State and describe with particularity your position with respect to the fourth issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013 and identify all facts and documents that you contend support that position.

11. Identify and describe with particularity all efforts you have made from May 1, 2011, to the present to make an agreement with CN or its affiliates to use facilities of, and have services provided by, CN or its affiliates, on any rail lines, or segments of rail lines, other than the Rail Lines as defined in the 2011 Operating Agreement.

12. Identify and describe with particularity all passenger rail services you propose to operate, and all your plans relating to such proposals, that would use facilities of, and have services provided by, CN or its affiliates, on any rail lines, or segments of rail lines, other than the Rail Lines as defined in the 2011 Operating Agreement.

13. Describe with particularity Amtrak's policies, procedures, and practices relating to (a) communications with dispatchers and other employees of CN, (b) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as HRD or for purposes of any Operating Agreement, and (c) the recording, coding, measurement, and reporting of OTP.

14. Describe with particularity how the policies, procedures, and practices described in response to Interrogatory No. 13 above are communicated to Amtrak's conductors, assistant conductors, engineers, and second engineers.

15. Identify all changes to any policies, practices, or procedures described in response to Interrogatory No. 13 and describe with particularity the nature of each such change.

16. State whether any Amtrak employees are or have been evaluated, compensated, supervised, or disciplined based in whole or part on information they recorded or failed to record in CDRs, and if so, identify the basis for this statement.

17. Identify all documents related to complaints, grievances, Ombudsman files, whistleblower disclosures, reports, and any other documents including criticism or an assessment regarding (a) Amtrak's operation of the Relevant Services, or (b) Amtrak's promulgation or implementation of policies, practices, or procedures for the monitoring, recording, coding, reporting, measurement, or description of delays to Amtrak trains.

18. Identify all sources and stores of data maintained by Amtrak relating to the performance of the Relevant Services, including but not limited to data regarding delays to Amtrak trains and OTP. For each data set, describe what it contains, how it was collected, when it was collected, and who collected it.

19. Identify and describe with particularity all sources of funding available or potentially available to Amtrak for infrastructure investment on Relevant Services or on lines traversed by Relevant Services.

20. Identify and describe with particularity all documents relating to communications between Amtrak (including its employees, representatives or agents) and Government agencies, Members of Congress, congressional committees, state governors, and their staffs regarding the Relevant Services or Amtrak's funding, funding needs, or funding priorities. For each such document, identify all employees, representatives, former employees, and former representatives of Amtrak who participated in or contributed to it or who may have knowledge or documents relating to it.

21. Describe the processes, procedures, and criteria employed by Amtrak to determine (a) how an individual delay to an Amtrak train or a type of delay to an Amtrak train should be categorized for purposes of the PRIIA Metrics, (b) whether a CDR should be corrected, and (c) how an individual delay to an Amtrak train or type of delay to an Amtrak train

or cause of failure of OTP should be treated for purposes of Performance Payments and Penalties under the CN Operating Agreement.

22. Identify by name, title, and corporate affiliation all persons, including Amtrak employees, consultants, contractors, and any non-Amtrak employees, who authored, contributed to, or were otherwise responsible, in whole or in part, for any of the documents produced in response to the foregoing Document Requests, and identify, for each person, the document(s) for which they were responsible.

23. Identify by name and title the persons who review or consider, or who have reviewed or considered (a) potential changes to or corrections to CDR data, or (b) relief items related to billing, for purposes of the 2011 Operating Agreement (including insofar as the 2011 Operating Agreement or its terms have remained in effect by order of the STB).

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*Counsel for Grand Trunk Western Railroad Company, and
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October 31, 2013

EXHIBIT 2

**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 DISCOVERY PROTOCOL

The following Joint Discovery Protocol (“Protocol”), dated this 30th day of January 2014, shall apply to all documents, including but not limited to electronically stored information and other electronically stored discovery materials (hereinafter “ESI”), maintained and/or exchanged by the Parties (“Parties” or “Party”) in this proceeding, and to certain other issues relating to discovery in this proceeding. The obligations in this Protocol are in addition to those set forth in the Protective Order entered by Surface Transportation Board (“Board”) on December 16, 2013. The purpose of this Protocol is to facilitate the conduct of discovery and the resolution of disputes. Compliance with this Protocol may be considered by the Board in resolving discovery disputes.

1. **Searches for Responsive Documents.** In response to a request for document production, a Party shall search both the paper files and the reasonably accessible ESI of custodians who are reasonably likely to possess responsive documents that are not duplicative of documents that would be possessed by other custodians already being searched. In order to search such reasonably accessible ESI, each Party shall apply the relevant time frame and search terms reasonably necessary to satisfy all non-objectionable parts of document production requests. Each Party shall produce on a rolling basis non-privileged, relevant, and responsive

documents and information, including ESI, in the format provided for under Paragraph 3 and within a time frame agreed by the Parties or otherwise ordered by the Board.

(a) Search Dates and Methodology.

(i) The Parties have agreed that the starting date for selection of responsive documents will be May 1, 2011 (encompassing documents created, revised, sent, in force, in effect, or in operation from that date forward), with the exception of: (1) documents relating to actual and potential capital expenditures and investments in rail lines and infrastructure/capacity funding issues with respect to rail lines; and (2) documents relating to general discussions or analyses of public policy issues or PRIIA metrics. The ending date for selection of responsive documents will be October 31, 2013 (the date of the first document request in this proceeding).

(ii) The use of search terms appears to be reasonably necessary to identify emails and email attachments, and may be reasonably necessary to identify other ESI, likely to contain discoverable information. Prior to document production, the Parties shall exchange search terms and try to reach agreement on them, but agreement shall not be a precondition to searching for and producing documents. The Parties shall fully document their use of search terms, including which search terms are used for which custodians and for which ESI sources. If a Party discovers that the search terms it is using are failing to collect non-privileged documents that are within the non-objectionable scope of document requests, it shall broaden its search to the extent reasonably necessary to collect such documents.

(b) Custodians. Prior to document production, the Parties shall exchange initial lists of custodians whose files they propose to search, including the custodian's title, the date the custodian assumed the position, and the names of any persons within the company who,

at any time after May 1, 2011, had prior responsibility for one or more of the custodian's present responsibilities respecting an area or subject of the other party's discovery requests. The Parties shall supplement and update their list of custodians as their search and production progresses.

(c) Disputes. Either before or after production, the Parties after conferring may seek resolution at the Board of any remaining disputes regarding search terms, custodians, or other discovery issues. Each party agrees to promptly raise concerns with the producing party concerning its list of search terms or list of custodians.

2. **ESI Not Reasonably Accessible.** ESI may not be reasonably accessible where the requirements in order to search that ESI involve undue burden and costs. For purposes of this Protocol, ESI available from a live, readily accessible source shall be considered "reasonably accessible." ESI maintained on voicemail systems and mobile phones, and ESI which cannot be retrieved without great effort and cost, including ESI maintained on obsolete or "legacy" systems no longer in use, or on backup tapes and other archival media, shall be considered "not reasonably accessible." Neither Party shall have an affirmative obligation to investigate whether ESI that is not reasonably accessible contains potentially responsive and non-duplicative information.

(a) Each Party shall provide the opposing Party with a list and description of any ESI that a Party considers not reasonably accessible, setting forth (i) a description of the nature of the ESI (*e.g.*, email communications, account payable information, etc.); (ii) the type of media in which the not reasonably accessible data is contained, to the extent it is known or can reasonably be ascertained; and (iii) the reasons the ESI is considered not reasonably accessible. If, after conferring, the Parties are unable to resolve their disagreement as to whether the ESI is

or is not reasonably accessible, the Party contesting the designation of the ESI as not reasonably accessible may seek resolution of that issue from the Board.

(b) Each Party shall promptly notify the other Party if it learns of responsive, non-privileged documents that are not duplicative of documents already being produced that are contained in ESI that is not reasonably accessible. Upon such notification, the Parties shall promptly meet and confer to determine what steps, if any, should be taken with respect to such not reasonably accessible ESI. If, after conferring, the parties are unable to agree on what steps should be taken with respect to such ESI, then the Party seeking the search and production of such ESI may seek resolution from the Board.

3. **Production.** Unless the Parties agree otherwise, the provisions set forth in this Section shall govern the format for the production of all documents. To the extent that issues arise in the course of productions that are not fully addressed in this Protocol, the parties shall immediately confer to resolve them. In all instances, the producing Party shall make all reasonable efforts to insure that documents are produced in a manner that is easily reviewable and not inconsistent with modern e-discovery techniques.

(a) Bates Numbering and Confidentiality Designations. Each Tagged Image File Format (“TIFF”) image of a produced document (see Subsection 3(b), below) shall contain a legible Bates number that: (i) is unique across the document production; (ii) has a constant length across the production; and (iii) is sequential within a given document. Each page shall be numbered such that it can be uniquely identified and will include before the Bates number an acronym identifying the producing Party (*e.g.*, “CN” or “ATK”) followed by the zero-filled sequential number (*e.g.*, CN0000000987 or ATK0000019931). Rather than skipping Bates numbers within the range of production, the Parties shall use placeholders (marked “No

Document For This Bates Number”). In addition, a producing Party designating a document for confidential treatment shall place the appropriate confidentiality designation – “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” – on each TIFF image of that document. Both the Bates number and confidentiality designation shall be placed on the page image in a manner that does not conceal or interfere with any information contained on the page. The producing Party shall not place any stamp or information on a document it produces that is not on the original, other than the Bates number, any confidentiality designation, or an indication of any redactions. The provisions of this Subsection 3(a) notwithstanding, Bates numbering and the confidentiality designations of documents produced in native format shall be in accordance with Subsections 3(b) and 3(i).

(b) Format for Production.

(i) Except for ESI produced in native format, the Parties shall electronically produce any non-privileged, relevant, and responsive document in electronic format as a single-page black and white Group IV TIFF image with a minimum resolution of 300 dpi. Receiving Parties shall have the right to request that a document be produced in color if they have a reasonable basis to believe that color will significantly improve their understanding of the document, and such a request shall not be unreasonably denied.

(ii) For each document produced, the Parties shall provide a document level or multipage text file containing Optical Character Recognition (“OCR”) text (for documents without extractable text) or extracted text (where available). Each such text file shall be named to correspond with the beginning Bates number of the produced document from which the text was obtained. All text files shall be provided in separate folder titled “Text.” For each produced document, the Concordance .DAT file (or similar load file if provided in another

format) shall contain a field named "OCR PATH," which shall be populated with the path to the corresponding OCR/Extracted text file.

(iii) The producing Party shall also provide both a metadata load file and an image load file. Those load files shall be produced in Concordance format (.DAT file using Concordance standard delimiters for the metadata load files, and .OPT file using Concordance standard fields for the image load files). The producing Party shall also provide image load files in a format viewable in or readily convertible to the IPRO Image Viewer, with extracted text files at the document level having the same file name as its corresponding image file, unless a document has otherwise been redacted. The image load file shall provide image and document break information for the TIFF files produced that correspond to the beginning Bates numbers contained in the metadata load file. Every TIFF file in each production must be referenced in the production's corresponding image load file, and the total number of TIFF files referenced in a production's image load file shall match the number of TIFF files in the production. The metadata load file for each production shall provide the Bates numbers and the Bates number attachment range for email or other documents containing attachments and any applicable confidentiality designation.

(iv) The producing Party shall also provide a multipage searchable OCR text file for the unredacted portions of each redacted document as well as for the entirety of each document that does not contain redactions. The OCR text files and image load files should indicate page breaks, to the extent possible.

(v) Paper documents shall be imaged and produced in digital form, including an OCR file and a TIFF file for each document. When scanning paper documents, distinct documents shall not be merged into a single record, and single documents shall not be

split into multiple records. The Parties shall use physical bindings as document boundaries, such that the smallest binding shall be the document, and the largest binding shall be the attachment group.

(vi) In order to minimize any delays that may arise from conflicts or incompatibilities between the software used by each Party, the parties shall exchange sample image load files, metadata load files, OCR text files, and TIFF files within seven (7) calendar days of the date of this Protocol, which shall be representative of the principal file formats in which the Parties expect to produce documents.

(c) Metadata.

(i) ESI. During the process of converting ESI from the electronic format of the application in which the ESI is normally created, viewed and/or modified to TIFF, metadata values shall be extracted and produced in a metadata load file, unless one or more of the metadata fields would reveal information that has otherwise properly been redacted, in which case that specific information may be redacted from the pertinent metadata field. To the extent they are available in collected data, the metadata values that are to be extracted and produced in the metadata load files are:

1. BEGBATES
 - (a) Starting production number
2. ENDBATES
 - (a) Ending production number
3. BEGATTACH
 - (a) Starting production number of attachment range
4. ENDATTACH
 - (a) Ending production number of attachment range
5. CUSTODIAN
 - (a) Name of individual custodian. Where not reasonably available, identify company custodian (e.g., "CN" or "ATK")
6. ATTACHMENT COUNT
 - (a) Number of attachments
7. ATTACHMENT NAMES
 - (a) Names of attachments, delimited by ";"
8. MD5 HASH
9. ELECTRONIC DOCUMENT TYPE/FILE EXTENSION

10. FILE SIZE
11. FILE NAME
12. FILE LOCATION
13. NATIVE FILE PATH
14. DATE SENT/CREATED
15. TIME SENT/CREATED
16. DATE LAST MODIFIED
17. TIME LAST MODIFIED
18. FROM/AUTHOR(S)
19. TO
20. CC
21. BCC
22. SUBJECT
 - (a) Subject line of email
23. COMMENTS
 - (a) Any comments recorded in document properties (not internal comments within the document)
24. IMPORTANCE FLAG
 - (a) Marked as YES if an email was sent with high importance
 - (b) Marked as NO if not

(ii) Attachments. In addition, for every document that includes an attachment, to the extent available, the following fields should be produced and populated as part of the metadata load file record for both parents and attachments to provide the parent/child or parent/sibling relationship:

- 1) BEGBATES
 - a) Starting production number
- 2) ENDBATES
 - a) Ending production number
- 3) BEGATTACH
 - a) Starting production number of attachment range
- 4) ENDATTACH
 - a) Ending production number of attachment range

(iii) Paper Documents. With respect to images of paper files, the producing Party shall provide in the metadata load file information corresponding to items 1-5 in the list in subparagraph (i) above and information relating to attachments in accordance with subparagraph (ii) above.

(d) Logical Unitization for Images. The producing Party shall make reasonable efforts to split image-based electronic files (scanned PDFs and multi-page TIFFs) into logical files (known in the information technology industry as logical unitization).

(e) Spreadsheets and Database Data.

(i) Spreadsheets are defined as MS-Excel and other application programs whose primary function is the organization, display and processing of data in a row/column format. Each spreadsheet shall be produced in native format unless the spreadsheet is to be redacted and redacting the spreadsheet in native format would be unduly burdensome as compared to redaction not using native format. The producing Party shall retain for the duration of this proceeding (including any appeals, judicial review and or proceedings on remand) unredacted originals of any spreadsheets that are produced with information redacted. When producing redacted spreadsheets in other than their native formats, the producing Party shall legibly display all unredacted data including all hidden rows, columns, cells, worksheets, comments, formulas, and metadata, as well as any associated headers or footers.

(ii) The Parties shall identify any databases containing non-duplicative relevant and responsive information. If any such information exists, the Parties shall confer to determine what data is contained in each database, and to agree upon the method and format for producing any such relevant and responsive information. The Parties shall also confer with respect to the most reasonable form of production for any other data contained in any other format that cannot reasonably be produced and understood in single-page TIFF format or where the review of native data by the receiving Party would require the use of a proprietary or non-standard file viewer or media player.

(iii) If after conferring the Parties are unable to resolve a production issue discussed in this Subsection 3(e), the Party seeking production may seek resolution of that issue from the Board.

(f) Media Files. Media files shall be produced in the native media file format in which they were maintained in the ordinary course of business, unless redactions are needed. If redactions are needed, the redacted media file may be produced in either the original native format or a standard media format.

(g) System and Program Files. System and program files defined as such in the National Software Reference Library need not be processed, reviewed, or produced. Additional files may be added to the list of excluded files by mutual agreement of the Parties.

(h) Native File Production. Any file produced in its native format shall be assigned a single Bates number and shall be named with its Bates number and producing Party acronym, and shall be assigned any applicable confidentiality designation, following the format conventions of Subsection 3(a). The load file entry for any file produced in native format shall include a field containing the file's original file name and a link to the produced file. For every file produced in native format there shall be a single TIFF image containing the words "File Produced in Native Format," the name of the file as produced, and the corresponding Bates number and any confidentiality designation for the file. The Parties reserve the right to request production of additional ESI in native format after review of data produced as TIFF images rather than in native format. The Party from whom native files are requested shall not unreasonably deny a request to produce the native files if the other Party has shown a particularized and substantial need for such information. Should the Parties not reach agreement after conferring, the requesting Party may file with the Board a motion to compel the production of such ESI in native format.

(i) Physical Production of Documents. The Parties shall produce all documents in electronic format to the requesting Party on CD, DVD, flash drive, via secure ftp,

or hard drive, as appropriate for the size of the production. Multiple small media (*e.g.*, several CDs) shall not be provided where one larger medium (*e.g.*, a DVD) can reasonably be produced.

(j) Redactions. If the producing Party redacts a document, such redaction shall be clearly marked on the TIFF image of the document. For each redacted document, the producing party shall also either (i) provide a list identifying by Bates number those pages that have been redacted or that contain redactions and the reason(s) for such redactions or (ii) a database field populated with an indicator of redaction and the reason(s) for redaction. A failure to redact information shall be subject to the provisions of Section 10.

(k) De-duplication. A Party is only required to produce a single copy of any responsive document. A Party may de-duplicate ESI across each Party's custodians or sources, but is not required to do so. A Party may only de-duplicate "exact duplicate" documents as identified by MD5 hash and not de-duplicate "near duplicate" documents. Hard copy documents may not be eliminated as duplicates of responsive ESI if the hard copy document contains any distinguishing writings, markings, or other features not evident from an otherwise duplicate version of the document.

4. **Costs**. The costs of discovery, including ESI, shall be borne by each respective Party. However, the Board may, upon application by a Party, consider apportioning the costs of discovery where appropriate and upon a showing of good cause.

5. **Applicable Provisions**. Except as otherwise expressly addressed in this Protocol, each Party's discovery and ESI production obligations shall be subject to the obligations, limitations, and protections contained in the Board's rules governing discovery, 49 C.F.R. Part 1114, Subpart B, and in the Protective Order entered by the Board on December 16, 2013.

6. **Expert Materials**. The Parties agree not to seek discovery of any experts' notes, drafts of expert reports or communications with counsel, unless that expert had involvement with

the factual issues in this proceeding (outside that expert's role in preparing to advise or testify) and such materials are otherwise discoverable. However, counsel may inquire at any expert's deposition about any facts provided to the expert by counsel and upon which the expert is relying in formulating the expert's opinions.

7. **Meet and Confer.** The Parties shall meet and confer to agree upon the timing for beginning and completing the rolling production of relevant and responsive documents and information.

8. **Confidential Documents.** Documents that contain Confidential Information (as defined in the Protective Order) shall be handled according to the procedures set forth in that Order. If a Party converts native files or other ESI designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" under the Protective Order to hard copy form, it shall mark the hard copy with the appropriate designation.

9. **No Privilege Logs, Absent Order.** Except as the Board may provide by specific order in this proceeding, no privilege logs shall be required in this proceeding, and the failure to provide a privilege log shall not be relied upon in any way in support of any claim of waiver of attorney client privilege or of attorney work product protection. The Parties reserve the right, however, to challenge before the Board any claims of privilege or work product protection.

10. **Handling of Privileged Documents.**

(a) Each Party shall make reasonable efforts to identify and withhold from production all information that it claims to be privileged or subject to work product protection. If information subject to a claim of attorney-client privilege or work product protection or otherwise immune from discovery is inadvertently or mistakenly disclosed or produced by a Party (such information hereinafter referred to as "Inadvertently Disclosed Information"), such disclosure or production shall in no way constitute a waiver or forfeiture of, or estoppel as to, any claim of privilege or work product protection or immunity for such information and its subject matter.

(b) If a Party intends to produce a document marked as privileged or as subject to work product protection, the producing Party shall so notify the receiving Party, identifying the document by Bates number, at the time of production. Subparagraphs (c) and (d) below shall not apply to such documents. In the event that a receiving Party discovers that a producing Party has produced a document that is marked as privileged or otherwise bears indicia of attorney-client privilege or work product protection the receiving Party shall promptly cease reading the document and so notify the producing Party through its counsel, specifically identifying such document by its Bates number. The producing Party shall promptly respond to any such notification, stating whether it claims attorney-client privilege or work product protection with respect to the document. If the producing Party states that it makes such a claim, the document shall be treated as Inadvertently Disclosed Information in accordance with subparagraph (e) below. If the producing Party does not state within seven (7) days that it makes such a claim, any such claim with respect to that document shall be deemed waived, and the receiving Party shall be free to retain and resume reading and otherwise use the document, subject to such confidentiality restrictions as may apply.

(c) No receiving Party shall assert that the fact that it has been permitted to review or receive Inadvertently Disclosed Information constitutes a waiver of any right, privilege, or other protection that the producing Party had or may have had. In thereafter seeking production of the Inadvertently Disclosed Information, the receiving Party shall not assert waiver or estoppel as a ground for such production. Nor shall the producing Party use the Inadvertently Disclosed Information as a basis for arguing for disqualification of counsel for the receiving Party.

(d) If the producing Party asserts that Inadvertently Disclosed Information was privileged or otherwise protected from discovery, the receiving Party shall destroy all copies of, and any electronic records, notes or memoranda that reflect the substance of, such Inadvertently Disclosed Information within ten (10) business days of such request, except that portions of backup tapes may instead be destroyed in accordance with standard retention

policies. The receiving Party shall promptly provide a certification of counsel that all such Inadvertently Disclosed Information has been destroyed. If Inadvertently Disclosed Information to be destroyed was not produced to the receiving party in a format permitting destruction of the Inadvertently Disclosed Information without also destroying other documents or data that have been produced, then the producing party shall provide a replacement set for such other documents or data and the receiving party need not destroy the Inadvertently Disclosed Information until that replacement set has been received. The producing Party will maintain copies of all Inadvertently Disclosed Information until the later of (1) 60 days following its request to the receiving Party for the destruction or return of the Inadvertently Disclosed Information, or (2) the resolution by the Board of any and all challenges to the producing Party's assertions of privilege regarding such Inadvertently Disclosed Information that are brought within those 60 days.

11. **Motions.** The Parties agree that all discovery-related motions in this proceeding should be determined on an expedited basis. To that end, unless otherwise agreed to by the Parties or ordered by the Board, replies to discovery-related motions shall be due within seven (7) days of the filing and service of the motion.

Read and approved by:

1/30/14
Date:

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EXHIBIT 3

**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

**NATIONAL RAILROAD PASSENGER CORPORATION'S RESPONSES AND
OBJECTIONS TO FIRST SET OF DISCOVERY REQUESTS OF IC AND GTW**

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**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

NATIONAL RAILROAD PASSENGER CORPORATION'S
FIRST SET OF REQUESTS FOR DISCOVERY

**NATIONAL RAILROAD PASSENGER CORPORATION'S RESPONSES AND
OBJECTIONS TO FIRST SET OF DISCOVERY REQUESTS OF IC AND GTW**

National Railroad Passenger Corporation ("Amtrak"), by and through its attorneys, Nossaman LLP, hereby responds, answers, and objects to the requests for admission, requests for production of documents and interrogatories (collectively, "discovery requests") set forth in the First Set of Discovery Requests of Illinois Central Railroad Company ("IC") and Grand Trunk Western Railroad Company ("GTW") (collectively, "CN"), dated October 31, 2013, as follows.

GENERAL OBJECTIONS

Each definition, instruction, request, and/or interrogatory is subject to and incorporates the following general objections, as applicable. These objections are set forth here to avoid the duplication and repetition of restating them for each interrogatory and request. Some general objections may be referred to in a given answer for purposes of clarity. The failure to list a particular general objection in a given answer should not be construed as a waiver of that objection.

Amtrak reserves the right to supplement or modify these responses and objections as the application proceeding and discovery proceed.

1. Beyond the Scope of the Surface Transportation Board's Rules of Practice:

Amtrak objects to CN's discovery requests and the definitions and instructions contained therein to the extent that they exceed the scope and requirements of the Surface Transportation Board's ("STB" or "Board") Rules of Practice ("STB Rules").

2. Privilege: Amtrak objects to CN's discovery requests to the extent they seek information protected by the attorney-client privilege, the work-product doctrine, the privilege accorded to settlement materials, or any other applicable privilege, immunity, protective order, or court rule. If any protected information or material is produced, such disclosure is not intentional and shall not be deemed a waiver of any privilege or protection. Amtrak further objects to the extent the discovery requests seek documents prepared in anticipation of or during the course of any litigation or administrative proceeding, or which otherwise constitute or disclose the mental impressions, conclusions, opinions, or legal theories of any attorney for Amtrak.

3. Premature: Discovery has only recently begun in this matter, and Amtrak's research and analysis are ongoing. The responses herein are based only on Amtrak's investigation to date and upon information and documents currently available and known to Amtrak. Amtrak objects to CN's discovery requests that are premature and thus not susceptible to answer. Amtrak further objects to the extent CN's discovery requests call for information not yet ascertained or analyzed by Amtrak, or for an opinion, contention, or legal conclusion that Amtrak will not be able to form until the completion of discovery. No response shall be construed as providing a legal conclusion. Amtrak anticipates that further discovery and

investigation will supply additional facts, add meaning to the known facts, and alter existing or establish new factual conclusions and legal contentions. Amtrak therefore provides these responses without prejudice to its right in the future to identify additional documents and information or to alter any contentions or conclusions.

4. Possession, Custody, or Control: Amtrak objects to CN's discovery requests to the extent they seek documents or information beyond those in the immediate and present possession of Amtrak. Amtrak further objects to CN's discovery requests to the extent they seek information that is primarily or exclusively within CN's knowledge or control.

5. Confidential Business Information: To the extent a discovery request requires the disclosure of secret, confidential, and/or proprietary information or any information implicating privacy interests, Amtrak's response shall be subject to a protective order entered by the Board. *See also* CN Instruction, ¶15. Amtrak further objects to the extent a discovery request seeks confidential or proprietary or personal information of a third party, the disclosure of which is not permitted by reason of contract, privacy laws, or other binding legal obligation.

6. Discoverability: Amtrak objects to CN's discovery requests to the extent they seek information not relevant to the issues in this proceeding, not calculated to lead to the discovery of admissible evidence, and neither material nor necessary to this proceeding. To the extent that Amtrak provides information in response to these discovery requests, Amtrak does not concede that the information is admissible in evidence or relevant to issues in this action.

7. Unduly Burdensome: Amtrak objects to CN's discovery requests as oppressive and unduly burdensome to the extent they seek information or documents that are unreasonably cumulative or duplicative; already in CN's possession, custody, or control; equally available to CN as to Amtrak; uniquely known or once controlled by CN; or obtainable with less burden or

expense from another source, such as public sources. Amtrak further objects to the extent that the burden or expense of proposed discovery would be disproportionate to the probative value or relevance of the material sought, and objects to the extent that the Requests for Production request voluminous information which Amtrak can locate and copy only at tremendous expense of money and/or personnel resources expenditure.

8. Reasonable Search: Amtrak objects to CN's discovery requests to the extent they purport to impose on Amtrak a duty to search for information or documents beyond a reasonable search of the locations and files where potentially responsive materials would reasonably be expected to be found. To the extent that electronically stored information is necessary to answer CN's discovery requests, Amtrak will search reasonably accessible computer files for responsive electronically stored information in a manner that balances the obligation to identify relevant information against the avoidance of undue burden or expense. Amtrak objects to the extent a request requires it to search electronically stored information on back up or legacy systems or to the extent that the request calls for the restoration of any systems, programs, or media.

9. Information That Can Be Derived From Documents To Be Produced or Other Forms of Discovery: Amtrak objects to CN's Interrogatories to the extent they are document requests posed in the form of an interrogatory or they seek deposition-type testimony. Amtrak objects to those of CN's Interrogatories that request an interpretation of documents which are readily accessible to CN and which contain terms and conditions that speak for themselves. Amtrak further objects to the Interrogatories to the extent the information requested may be determined by examining, compiling, abstracting, or summarizing business records that will be produced by Amtrak, where the burden of deriving or ascertaining the information is substantially the same for Amtrak as it is for CN.

10. Vague, Ambiguous, or Overbroad: Amtrak additionally objects to CN's discovery requests insofar as they are vague, ambiguous, indefinite, overbroad, or otherwise unclear as to the information sought. Amtrak further objects to the extent the discovery requests use terms that are not defined with sufficient clarity to permit a meaningful response.

11. Reservations Regarding Interrogatories: In responding to the Interrogatories, Amtrak does not concede that the Interrogatories are relevant to the subject matter of this action or are calculated to lead to the discovery of admissible evidence. In addition, Amtrak does not adopt by responding to the Interrogatories any definition of words or phrases or any express or implied characterizations of fact or law contained in the Interrogatories. Amtrak expressly reserves the right to object to further discovery into the subject matter of the Interrogatories and the right to object to the introduction into evidence, in this or any other litigation, of its responses to the Interrogatories. Amtrak further reserves the right, at any time, to supplement its responses should further investigation disclose additional evidence, but it declines any obligation to do so beyond those expressed in the STB Rules.

12. Reservations Regarding Requests for Production: The fact that Amtrak objects to any particular Request for Production should not be construed generally to mean that responsive documents exist. Similarly, the statement that Amtrak will produce responsive documents in response to any particular Request for Production should not be construed to mean that documents of a type or in the category described in the Request for Production in fact exist. Furthermore, the production of any documents that are otherwise subject to an objection is not a waiver of any such objection as to any other document not produced. In addition, Amtrak does not adopt by responding to these Requests for Production any definition of words or phrases or any express or implied characterizations of fact or law contained in the Requests for Production.

Amtrak further reserves the right, at any time, to supplement its responses should further investigation disclose additional responsive documents, but declines any obligation to do so beyond those expressed in the STB Rules or otherwise required by law. The responses below are made without waiver of, and with preservation of:

- a. all objections as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purposes in any further proceeding in this action and any other action;
- b. Amtrak's right to object on any ground and at any time to a demand or request for additional documents or other discovery procedures related to the subject matter of this case; and
- c. Amtrak's right, at any time, to revise, correct, add to or clarify any of the documents produced by Amtrak.

ADDITIONAL GENERAL OBJECTIONS TO CERTAIN INSTRUCTIONS

1. Amtrak objects to Instruction 1 to the extent CN seeks to include Amtrak's "employees, officers, agents, affiliates, subsidiaries, or counsel." This instruction is overbroad, unduly burdensome, and oppressive, and it encompasses information which is neither relevant nor calculated to lead to the discovery of admissible evidence and neither material nor necessary to the investigation. Amtrak further objects to the extent the Instruction seeks information not within the possession, custody, or control of Amtrak or otherwise purports to impose obligations beyond those imposed by the STB Rules or law.

2. Amtrak objects to Instruction 2 as unduly burdensome and oppressive and as purporting to impose obligations beyond those imposed by the STB Rules. Amtrak will answer each Interrogatory to the best of its ability in the manner that is most efficient.

3. Amtrak objects to Instructions 7 and 14 to the extent that they impose requirements beyond those required by law and the STB Rules.

4. Amtrak objects to Instruction 10 as premature to the extent that it requires a statement of inability to answer the Interrogatory fully. It may be necessary to supplement Answers to Interrogatories as information becomes available.

ADDITIONAL GENERAL OBJECTIONS TO CERTAIN DEFINITIONS

1. Amtrak objects to Definition 6 to the extent the definition of “document” is overbroad and unduly burdensome, includes irrelevant information, and purports to impose obligations beyond those imposed by the STB Rules. Amtrak will interpret the term “document” according to the customary meaning of the term and in compliance with applicable law and the STB Rules.

2. Amtrak objects to Definition 13 to the extent the definition of “identify” purports to impose obligations beyond those imposed by the STB Rules and seeks information protected by the attorney-client privilege or work-product doctrine.

3. Amtrak objects to Definition 21 on the ground that the definition of “public benefit” is not limited to subparagraph (i) of 49 U.S.C. § 22701(2)(A) as CN represents in Definition 21, but also includes subparagraph (ii) of 49 U.S.C. § 22701(2)(A) and 49 U.S.C. § 22701(2)(B).

RESPONSES TO SPECIFIC REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit that, between signing the 2011 Operating Agreement and initiating the present proceeding, Amtrak made no requests to CN or its affiliates to use facilities of or have services provided by CN or its affiliates for purposes of regularly scheduled Amtrak service on any rail

lines or segments of rail lines other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Amtrak objects to this Request for Admission on the ground that it is compound. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak denies Request for Admission No. 1.

REQUEST FOR ADMISSION NO. 2

Admit that no element of the Base Compensation under the 2011 Operating Agreement was intended by Amtrak to include compensation to IC or GTW for delays to their freight trains that would not have occurred but for Amtrak's trains.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Amtrak objects to this Request for Admission on the ground that it is compound. Amtrak further objects to this Request for Admission on the ground that the 2011 Operating Agreement is the best evidence of what the parties intended with respect to Base Compensation under the 2011 Operating Agreement and that no other evidence of such intent is relevant, calculated to lead to the discovery of admissible evidence, or admissible. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds as follows: Amtrak admits that no element of the Base Compensation under the 2011 Operating Agreement is specifically allocated to "delays to freight trains," whether or not those delays would have occurred but for Amtrak's trains. Except as expressly admitted herein, Amtrak denies Request for Admission No. 2.

REQUEST FOR ADMISSION NO. 3

Admit that Amtrak has provided no discrete funds or compensation or payments to CN for capital improvements on IC's or GTW's lines since it began operating passenger trains on those lines.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Amtrak objects to this Request for Admission on the grounds that it is compound and vague and ambiguous with respect to use of the terms "discrete funds" and "capital improvements." Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak denies Request for Admission No. 3.

REQUEST FOR ADMISSION NO. 4

Admit that Amtrak has increased the number of trains it operates on IC's and GTW's lines from 8 trains per day on IC and none on GTW in 1971, to 16 trains per day on IC and 8 trains per day on GTW at present.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Amtrak objects to this Request for Admission on the grounds that it is compound. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak admits that the number of Amtrak trains operated on GTW's lines increased from none in 1971, to 8 trains per day at present. Except as expressly admitted herein, Amtrak denies Request for Admission No. 4.

RESPONSES TO SPECIFIC REQUESTS FOR PRODUCTION OF DOCUMENTS

Amtrak states that the vast majority of documents potentially responsive to these requests are maintained on Amtrak's computer systems in electronic format. The process for identifying, gathering, uploading, reviewing and producing responsive documents is underway, but as of the

date of these responses is not completed. Amtrak expects that CN is undertaking similar steps to gather and produce documents responsive to Amtrak's requests for production. Amtrak states that it will produce its documents at a mutually agreeable date and location.

Amtrak incorporates by reference its general objections in response to each of CN's Requests for Production set forth below. Expressly reserving its right to amend and supplement its responses to any and all of these Requests for Production, Amtrak makes the following specific objections and responses while reserving the right to make additional objections as may be deemed appropriate during the course of this proceeding:

REQUEST FOR PRODUCTION NO. 1

If your response to Request for Admission ("RFA") #1 was anything other than an unqualified admission, please produce all documents relating to requests to CN or its affiliates to use facilities of or have services provided by CN or its affiliates for purposes of regularly scheduled Amtrak service on any rail lines or segments of rail lines other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 2

If your response to RFA #2 was anything other than an unqualified admission, please produce all documents relating to Base Compensation under the 2011 Operating Agreement for delays to the freight trains of CN that would not have occurred but for Amtrak's trains.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

Amtrak objects to this Request for Production on the ground that it is overbroad. Amtrak further objects to this Request for Production on the ground that the 2011 Operating Agreement is the best evidence of what the parties intended with respect to Base Compensation under the 2011 Operating Agreement, that the 2011 Operating Agreement is equally available to CN because it is in CN's possession, and that no other evidence of such intent is relevant, calculated to lead to the discovery of admissible evidence, or admissible. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 3

If your response to RFA #3 was anything other than an unqualified admission, please produce all documents relating to any funding by Amtrak or payment by Amtrak to CN for capital improvements on CN's lines since it began operating passenger trains on those lines.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 4

If your response to RFA #4 was anything other than an unqualified admission, please produce all documents relating to the number of trains operated by Amtrak on CN's lines in 1971 and 1972.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 5

Please produce all of Amtrak's Operating Agreements, including amendments, attachments, exhibits, and schedules thereto, with Host Railroads, in force at any time since 1971.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5

Amtrak objects to this Request for Production on the grounds that it is overbroad as to time, unduly burdensome and oppressive. Amtrak further objects to this Request for Production to the extent it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. To the extent this Request for Production seeks operating agreements between Amtrak and CN, Amtrak further objects on the ground that these documents are equally available to, and in the possession, custody or control of, CN. To the extent this Request for Production seeks operating agreements between Amtrak and any Host Railroad other than CN, Amtrak further objects on the ground that the operating agreements contain highly confidential and commercially sensitive information of third parties. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 6

Please produce all agreements, including any amendments, exhibits, attachments or schedules thereto, in force at any time since 2008, relating to any hosting by Amtrak of non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6

Amtrak objects to this Request for Production on the grounds that it is compound and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Amtrak further objects on the ground that this Request for Production seeks agreements that contain highly confidential and commercially sensitive information of third parties. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 7

Please produce all documents relating to compensation received or sought by Amtrak for delays or interference to Amtrak trains due to hosting any non-Amtrak passenger service on rail lines owned, leased, or operated by Amtrak.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7

Amtrak objects to this Request for Production on the ground that is vague and ambiguous. Amtrak further objects to this Request for Production on the grounds that it is compound and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 8

Please produce all documents relating to any consideration of, or communications regarding, actual or potential capital expenditures (whether by Amtrak or by the Host Railroad or by other entities or jointly) or contributions to capital expenditures to improve, facilitate, or reduce costs associated with Amtrak service on any Host Railroad's tracks since 2003.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

Amtrak objects to this Request for Production on the ground that is vague and ambiguous and calls for speculation, including as it relates to "potential capital expenditures." Amtrak further objects to this Request for Production on the grounds that it is compound, overbroad, including as to time, unduly burdensome and oppressive, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent Host Railroad is defined to include railroads other than IC or GTW. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to actual capital expenditures to improve, facilitate or reduce costs associated with Amtrak's service on CN's tracks for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 9

Please produce all documents from 2006 to the present relating to monies earmarked or otherwise available to Amtrak to fund, contribute to, or compensate a Host Railroad for capital expenditures or capacity or infrastructure improvements on the rail lines of any Host Railroad.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, unduly burdensome and oppressive, and vague and ambiguous with respect to use of

the terms “otherwise available” and “earmarked”. Amtrak further objects to this Request for Production on the ground that it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent it seeks information relating to Host Railroads other than IC or GTW. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to any funds allocated to Amtrak for the specific purpose of compensating CN for capital expenditures or capacity or infrastructure improvements on CN’s rail lines for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 10

Please produce all documents from 2006 to the present relating to Amtrak efforts to obtain funds from public or private sources for capital expenditures or capacity or infrastructure improvements on the rail lines of any Host Railroad.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, including as to time, unduly burdensome and oppressive, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent Host Railroad is defined to include railroads other than IC or GTW. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to any Amtrak efforts to obtain funds for capital expenditures or capacity or infrastructure improvements on CN’s rail lines for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 11

Please produce all documents from 2006 to the present relating to any determination or consideration by or within Amtrak of whether and what infrastructure investment would be necessary, appropriate, or desirable to improve the performance of or reduce costs associated with the Relevant Services, and of potential sources of funding therefor.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad, including as to time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents for the time period between 2008 and the present at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 12

Please produce all documents from 2008 to the present relating to Amtrak's analysis or consideration of compensation terms for a future Operating Agreement with CN, including Base Compensation, Performance Payments, and Penalties.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12

Amtrak objects to this Request for Production on the ground that it is overbroad, including with respect to use of the term "compensation terms" and as to time. Amtrak further objects to this Request for Production as it seeks documents neither relevant nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to the renegotiation of Base Compensation, Performance Payments,

and Penalties for the 2011 Operating Agreement at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 13

Please produce all documents from 2008 to the present relating to organizational chart(s) and other documentation reflecting all employees, former employees, agents, or other representatives of Amtrak involved with (a) communications, negotiation, or contracting with, or compensating, Host Railroads, (b) scheduling of Amtrak trains on lines not entirely owned or controlled by Amtrak, (c) operating Amtrak trains on lines not entirely owned or controlled by Amtrak, (d) monitoring, recording, reporting, or evaluating the performance of Amtrak trains on lines not entirely owned or controlled by Amtrak, (e) Amtrak's budget or Amtrak's policies, analyses, reviews or deliberations relating to infrastructure investment on lines not entirely owned or controlled by Amtrak, and (f) Amtrak's relationships with IC and GTW.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, unduly burdensome and oppressive, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding to the extent it requests documents related to railroads or rail lines other than those owned, leased or operated by IC or GTW. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce organizational charts responsive to this request.

REQUEST FOR PRODUCTION NO. 14

Please produce all documents from 2008 to the present relating to communications between and among Amtrak employees, or between and among Amtrak employees and former

employees, relating to the classification or coding of delays to Amtrak trains for HRD or for purposes of any Operating Agreement.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14

Amtrak objects to this Request for Production on the grounds that it is overbroad and potentially seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents related to any Amtrak communications pertaining to the classification or coding of delays to Amtrak trains on CN's lines for HRD or for purposes of the 2011 Operating Agreement at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 15

Please produce all documents from 2008 to the present relating to instructions, training, procedures, manuals, guidelines, or policies, for completing CDRs or for conductors, engineers, or assistant engineers otherwise to record information relating to delays to Amtrak trains for the Relevant Services, including the Service Standards Manual for Train Service and On-Board Service Employees, Amtrak's Delay Data Recording Policy, and like instruction, training, or policy guides or manuals.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15

Amtrak objects to the Request for Production on the grounds that it is compound, overbroad and unduly burdensome. Subject to and without waiving Amtrak's foregoing general objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 16

Please produce all documents relating to the number of passengers loading and unloading on particular trains at each station on the Relevant Services, any analyses or projections of the number of passengers on particular trains of the Relevant Services and between particular segments of the Relevant Services and any analyses of ridership trends or factors affecting ridership for the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16

Amtrak objects to this Request for Production on the grounds that it is compound and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Amtrak further objects to this Request for Production to the extent it seeks documents, analyses or projections that contain highly confidential and commercially sensitive information. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 17

Please produce all documents relating to passenger ticket revenue generated by Amtrak on the Relevant Services, and on each segment thereof, including but not limited to any data, measurements, analyses, estimates, or projections of revenue on particular trains and between particular segments and any analyses of revenue trends or factors affecting revenue.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17

Amtrak objects to this Request for Production on the grounds that it is overbroad and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Amtrak further objects to this Request for Production to the extent

it seeks documents that contain highly confidential and commercially sensitive information.

Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 18

Please produce all documents relating to Amtrak's pricing of passenger tickets on the Relevant Services, including for individual segments, and including any documents relating to the relationship, if any, between ticket price and ridership.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18

Amtrak objects to this Request for Production on the grounds that it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 19

Please produce all documents relating to any federal subsidies or state subsidies sought or received by Amtrak from 2010 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19

Amtrak objects to this Request for Production on the grounds that it is overbroad and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents sufficient to reflect any federal or state funding it has sought since 2010 for Amtrak services operated on CN's rail lines at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 20

Please produce all documents from 2007 to the present relating to analyses, projections, or quantifications of the Public Benefit of Amtrak's services or any aspect thereof, including changes in Public Benefit due to changes in OTP.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20

Amtrak objects to this Request for Production on the grounds that it is overbroad particularly as to time, vague and ambiguous, includes the improper and objectionable term "Public Benefit" as described above, and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not produce any documents in response to this Request for Production.

REQUEST FOR PRODUCTION NO. 21

Please produce all documents from 2008 to the present relating to (a) any consideration or analysis by, within, or for Amtrak of any measures that Amtrak, CN, Amtrak and IC together, or Amtrak and GTW together might take to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services, (b) any measures taken or proposed by Amtrak to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services, and/or (c) any measures taken or proposed by CN, or by CN and Amtrak together, to improve the OTP of, and reduce delays to Amtrak trains for, the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 22

Please produce all documents from 2008 to the present relating to any consideration or analysis by, within, or for Amtrak of any measures that any third party (other than Amtrak or IC or GTW) might take to improve the OTP of, and reduce delays to the Amtrak trains for, the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22

Amtrak objects to this Request for Production on the ground that it is overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 23

Please produce all documents from 2008 to the present relating to (a) any request made by IC or GTW for correction of CDRs, including Amtrak's internal analyses and responses, and (b) Amtrak's procedures, criteria, protocols, instructions, directions, and guidance for handling requests made by Host Railroads for correction of CDRs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad and seeks documents that are equally available to, and in the possession of, CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 24

Please produce all documents from 2008 to the present relating to any consideration or analysis by, within, or for Amtrak of (a) the accuracy, reliability, definition, or significance of

the PRIIA Metrics, (b) the criteria used by Amtrak to identify and categorize delays as FTI or other HRD, and/or (c) whether to revise the aforementioned metrics or criteria.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24

Amtrak objects to this Request for Production on the ground that it is vague and ambiguous. Amtrak further objects to this Request for Production on the grounds that it is compound and overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 25

Please produce all documents from 2008 to the present relating to any disagreements or relief items, whether resolved or not, between Amtrak and IC or GTW, regarding the OTP of, or delays to, or the classification of or attribution of responsibility for delays to, Amtrak trains included in the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25

Amtrak objects to this Request for Production on the grounds that it is compound, overbroad, and seeks documents that are equally available to, and in the possession of, CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 26

Please produce all documents from 2008 to the present relating to the costs or burdens, to Amtrak and to IC and GTW, of administering the contractual system for determining Performance Payments and Penalties for the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26

Amtrak objects to this Request for Production on the ground that it is vague and ambiguous, including as it relates to the term "burdens". Amtrak further objects to this Request for Production on the grounds that it is compound and overbroad, and seeks documents that are equally available to, and in the possession of, CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 27

Please produce all documents from 2008 to the present relating to the costs or burdens, to Amtrak, to FRA, and to CN, of administering the PRIIA Metrics for the Relevant Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27

Amtrak objects to this Request for Production on the ground that it is vague and ambiguous, including as it relates to the term "burdens". Amtrak further objects to this Request for Production on the grounds that it is compound, overbroad as to time, and seeks documents that are equally available to, and/or in the possession, custody or control of, CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 28

Please produce all documents discussing or analyzing changes in the OTP of the Relevant Services since October 1, 2010, and the reasons for or causes of such changes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28

Amtrak objects to this Request for Production on the grounds that it is compound and overbroad. Subject to and without waiving Amtrak's foregoing general and specific objections,

Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 29

Please produce all documents relating to the decision or determination by Amtrak or FRA not to publish PRIIA Metrics for Host Railroad rail segments shorter than 15 miles.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29

Amtrak objects to this Request for Production on the grounds that it seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce any responsive, non-privileged documents at a time and place and in a format mutually agreed upon by Amtrak and CN.

REQUEST FOR PRODUCTION NO. 30

Simultaneous with the filing or submission of written testimony by a witness relied upon by Amtrak in this proceeding, please produce all Workpapers of, all materials relied upon by, and all materials used or consulted in the course of the preparation of such testimony.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30

Amtrak objects to this Request for Production to the extent it seeks documents or information protected by the attorney-client privilege or the work-product doctrine or beyond what is required by the STB Rules to be served on CN with Amtrak filings. Amtrak further objects to this Request for Production on the ground that it is premature and thus not susceptible to answer. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that, consistent with Board regulations, it will serve on CN non-privileged

material relied upon at the time of the filings or submission of written testimony by a witness relied upon by Amtrak in this proceeding.

REQUEST FOR PRODUCTION NO. 31

Please produce all documents identified in response to the Interrogatories below, and all documents used or consulted in the course of the preparation of your response to each of those Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31

Amtrak objects to this Request for Production to the extent it seeks documents or information protected by the attorney-client privilege or the work-product doctrine. Amtrak further objects to this Request for Production on the ground that it is overbroad with respect to its request for “documents used or consulted” in the course of preparing responses to the Interrogatories identified below. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce the responsive, non-privileged documents described in the responses to the Interrogatories below at a time and place and in a format mutually agreed upon by Amtrak and CN.

SPECIFIC ANSWERS AND OBJECTIONS TO INTERROGATORIES

Amtrak incorporates by reference its general objections in response to each of CN’s interrogatories set forth below. To the extent an interrogatory permissibly calls for the production of documents, CN is directed to the documents which will be produced in response to CN’s Requests for Production at a mutually agreeable time and place. Amtrak states that the following responses are true and complete to the best of its knowledge at this time, while reserving the right to identify additional facts or documents, amend or supplement any answer, or raise additional objections during the course of this proceeding.

INTERROGATORY NO. 1:

Identify each person who supplied information for, who was consulted in connection with, or who participated in preparation of the answers to these interrogatories. As to each such person, identify the answer(s) for (or in which) he or she was consulted, supplied information, or participated.

RESPONSE TO INTERROGATORY 1:

Subject to and without waiving Amtrak's foregoing general objections, Amtrak responds as follows:

William Auve, Jr.
Assistant Controller Capital & Costing
Interrogatory No. 19

Rory Beelek
Senior Director Grant Administration
Interrogatory No. 19

James Blair
Senior Director Host Railroad Contract Management
Interrogatory No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

Jane Brophy
Senior Officer, Host Railroads
Interrogatory No. 19

Robin Buonopane
Director Finance Accounts Payable
Interrogatory No. 19

Kelly Cunningham
Senior Officer, Host Railroad Development
Interrogatory No. 13, 14, 15, 18, 21

Charles Farmer, III
Assistant Vice President Financial Planning
Interrogatory No. 19

Michael Franke
Chief, State Government Contracts
Interrogatory No. 11, 12, 19

George Genge
Manager Operations Support
Interrogatory No. 13, 18

Ronald Gonzalez
Operations Supervisor
Interrogatory No. 13, 23

Bruce Hillblom
Senior Director State Partnerships
Interrogatory No. 11, 12

Rich Hyer
Senior Officer, Host Railroad Invoice Administration
Interrogatory No. 18

Thomas Kirk
Deputy General Manager Southeast
Interrogatory No. 14, 16

James Klaiber
Principal Host Railroad Management
Interrogatory No. 11, 12

David Klouda
Division Engineer Central
Interrogatory No. 19

Don Kushto
Principal Host Railroad Development
Interrogatory No. 19

Jason Maga
Director Host Railroads
Interrogatory No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23

Jacklyn Meredith-Batchelor
Associate General Counsel – Corporate Affairs
Interrogatory No. 11

Robert Ripperger
Principal Officer, Technical Writing & Comm Sup
Interrogatory No. 20

Richard Salmon, Jr.
Senior Director Scheduling

Moe Savoy
Deputy General Manager Central
Interrogatory No. 13, 14, 16

Benjamin Sheets
Assistant Superintendent Rd Ops
Interrogatory No. 13, 14

Christine Suchy
Principal Officer Capital Investment Program Management
Interrogatory No. 19

James Sundman
Senior Director Rider Analysis
Interrogatory No. 18

Paul Vilter
Assistant Vice President Host Railroads
Interrogatory No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23

Albert Walton, Jr.
Director Contract Operations
Interrogatory No. 13, 14, 15, 16, 21, 23

John Wojciechowski
Director Customer Relations
Interrogatory No. 17

INTERROGATORY NO. 2:

Identify each person who has, claims to have, or is likely to have knowledge, information, or documents relevant to the proceeding. Describe with particularity the knowledge, information, or documents that Amtrak believes each such person possesses.

RESPONSE TO INTERROGATORY 2:

Amtrak objects to this Interrogatory on the grounds that is overbroad, unduly burdensome and oppressive and calls for speculation. Amtrak further objects to this Interrogatory to the extent it seeks information that is redundant and duplicative of other Interrogatories. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak states that, based on its investigation up to the present time, persons who are likely to have knowledge, information or documents relevant to this proceeding other than those listed in response to Interrogatory No. 1 are:

William Sheridan
Chief, Market Research & Analysis

Nancy Miller
Director Finance

Jason Harrell
Assistant Superintendent Rd Ops

Morgan Connell
Program Analyst

Dick Salmon
Senior Director, Scheduling

Barbara Bruce
Director Scheduling

Ronald Blaine
ARRA Program Director Stations & Facilities Construction

Timothy Berg
Accounting Director, Host Railroads

Joyce Dolan
Manager, Records Management

INTERROGATORY NO. 3:

Identify all witnesses Amtrak may rely upon or refer to in the course of this proceeding and describe with particularity the subject matter and the substance of each witness's anticipated testimony.

RESPONSE TO INTERROGATORY 3:

Amtrak objects to this Interrogatory on the ground that is overbroad and premature. Amtrak further objects to this Interrogatory to the extent it seeks information that is redundant and duplicative of other Interrogatories. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not provide any answer to this Interrogatory at this time.

INTERROGATORY NO. 4:

Describe with particularity all of Amtrak's records management and retention policies affecting documents and information potentially relevant to this proceeding.

RESPONSE TO INTERROGATORY 4:

Subject to and without waiving Amtrak's foregoing general objections, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY NO. 5:

Identify and describe with particularity all Amtrak record management systems that may contain any documents or information potentially relevant to this proceeding.

RESPONSE TO INTERROGATORY 5:

Amtrak objects to this Interrogatory on the ground that it is overbroad, vague and ambiguous with respect to use of the terms “record management systems” and “information potentially relevant to this proceeding”, and redundant and duplicative of other Interrogatories. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak states that it has identified the following databases and document management systems that may contain documents relevant to the issues in dispute:

ARROW

On-Time Performance Monitoring System

Microsoft Outlook

FileSite

Documentum

SalesForce

Enterprise Data Warehouse

Customer Service Performance Metrics Integrator (CSPMI)

Remedy database

INTERROGATORY NO. 6:

Identify all current or former employees or other representatives of Amtrak who created, edited, authorized, or may presently be in possession of any documents related to this proceeding. As to each employee or other representative, identify the time period during which he or she participated, the role he or she served, the functions he or she performed, and the records he or she possesses or is likely to possess.

RESPONSE TO INTERROGATORY 6:

Amtrak objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, including to the extent that it would require the identification of individuals whose participation in "this proceeding" might have been negligible, immaterial or of no probative value.. Amtrak also objects to this Interrogatory on the grounds that it is vague and calls for speculation regarding "any documents related to this proceeding." Amtrak further objects to this Interrogatory to the extent it seeks information that is redundant and duplicative of other Interrogatories and which can be ascertained by examining the face of the documents that will be produced to CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak incorporates by reference its Responses to Interrogatory Nos. 1 and 2 above. Additionally, Amtrak will produce business records in response to CN's requests for discovery from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11. To the extent that specific document(s) are produced for which this information is relevant to this proceeding and not otherwise ascertainable from the documents produced, Amtrak will consider specific requests by CN for the identity of the author(s) of that document.

INTERROGATORY NO. 7:

State and describe with particularity your position with respect to the first issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013, including what, if any role, HRD should play in determining compensation, and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 7:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY NO. 8:

State and describe with particularity your position with respect to the second issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013, including what, if any role, HRD should play in determining Penalties, and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 8:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY NO. 9:

State and describe with particularity your position with respect to the third issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013 and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 9:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general

and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY NO. 10:

State and describe with particularity your position with respect to the fourth issue listed in your Statement Identifying Disputed Issues, filed in this proceeding on October 24, 2013 and identify all facts and documents that you contend support that position.

RESPONSE TO INTERROGATORY 10:

Amtrak objects to this Interrogatory on the ground that it is premature and thus not susceptible to answer at this time. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak responds that it will not be providing an answer at this time. Amtrak's Opening Submission will provide Amtrak's argument and support in connection with this issue.

INTERROGATORY 11:

Identify and describe with particularity all efforts you have made from May 1, 2011, to the present to make an agreement with CN or its affiliates to use facilities of, and have services provided by, CN or its affiliates, on any rail lines, or segments of rail lines, other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO INTERROGATORY 11:

Amtrak objects to this Interrogatory on the ground that it makes requests previously made and responded to. Subject to and without waiving Amtrak's foregoing general and specific objections. Amtrak responds as follows: Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 12:

Identify and describe with particularity all passenger rail services you propose to operate, and all your plans relating to such proposals, that would use facilities of, and have services provided by, CN or its affiliates, on any rail lines, or segments of rail lines, other than the Rail Lines as defined in the 2011 Operating Agreement.

RESPONSE TO INTERROGATORY 12:

Amtrak objects to this Interrogatory on the ground that it makes requests previously made and responded to. Amtrak also objects to this Interrogatory on the grounds that it is overbroad and vague, and calls for speculation. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 13:

Describe with particularity Amtrak's policies, procedures, and practices relating to (a) communications with dispatchers and other employees of CN, (b) the recording, coding, measurement, reporting, and description of delays to Amtrak trains as HRD or for purposes of any Operating Agreement, and (c) the recording, coding, measurement, and reporting of OTP.

RESPONSE TO INTERROGATORY 13:

Amtrak objects to this Interrogatory on the grounds that it is compound, vague, ambiguous, and overbroad, including with respect to use of the term "practices", and seeks documents neither relevant to nor calculated to lead to the discovery of admissible evidence in this proceeding with respect to its request for information relating to "any Operating Agreement" rather than the 2011 Operating Agreement. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce the relevant business records from which

this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 14:

Describe with particularity how the policies, procedures, and practices described in response to Interrogatory No. 13 above are communicated to Amtrak’s conductors, assistant conductors, engineers, and second engineers.

RESPONSE TO INTERROGATORY 14:

Amtrak objects to this Interrogatory on the grounds that it is vague, ambiguous, and overbroad, including with respect to use of the term “practices.” Subject to and without waiving Amtrak’s foregoing general and specific objections, and with the limitation noted in Interrogatory No. 13 above, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 15:

Identify all changes to any policies, practices, or procedures described in response to Interrogatory No. 13 and describe with particularity the nature of each such change.

RESPONSE TO INTERROGATORY 15:

Amtrak objects to this Interrogatory on the grounds that it is vague, ambiguous and overbroad, including with respect to use of the term “practices”. Subject to and without waiving Amtrak’s foregoing general and specific objections, and with the limitation noted in Interrogatory No. 13 above, Amtrak will produce the relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 16:

State whether any Amtrak employees are or have been evaluated, compensated, supervised, or disciplined based in whole or part on information they recorded or failed to record in CDRs, and if so, identify the basis for this statement.

RESPONSE TO INTERROGATORY 16:

Amtrak objects to this Interrogatory on the grounds that it is compound and vague and ambiguous with respect to use of the term “supervised.” Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak responds as follows: Amtrak conductors are tested, and receive counseling and/or coaching by their supervisors based on those tests and other observations, with respect to completion of CDRs in accordance with the policies and procedures identified in the Response to Interrogatory No. 14 above. Conductors are not compensated or disciplined based in whole or in part on the information they recorded or failed to record in CDRs.

INTERROGATORY 17:

Identify all documents related to complaints, grievances, Ombudsman files, whistleblower disclosures, reports, and any other documents including criticism or an assessment regarding (a) Amtrak’s operation of the Relevant Services, or (b) Amtrak’s promulgation or implementation of policies, practices, or procedures for the monitoring, recording, coding, reporting, measurement, or description of delays to Amtrak trains.

RESPONSE TO INTERROGATORY 17:

Amtrak objects to this Interrogatory on the ground that it is compound. Amtrak further objects to this Interrogatory on the grounds that it is vague, ambiguous and overbroad, including with respect to use of the term “assessment.” Subject to and without waiving Amtrak’s foregoing general and specific objections, for (a) and (b) Amtrak will produce the relevant

business records in connection with the Relevant Services from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 18:

Identify all sources and stores of data maintained by Amtrak relating to the performance of the Relevant Services, including but not limited to data regarding delays to Amtrak trains and OTP. For each data set, describe what it contains, how it was collected, when it was collected, and who collected it.

RESPONSE TO INTERROGATORY 18:

Amtrak objects to this Interrogatory on the grounds that it is compound and vague and ambiguous with respect to use of the terms “stores” and “performance.” Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak responds as follows: The primary sources and stores of data maintained by Amtrak relating to the operational performance of the Relevant Services is the OTP Monitoring System. At the end of each conductor’s trip, the conductor faxes a CDR to Amtrak’s Consolidated National Operations Center in Wilmington (CNOC), DE for entry into the OTP Monitoring System. Unless otherwise arranged, the conductor also faxes the CDR to the host railroad(s) for review. CNOC personnel have up to seven calendar days from a train origin date to finalize the CDR information in the OTP Monitoring System. During this seven-day window, any discrepancies found with the CDR data can be corrected in accordance with Amtrak’s Delay Data Recording Policy.

Amtrak train arrival and/or departure times at stations or at a non-station reporting point (OS) are kept for seven days in Amtrak’s transaction based mainframe system called ARROW. The majority of the train OS times are transmitted electronically into ARROW through the

National Train Activity Monitoring System (NTAMS) and Electronic Data Interchange (EDI) messages. For locomotives equipped with a Train Communication Data (TCD) unit, the TCD unit communicates with the Global Positioning Satellite (GPS) system to determine the train's location to process and transmit arrival and departure times to NTAMS. In the event the electronic OS times are unavailable or in error, manual adjustment is made to the OS times in ARROW. Station agents with the proper authority enter the observed station arrival or departure times manually into ARROW or, in the event there is not a station agent, the station caretaker or conductor notifies the appropriate off-site Amtrak agent of the actual arrival or departure time. The conductor records station arrival, station departure and passing point times on the CDR. If there is no electronic data recorded in ARROW for a reporting point, CNOC personnel will enter the conductor's recorded times into ARROW either after phone communication with the conductor (while on the train) or when the CDR is received by CNOC. OS reporting times can be corrected by authorized station agents or CNOC personnel if found to be in error.

Amtrak will produce the relevant business records from which this and additional responsive information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 19:

Identify and describe with particularity all sources of funding available or potentially available to Amtrak for infrastructure investment on Relevant Services or on lines traversed by Relevant Services.

RESPONSE TO INTERROGATORY 19:

Amtrak objects to this Interrogatory on the grounds that it calls for speculation with respect to funding "potentially available." Subject to and without waiving Amtrak's foregoing

general objections, Amtrak responds as follows: There is no source of funding available to Amtrak specifically for infrastructure investment on track or facilities owned by CN.

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) established a new “Intercity Rail Policy” under Title III of the Act. Sections 301, 302, and 501 created a new framework for states and inter-state compacts to apply for federal funding for high speed and intercity passenger rail improvement projects (known as the HSIPR program). The program was funded initially through \$8 billion under the American Recovery and Reinvestment Act (Pub.L. 111-5) (ARRA), and then under the FY10 Appropriations Act for an additional \$2.4 billion.

Amtrak, by itself, was an eligible applicant only under Section 501, the “High-Speed Rail Corridor Program”. Other than for projects on Amtrak-owned infrastructure, Amtrak has not applied for any funding specifically for infrastructure investment on track or facilities owned by CN under this program. Amtrak has actively supported states in their efforts to obtain funding under the HSIPR grant program, primarily by providing Letters of Support (LOSs) and Agreements in Principle (AIPs) that were submitted by (some) states as part of their application process. Part of the application and approval process required host railroads whose infrastructure would benefit from the expenditure of applied-for funds to enter into agreements with the relevant state and/or Amtrak ensuring the realization of the anticipated benefits to intercity passenger rail service, including commitment to an enforceable standard of on-time performance of passenger trains.

With respect to freight infrastructure within the State of Illinois, Amtrak is a member of CREATE, a partnership between the U.S. Department of Transportation, the State of Illinois, City of Chicago, Metra, Amtrak, and freight railroads (BNSF, CN, Canadian Pacific, CSX, Norfolk Southern, and Union Pacific) formed to invest in capital improvements intended to

increase the efficiency of the region's rail infrastructure and thereby reduce delays to passenger and freight traffic. Both ARRA and TIGER grants have been awarded to CREATE for various projects such as the Englewood flyover, intended to reduce conflicts between Amtrak, Metra, and Norfolk Southern trains. In 2010 Amtrak contributed \$2 million out of its general capital funds for certain CREATE projects, including Project P-6, which involves construction of a double-tracked bridge to carry two CN main tracks over or under the Indiana Harbor Belt, and associated signal work.

INTERROGATORY 20:

Identify and describe with particularity all documents relating to communications between Amtrak (including its employees, representatives or agents) and Government agencies, Members of Congress, congressional committees, state governors, and their staffs regarding the Relevant Services or Amtrak's funding, funding needs, or funding priorities. For each such document, identify all employees, representatives, former employees, and former representatives of Amtrak who participated in or contributed to it or who may have knowledge or documents relating to it.

RESPONSE TO INTERROGATORY 20:

Amtrak objects to this Interrogatory on the grounds that it is compound, overbroad, unduly burdensome and oppressive. Amtrak further objects to this Interrogatory on the ground that it seeks information that is equally available to CN. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak will produce relevant business records relating to communications between Amtrak and Government agencies, Members of Congress, Congressional Committees, State Governors, and their staffs regarding the Relevant

Services from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 21:

Describe the processes, procedures, and criteria employed by Amtrak to determine (a) how an individual delay to an Amtrak train or a type of delay to an Amtrak train should be categorized for purposes of the PRIIA Metrics, (b) whether a CDR should be corrected, and (c) how an individual delay to an Amtrak train or type of delay to an Amtrak train or cause of failure of OTP should be treated for purposes of Performance Payments and Penalties under the CN Operating Agreement.

RESPONSE TO INTERROGATORY 21:

Amtrak objects to this Interrogatory on the grounds that it is compound and vague and ambiguous, including with respect to use of the terms “processes”, “corrected” and “criteria.” Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak will produce relevant business records from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11.

INTERROGATORY 22:

Identify by name, title, and corporate affiliation all persons, including Amtrak employees, consultants, contractors, and any non-Amtrak employees, who authored, contributed to, or were otherwise responsible, in whole or in part, for any of the documents produced in response to the foregoing Document Requests, and identify, for each person, the document(s) for which they were responsible.

RESPONSE TO INTERROGATORY 22:

Amtrak objects to this Interrogatory on the ground that the phrase “all persons, including Amtrak employees, consultants, and any non-Amtrak employees, who authored, contributed to,

or were otherwise responsible, in whole or in part” is overbroad, vague and ambiguous because it may be construed to require the identification of individuals whose participation in the relevant matters might have been negligible, immaterial, or of no probative value. Amtrak further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak responds that CN should review the relevant business records to be produced and from which this information can be derived or ascertained by CN as easily as it can by Amtrak in accordance with 49 C.F.R. § 1114.26(b) and Instruction 11. To the extent that specific document(s) are produced for which this information is relevant to this proceeding and not otherwise ascertainable from the documents produced, Amtrak will consider specific requests by CN for the identity of the author(s) of that document.

INTERROGATORY 23:

Identify by name and title the persons who review or consider, or who have reviewed or considered (a) potential changes to or corrections to CDR data, or (b) relief items related to billing, for purposes of the 2011 Operating Agreement (including insofar as the 2011 Operating Agreement or its terms have remained in effect by order of the STB).

RESPONSE TO INTERROGATORY 23:

Amtrak objects to this Interrogatory on the grounds that it is compound, vague and ambiguous with respect to use of the term “relief items,” and calls for speculation to the extent it seeks the identities of persons who might have considered “potential changes or corrections” to CDR data. Subject to and without waiving Amtrak’s foregoing general and specific objections, Amtrak states that the Amtrak employees who primarily review or consider potential changes to

or corrections to CDR data, or relief items related to billing, for purposes of the 2011 Operating Agreement, are:

Jane Brophy
Senior Officer, Host Railroads

James Blair
Senior Director Host Railroad Contract Management

Ronald Gonzalez
Operations Supervisor

Rich Hyer
Senior Officer, Host Railroad Invoice Administration

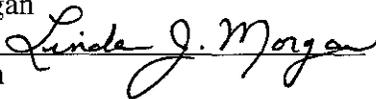
Jason Maga
Director Host Railroads

Paul Vilter
Assistant Vice President Host Railroads

Albert Walton, Jr.
Director Contract Operations

Respectfully submitted,

/s/Linda J. Morgan



Linda J. Morgan
Kevin M. Sheys
Paul L. Knight
David J. Farkas
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
(202) 887-1400

Counsel for National Railroad Passenger Corporation

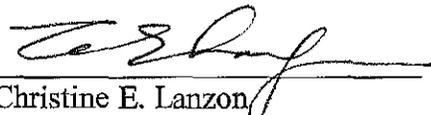
/s/William H. Herrmann

William H. Herrmann
Managing Deputy General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

Dated: November 19, 2013

VERIFICATION OF CORPORATE EMPLOYEE

On behalf of the National Railroad Passenger Corporation ("Amtrak"), I have read the foregoing responses to First Set of Discovery Requests of IC and GTW. The responses were prepared with the assistance of Amtrak employees and with the assistance and advice of counsel. The answers are based on Amtrak's review of the records and information currently available. I reserve the right to make changes in or additions to any of these responses if at any time it appears that errors or omissions have been made or if more accurate or complete information becomes available. Subject to these limitations and reservations, these responses are true to the best of my present knowledge, information, and belief.


Christine E. Lanzon
Senior Associate General Counsel
National Railroad Passenger Corporation

Sworn to before me this
19th day of November, 2013


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I certify that I have this 19th day of November, 2013, served the foregoing Responses and Objections to First Set of Discovery Requests of IC and GTW by sending a copy by e-mail, as indicated below, to the following:

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

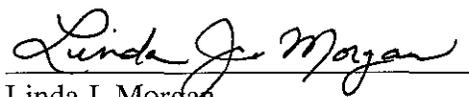

Linda J. Morgan
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
(202) 887-1400

EXHIBIT 4

HARKINS CUNNINGHAM LLP

Attorneys at Law

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Facsimile 202.973.7610

December 27, 2013

Linda J. Morgan, Esquire
Nossaman LLP
1666 K Street, N.W., Suite 500
Washington, D.C. 20006

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

Dear Linda:

At our meeting last week, you suggested that one possible approach to CN's Request for Production No. 5 ("RFP 5") (which seeks "all of Amtrak's Operating Agreements, including amendments, attachments, exhibits, and schedules thereto, with Host Railroads, in force at any time since 1971") might be for CN to indicate which portions of the Operating Agreements ("OAs") CN particularly needs for its case, and for Amtrak to produce those portions rather than the entire agreements.

CN is eager to reach compromise on discovery issues. Accordingly, we have offered to limit RFP 5 to agreements (including amendments, etc.) currently in effect if Amtrak produces OAs voluntarily. Moreover, as we indicated last week, we have no objection to reasonable confidentiality designations. Alternatively, if Amtrak identifies particular contract provisions that it seeks to redact, and does so promptly enough to avoid causing a significant delay in case a motion to compel later becomes necessary, CN would be willing to have its outside counsel review the OAs and Amtrak's proposed redactions to determine whether agreement can be reached.

In the particular context of RFP 5, however, we have concluded after careful review that, for several reasons, it is not practicable for CN to narrow its request to an identifiable subset of OA provisions. First, as we explained last week, we consider other OAs between Amtrak and host railroads to be potentially some of the most important evidence in the case. The object of this proceeding is to determine what terms should reasonably be included in the OA between Amtrak and CN. The terms of voluntary agreements between Amtrak and host railroads similarly situated to CN are highly probative of what would be reasonable here, as the Board (or the ICC) has recognized in multiple decisions in section 402 cases in which it has made reference to terms agreed with non-party host railroads.

Linda J. Morgan, Esquire

December 27, 2013

Page 2

Second, we have, unfortunately, been unable to limit the issues between the parties to a narrow subset of contractual terms. According to the statements of the issues, relevant matters include, at a minimum, issues related to incentive payments and penalties, including their formulation and administration, delay costs and Amtrak responsibility for infrastructure improvements, expansion of the geographic scope of the agreement, and the term and termination of the agreement. Notably, these issues include the provisions whose disclosure typically raises the most sensitivity, those relating to compensation. Moreover, contractual provisions tend to be interdependent, both because of express cross-references and use of defined terms and because a concession on one point may be exchanged in negotiations for a concession on another point. Accordingly, while there may be a narrow penumbra of OA provisions that are not important, the core of the OAs sought by RFP 5 will remain potentially highly relevant unless and until the issues are significantly narrowed.

Third, as you noted, OAs may vary. Insofar as there may be specific aspects of provisions, or provisions addressing unique issues, that might be candidates for exclusion from production, Amtrak may be able to identify such provisions, but, without reviewing the agreements (or without, at least, an opportunity for its outside attorneys to do so), CN cannot do so.

Finally, while we are offering to consider proposed redactions by means of an outside-attorneys-only review in order resolve this dispute, we do not in any way concede that redaction is appropriate here. Amtrak's executed OAs with independent host railroads present no privilege or work product issue, and CN's experience with OAs suggests that they are not even designated as confidential by the parties. Insofar as there are valid claims of confidentiality, they are properly addressed under the protective order recently issued by the Board, not by redactions that are unnecessary in light of that order and that would likely be ineffective to address confidentiality concerns, insofar as the financially sensitive core of the OAs would need to be produced given its potential importance to the issues in this proceeding.

Accordingly, CN cannot narrow RFP 5 to particular contractual provisions, but, as stated above, in the context of a compromise, CN would be willing (1) to limit RFP 5 to OAs (including amendments, etc.) currently in effect; (2) to accord reasonable confidential treatment to OAs pursuant to the protective order; and/or (3) if Amtrak proposes redactions, to review the whole OAs on an outside-attorneys-only basis to determine whether the proposed redactions are acceptable.¹

¹ You also stated in our meeting last week that Amtrak would not voluntarily produce documents in response to RFP 6, which seeks agreements relating to Amtrak acting as a host carrier for other passenger rail services. If the parties are able to agree to a compromise regarding RFP 5,

HARKINS CUNNINGHAM LLP

Attorneys at Law

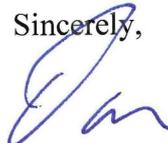
Linda J. Morgan, Esquire

December 27, 2013

Page 3

Absent such a compromise, CN expects to file a motion to compel. In order to avoid unnecessary delay, please advise us promptly of Amtrak's position.

Sincerely,



David A. Hirsh

cc: Theodore K. Kalick, Esquire

as suggested herein, CN would be willing to consider a similar compromise with respect to CN's RFP 6.

EXHIBIT 5



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Refer To File 500417-0001

January 31, 2014

David A. Hirsh, Esq.
Harkins Cunningham LLP
1700 K Street, NW
Suite 400
Washington, DC 20006

Dear David,

This letter responds to your letter of December 27, 2013, in which you discuss CN's Request for Production No. 5 (RFP5), which seeks production of Amtrak Operating Agreements with Host Railroads ("OAs"). In its response to RFP5, Amtrak objected to production on several grounds, including that these agreements contain highly confidential and commercially sensitive information of third parties, and indicated that it would not produce any documents in response to this request.

In your letter, you offered to limit RFP5 to agreements currently in effect if Amtrak produces OAs voluntarily. You also indicated that you have no objection to reasonable confidentiality designations. You further indicated that if Amtrak were to identify particular contract provisions that it seeks to redact, CN would be willing to have its outside counsel review the OAs and Amtrak's proposed redactions to determine whether agreement can be reached regarding the appropriateness of the redactions.

Amtrak remains steadfast in its strong objections to producing these agreements. These agreements are privately negotiated and contain proprietary and commercially sensitive material involving entities that are direct competitors to CN, and thus should be accorded the utmost protection. That said, and without waiving Amtrak's objections or any arguments based on these objections, in the spirit of attempting to reach a compromise on this matter, Amtrak proposes the following:

1. Amtrak is willing to produce redacted versions of the OAs with the other Class I Host Railroads that are in effect today, including amendments, attachments, exhibits and schedules thereto.
2. These redacted versions will reflect selective redactions that Amtrak believes are appropriate based on the proprietary and commercially sensitive nature of the redacted material, and will be produced with highly confidential designations to reflect the commercial sensitivity of the non-redacted text.

3. If upon review, CN's outside counsel has a concern regarding the redactions, outside counsel can raise those concerns with Amtrak's outside counsel.

CN has indicated that it views production of OAs as a key discovery issue in this case. There are discovery issues that Amtrak considers of similar importance. One such issue concerns documents pertaining to CN dispatching practices.

In CN's responses to Amtrak's RFP 13-18, CN objects to producing any documents relating to dispatching on rail lines upon which Amtrak does not conduct regularly scheduled passenger service or documents that relate to dispatching policies, practices, procedures, decisions or conduct that CN states do not involve and would not affect Amtrak trains. Amtrak believes that documents relating to CN's dispatching activities concerning the handling of its own trains or involving other users of its track and facilities can provide important information regarding how dispatching decisions are made concerning Amtrak trains. Thus, dispatching that may not directly involve Amtrak trains still can have an ultimate effect on the handling of Amtrak trains. By this letter, Amtrak is proposing as part of its offer to produce redacted versions of the OAs specified above that CN agree, in accordance with the time period for selection of responsive documents set forth in the Joint Discovery Protocol, to provide the dispatching documents requested by Amtrak without the limitation suggested by CN.

Resolution of these two issues is important to advancing the discovery process. I look forward to hearing from you on Amtrak's proposal.

Sincerely,



Linda J. Morgan
of Nossaman LLP

EXHIBIT 6

HARKINS CUNNINGHAM LLP

Attorneys at Law

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Telephone 202.973.7600
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February 3, 2014

Linda J. Morgan, Esquire
Nossaman LLP
1666 K Street, N.W., Suite 500
Washington, D.C. 20006

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

Dear Linda:

This responds to your letter of January 31, 2014, regarding CN's Request for Production No. 5 ("RFP 5"), which request seeks Amtrak's operating agreements with host railroads. We are disappointed that Amtrak took five weeks to respond to our letter of December 27, 2013, in which we proposed a compromise regarding RFP 5, and we are also disappointed with the substance of Amtrak's long-delayed response.

First, it is unreasonable to tie the already excessively delayed resolution of CN's RFP 5 to Amtrak's new-found concerns with CN's responses to Amtrak's Request For Production Nos. 13-18 ("RFP 13-18"). We have made clear from the outset of our meet-and-confer discussions in mid-December that the operating agreements called for in Request No. 5 are critical documents. Moreover, because they represent a limited, well-defined set of documents, their production does not raise the same collection issues as many of the other requests for production we have served on each other (*e.g.*, burden, custodians, search terms, etc.). Moreover, the only serious objection raised by Amtrak – confidentiality – is one properly addressed under the Board's protective order.

By contrast, you had not previously indicated a concern with CN's proposed production in response to Amtrak's RFP 13-18, despite the fact that in a separate letter, dated December 27, 2013, I memorialized our December meet-and-confer discussions and asked you to confirm your agreement with the letter and to "let us know if you believe we have misstated or omitted anything of significance." We are willing to discuss those responses with Amtrak, just as we anticipate we may need to discuss other production issues with one another as we move ahead with discovery pursuant to our recently executed Joint Discovery Protocol. But we are not willing to further delay resolution of Amtrak's response to RFP 5 while that process plays out, particularly given Amtrak's history of discovery delays in this proceeding.

HARKINS CUNNINGHAM LLP

Attorneys at Law

Linda J. Morgan, Esquire

February 3, 2014

Page 2

Second, with respect to the particulars of your counter-offer regarding production in response to RFP 5, there are several aspects that would have to be clarified or modified in order to be acceptable as part of a proposed compromise settlement of this issue.

1. CN would agree, as part of a compromise, that Amtrak may propose to redact clearly irrelevant portions, if any, of an operating agreement, but only, as stated in my December 27 Letter, if CN's outside counsel is permitted to contest Amtrak's proposed redactions after a review of the "whole" (*i.e.*, the unredacted) operating agreement. It would be too uncertain and too unwieldy to expect outside counsel to approve redactions without being able to see the redacted material itself, and see it in context.
2. If outside counsel contests a redaction, and the parties are unable to agree on the contested redaction, our agreement would be without prejudice to CN seeking relief from the Board in whatever form CN chooses.
3. With respect to unredacted portions of the operating agreements, like all other document production, Amtrak, as the producing party, would be entitled in the first instance to designate in good faith various portions as Confidential or Highly Confidential. See Protective Order ¶¶ 2-3. Moreover, as part of a compromise agreement, CN would be willing to waive its right to challenge good faith designations of Amtrak's operating agreements as "Confidential." CN cannot agree in advance, however, that all unredacted portions of Amtrak's operating agreements may properly be categorized as Highly Confidential under the protective order or to waive its right to challenge such Highly Confidential designations (*see id.* ¶ 8).

We see these as required elements of any workable agreement regarding Amtrak's production in response to RFP 5.

Finally, we note that you have not responded to our suggestion, contained in my December 27 letter, that any compromise reached resolving the question of production responsive to RFP 5 would be applicable to CN Request for Production No. RFP 6 ("RFP 6") (seeking agreements relating to Amtrak's acting as a host carrier for non-Amtrak passenger services). Accordingly, unless we hear further, we will assume we are unable to reach agreement regarding RFP 6, and that it is ripe for a motion to compel.

HARKINS CUNNINGHAM LLP

Attorneys at Law

Linda J. Morgan, Esquire

February 3, 2014

Page 3

We have proposed a reasonable process for the production of the critical agreements sought by our RFPs 5 and 6. Please let me know by Wednesday morning if our proposal is acceptable to Amtrak or we will understand that it is not.

Sincerely,



David A. Hirsh

cc: Theodore K. Kalick, Esquire

EXHIBIT 7

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32467

NATIONAL RAILROAD PASSENGER CORPORATION AND
CONSOLIDATED RAIL CORPORATION --
APPLICATION UNDER SECTION 402(a) OF THE
RAIL PASSENGER SERVICE ACT
FOR AN ORDER FIXING JUST COMPENSATION

ANTRAK'S RESPONSE TO CONRAIL'S MODIFICATIONS
TO PETITION TO SET THE BASIS FOR
ASSESSING MINIMUM AMOUNT DUE FROM ANTRAK

On February 13, 1995, Conrail submitted a response ("Conrail's Response") to Antrak's motion to file surrebuttal testimony. In addition to opposing Antrak's motion,¹ Conrail used its Response as an opportunity to submit additional argument (Conrail's Response, pp. 13-15) on a completely unrelated motion -- Conrail's October 4, 1994 Petition to Set the Basis for Assessing Minimum Amount Due from Antrak ("Conrail's Petition") -- that Conrail has already briefed twice.²

Conrail's Response purports merely to request that the Commission "grant the outstanding Petition". (Conrail's Response, p. 14.) It goes on to state that the Commission should also

¹ Conrail requested that, if the Commission grants Antrak's motion to file surrebuttal evidence, it allow Conrail to submit evidence in response, and that it make certain modifications in the procedural schedule. Antrak does not oppose those requests.

² See the October 31, 1994 letter from Paul A. Cunningham, Conrail's counsel, to Vernon A. Williams, Acting Secretary of the Commission ("October 31 letter"), in which Conrail replied to Antrak's opposition to its Petition in the guise of correcting Antrak's "misunderst[anding]".



Section 402(a), and that the new compensation terms it had established should be retroactive "to the date of the Commission's initial order" requiring Union Pacific to give Antrak continued access to its tracks. *Id.* at 936. In reaching this result, the Commission distinguished cases in which it had ordered that new compensation terms would take effect on other dates on the ground that the specified dates had been agreed to or requested by the parties. *Id.* And the Commission made it clear that the parties were free to agree upon a date different from the one that the Commission had determined in the absence of an agreement: "Upon mutual agreement, Antrak and Union Pacific may modify the terms and conditions of this report and order." *Id.* at 953.

Here, it is undisputed that the parties have entered into an agreement which provides that new compensation terms will take effect on a date other than the date on which the Commission orders Conrail to allow Antrak access to its lines.⁷ The only issue in dispute is what that date is. Because the Commission's jurisdiction under Section 402(a) of the Rail Passenger Service Act is limited to resolving matters upon which there is a "failure to agree", 45 U.S.C. § 562(a)(1), it could not change the date agreed upon by the parties even if it were inclined to do so. And the Commission has made it clear on innumerable occasions that it is not so inclined: its policy in administering Section 402(a) is

⁷ Indeed, the Commission has not even issued such an order in this case. See Decision served Apr. 1, 1994, p. 1 ("we have not ordered Conrail to allow Antrak on its lines in this instance").

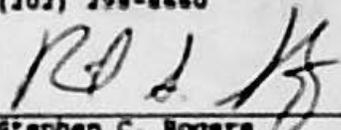
to encourage voluntary agreements between the parties.' Thus, there is no basis for Conrail's request that the Commission enter an order that would override the terms of the parties' agreement.

CONCLUSION

For the reasons stated above, the Commission should not consider the new arguments regarding retroactivity that Conrail has advanced in its February 13, 1995 Response, and should not issue the ruling on retroactivity that Conrail requests therein. Conrail's original Petition should be denied for the reasons stated in Antrak's October 24, 1994 Response.

Respectfully submitted,

Richard A. Allen
ZUCKERT, SCOTT & RASENBARGER
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(202) 298-8660



Stephen C. Rogers
Frederick C. Ohly
Richard G. Slattery
NATIONAL RAILROAD PASSENGER
CORPORATION (ANTRAK)
60 Massachusetts Ave., N.E.
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(202) 906-3987

Dated: February 17, 1995

See, e.g., Minnesota Transfer Railway -- Operation of Trains, 354 I.C.C. 749, 774 (1978); Finance Docket No. 31204, Antrak and Chicago & Western Indiana R.R. and the Belt Railway of Chicago -- Use of Tracks and Facilities and Establishing Just Compensation, Decision served Mar. 18, 1988, p. 4.

EXHIBIT 8

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32467

NATIONAL RAILROAD PASSENGER CORPORATION AND
CONSOLIDATED RAIL CORPORATION --
APPLICATION UNDER SECTION 402(a) OF THE
RAIL PASSENGER SERVICE ACT
FOR AN ORDER FIXING JUST COMPENSATION



ENTERED

Office of the Secretary

OCT 11 1994

Part of
Public Record

ANTRAK'S RESPONSE TO THE
FIRST INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
OF CONSOLIDATED RAIL CORPORATION

National Railroad Passenger Corporation ("Antrak") responds as follows to the First Interrogatories and First Request for Production of Documents of Consolidated Rail Corporation ("Conrail"). Antrak has conducted a reasonable search for documents and information responsive to Conrail's discovery requests.

GENERAL OBJECTIONS

1. Antrak objects to the requests to the extent that they seek documents or information subject to the attorney-client privilege or the work product doctrine.
2. Antrak objects to the requests to the extent that they seek documents or information already in Conrail's possession, including but not limited to Antrak's contracts with Conrail, or public documents that are readily available to Conrail.
3. Antrak objects to Definition and Instruction B to the extent that it requires Antrak to "identify" documents in greater detail than it has done in its responses to the individual

interrogatories on the ground that it is unduly burdensome in light of the number of documents Amtrak has been asked to identify.

4. Amtrak objects to Definition and Instruction C on the ground that it is unduly burdensome. For each document produced, Amtrak will identify the request or subpart to which the document is principally responsive.

5. Amtrak objects to Definition and Instruction E to the extent that it requires it to provide "estimated or projected information" or documents for any time period after the date of its response to these requests on the ground that it is ambiguous, unintelligible, and unduly burdensome.

6. Amtrak objects to Definition and Instruction F on the ground that it is ambiguous, unintelligible, and unduly burdensome. Except as described in Amtrak's responses to individual interrogatories, the information and documents sought cannot be described and/or are not maintained on a line-specific basis.

**SPECIFIC RESPONSES TO
INTERROGATORIES AND DOCUMENT REQUESTS**

Interrogatory No. 1

(a) Identify each of Amtrak's contracts or agreements (including all superseded versions and subsequent amendments to such contract or agreement) with any railroad(s) or commuter authority/ies) (including their affiliates) relating to Amtrak's use of the railroad/authority's facilities.

(b) For each contract or agreement identified in Response to Interrogatory No. 1(a), provide the method(s) (e.g., Speed Factored Gross Ton Model) used and those requested to be used by the parties in setting Amtrak's maintenance of way payments to the railroad/ authority, including but not limited to the actual model(s), all coefficients and data used in running the model(s) and all outputs obtained from running the model(s).

(c) For each contract or agreement identified in Response

to Interrogatory No. 1(a), provide the compensation Amtrak pays for maintenance of way costs, including unit cost, the basis on which such payments are made (e.g., train-mile, car-mile), and the annual payments made by Amtrak.

(d) For each contract or agreement identified in Response to Interrogatory No. 1(a), provide all other costs (other than maintenance of way costs) or payments/penalties (e.g., incentive payments for on-time service) that were being negotiated at the same time as maintenance of way costs and state whether, and if so, the extent to which, the negotiation of those other costs and payments/penalties had any impact on the negotiation of maintenance of way costs.

(e) For each contract or agreement identified in Response to Interrogatory No. 1(a), identify any studies or other analyses performed or received by Amtrak (or its consultants) of the railroad/authority's maintenance of way costs for the facilities used by Amtrak.

Response to Interrogatory No. 1

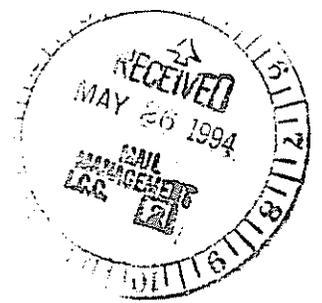
(a) Copies of Amtrak's contracts with other railroads and commuter authorities and their affiliates relating to Amtrak's use of their main line tracks and in effect after January 1, 1987 are being provided herewith. Amtrak objects to the identification and production of contracts relating to the use of facilities other than main line tracks and of contracts unrelated to payments for track maintenance as irrelevant to any issue in this proceeding and as unduly burdensome.

(b) The original Basic Agreement, which was in effect after 1987 only with respect to ATSF and Conrail, did not provide for specific maintenance of way payments to the railroad/authority.

The Amended Agreements, which Amtrak began to enter into with other railroads in the mid-1970's, provide for specific maintenance of way payments. All of these were calculated on the basis of the Speed Factored Gross Ton ("SFGT") formula. They

EXHIBIT 9

BEFORE THE
INTERSTATE COMMERCE COMMISSION



FINANCE DOCKET NO. 32467

NATIONAL RAILROAD PASSENGER CORPORATION AND
CONSOLIDATED RAIL CORPORATION--APPLICATION UNDER
SECTION 402(a) OF THE RAIL PASSENGER SERVICE ACT
FOR AN ORDER FIXING JUST COMPENSATION

STIPULATION AND ORDER REGARDING
PRODUCTION OF CONFIDENTIAL DOCUMENTS

WHEREAS, the National Railroad Passenger Corporation ("Amtrak") and Consolidated Rail Corporation ("Conrail") (jointly "Parties" and separately "Party") are willing to make available certain documents and computer software ("Confidential Documents") that they consider to contain highly sensitive confidential proprietary information, the disclosure of which would harm their competitive positions, and

WHEREAS Amtrak and Conrail may seek disclosure of Confidential Documents through discovery in this proceeding, and both Amtrak and Conrail and all individuals named in this protective order understand and have promised strict compliance with all terms of this Stipulation and Order;

I hereby enter the following order:

1. (a) All Confidential Documents provided to a Party, or anyone acting on its behalf, and all notes and other documents relating in any way to any of these Confidential Documents that are developed by any individual having access to such Confidential Documents ("the Notes"), shall be used solely for the purposes of the above-captioned proceedings or any appeals or

related proceedings taken or filed in connection therewith ("the Proceedings") and shall not be used for any other purpose, whether commercial, competitive or otherwise. Deposition testimony and answers to interrogatories may also be designated "CONFIDENTIAL" as described herein and treated as a Confidential Document herein.

(b) "Supplying Party" means the Party which provided the Confidential Document or information therein to the other Party. "Receiving Party" means the Party who was provided the Confidential Document or information therein.

2. Any Confidential Documents provided hereunder and stamped "CONFIDENTIAL," and any data contained therein, shall not be disclosed in any way to any person not authorized under paragraph 6 hereof to receive access to such Confidential Documents unless such disclosure is preceded by the prior written consent of the Supplying Party or an order of the Commission or the Administrative Law Judge in the above-captioned proceedings.

3. Unless the Supplying Party agrees otherwise, all Confidential Documents provided hereunder, and all Notes, shall be destroyed within twenty-one (21) Days of the completion of the Proceedings, and written notice of such destruction shall be provided to counsel for the Supplying Party, with the exception that outside counsel for each Party may retain file copies of any unredacted pleadings and materials filed with the Commission.

4. Insofar as either Party intends to use any Confidential Documents stamped "CONFIDENTIAL" or any portion thereof supplied

by the other Party, or any data contained therein, in any way at depositions at which persons who are not authorized to receive access to the Confidential Documents or data may be present, the hearings, in written testimony, on brief in the Proceedings, or in any other submission, the Party intending to use the Confidential Documents or data either (a) shall give counsel for Supplying Party sufficient advance written notice of the intent to use the Confidential Documents or any portion thereof, and of the anticipated time or occasion at which such Confidential Documents or any portion thereof will be used, in sufficient detail to enable counsel for the Supplying Party to petition the Administrative Law Judge for an order (i) restricting attendance at the hearings or depositions during discussion of the Confidential Documents, or (ii) restricting access to the portion of the record of briefs reflecting discussion of the Confidential Documents, or (b) in the event the notice described in (a) hereof is not given, shall give prior notices of such intended use (with such notice to be given, if practicable, at least 48 hours in advance) and will not oppose such a petition; Provided that, if the Supplying Party objects to such use and files as soon as practicable in light of the notice given a motion for protective order with the Commission, then no such use shall be made until the Commission or the Administrative Law Judge rules on such use and determines whether it is appropriate.

5. With respect to written submissions, a Party shall be deemed to have complied with paragraph 4 above if all filings

containing information from any Confidential Documents stamped "CONFIDENTIAL" are filed under seal, and all publicly available filings have had all such information redacted.

6. (a) All Confidential Documents which are stamped "CONFIDENTIAL," and which were or are supplied by Amtrak, and any data contained therein, shall be restricted to access by only the following named individuals, each of whom shall sign the Undertaking attached as Exhibit A to this order (and by doing so shall be responsible for compliance with this Stipulation and Order by their respective clerical and support staffs):

Paul A. Cunningham

Joseph L. Lakshmanan

Richard A. Mehley

and by any other person, including assistants, analysts, secretaries and attorneys, who, in advance of receiving access to the Confidential Documents or the data contained therein, shall read this Order and shall sign and deliver to counsel for Amtrak an Undertaking in the precise form attached to this Order as Exhibit A. To the extent practicable, this Undertaking shall be delivered to Amtrak prior to receipt of access to the Confidential Documents by the individual named in the Undertaking, and if not, shall be delivered to Amtrak as soon as possible thereafter.

(b) All Confidential Documents which are stamped "CONFIDENTIAL," and which were or are supplied by Conrail, and any data contained therein, shall be restricted to access by only the following names individuals, each of whom shall sign the Undertaking attached as Exhibit A to this order (and by doing so shall be responsible for compliance with this Stipulation and Order by their respective clerical and support staffs):

Richard A. Allen

Richard G. Slattery

and by any other person, including assistants, analysts, secretaries and attorneys, who, in advance of receiving access to the Confidential Documents or the data contained therein, shall read this Order and shall sign and deliver to counsel for Conrail an Undertaking in the precise form attached to this Order as Exhibit A. To the extent practicable, this Undertaking shall be delivered to Conrail prior to receipt of access to the Confidential Documents by the individual named in the Undertaking, and if not, shall be delivered to Conrail as soon as possible thereafter.

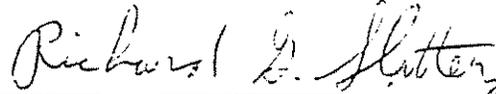
7. If a Party inadvertently fails to designate a Confidential Document as "CONFIDENTIAL" in a timely fashion as provided herein, it may make such a designation subsequently by

notifying the Receiving Party in writing. After receipt of such notification, such Confidential Documents shall be treated as if they had been designated in a timely fashion and the Receiving Party will promptly cause such documents to be properly marked as provided herein and certify to the Supplying Party that such marking has occurred.

8. Nothing contained herein shall preclude any party from seeking an order of the Commission or the Administrative Law Judge in the above-captioned proceedings that documents, deposition testimony, or answers to interrogatories designated by the Supplying Party as "confidential" should not be treated as such.



Counsel for Consolidated
Rail Corporation



Counsel for National Railroad
Passenger Corporation

The foregoing stipulation is approved and so ordered.

Dated: _____

Exhibit A

U N D E R T A K I N G

I, _____, have read the Stipulation and Order Regarding Production of Confidential Documents entered into between the National Railroad Passenger Corporation ("Amtrak") and Consolidated Rail Corporation ("Conrail") in ICC Finance Docket No. 32467, understand the same, and agree to be bound by its terms. I agree not to use any Confidential Documents contained under this Stipulation and Order and stamped "CONFIDENTIAL," or any data or information derived therefrom, for any purpose not related to participation in Finance Docket No. 32467 and related dockets, or any appeals or related proceedings taken or filed in connection therewith ("the Proceedings"), or to use any techniques disclosed or information learned as a result of receiving this data or information for any purpose not related to participation in the Proceedings. I recognize that I may be held personally liable for any damages that Amtrak or Conrail may suffer as a result of my use or disclosure in violation of this Stipulation and Order of any confidential information supplied as a result of this Stipulation and Order.

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 1994, a copy of the foregoing Stipulation and Order Regarding Production of Confidential Documents was served by hand on the following:

Richard A. Allen
ZUCKERT, SCOUTT & RASENBERGER
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3959

Richard G. Slattery
Associate General Counsel
NATIONAL RAILROAD PASSENGER CORPORATION
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

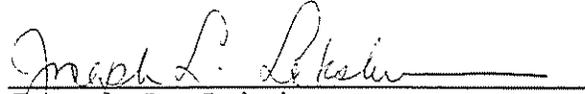

Joseph L. Lakshmanan

EXHIBIT 10

**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

NATIONAL RAILROAD PASSENGER CORPORATION'S
FIRST SET OF REQUESTS FOR DISCOVERY

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Paul L. Knight
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Washington, DC 20006
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National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002
(202) 906-3971

Counsel for National Railroad Passenger Corporation

**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

NATIONAL RAILROAD PASSENGER CORPORATION'S
FIRST SET OF REQUESTS FOR DISCOVERY

Pursuant to the Board's Decision served on August 9, 2013, National Railroad Passenger Corporation ("Amtrak"), through its attorneys, and pursuant to 49 C.F.R. §1114.30, serves the following First Set of Requests for Discovery upon Illinois Central Railroad Company and Grand Trunk Western Railroad Company. Amtrak hereby requests that the materials herein requested be produced to the undersigned Nossaman attorneys as soon as possible, and in no event later than 15 days from the date of service hereof.

The following definitions and general instructions shall apply to this First Set of Requests for Discovery.

DEFINITIONS

1. "All" or "Any" means each and every.
2. "Amtrak" means the National Railroad Passenger Corporation or any subset of the corporation, or any of the corporation's employees and agents.
3. "Application" means Amtrak's *Application under 49 U.S.C. §24308(A) – Canadian National Railway Company* that was filed on July 30, 2013.

4. “CNR” means Canadian National Railway Company and any of its subsidiaries, affiliates, parents, predecessors, or successors, or all divisions thereof, excluding the Host Railroads, and any and all Individuals, present and former officers, directors, representatives, agents, employees, partners, attorneys, independent consultants or experts, or other Persons acting or purporting to act on behalf of them, or who acted or purported to act on their behalf.

5. “Communication” means any internal or external written, oral or electronic transmission or disclosure of information or language, however made, whether or not the Person to whom the Communication is directed is physically present at the time of transmission.

6. “Conductor Delay Reports” means the reports prepared by Amtrak conductors to record the delay minutes for each Amtrak train and the cause of those delays.

7. “Concerning” means Related to, referring to, describing, evidencing, constituting, or otherwise discussing.

8. “Date” shall mean the exact date; when you do not know the exact date, it shall mean an approximate date or range of time.

9. “Describe with particularity” means to give the Date and a full and complete narrative account of the information requested without omission of any relevant facts, whether deemed material by you or not, and without omission of information that could lead to relevant facts, all within the spirit of the discovery rules that these Document requests should elicit all information, Documents, and Communications possessed by or known to you In connection with the instant Application.

10. “Dispatchers” means all personnel, whether known as Rail Traffic Controllers or otherwise, involved in Dispatching.

11. “Dispatching” means the direction, coordination, approval, or disapproval of the movement of trains over a railway, including terminals, junctions, interlockings, and crossings, and any other functions typically performed by Dispatchers.

12. “Documents” or “Records” shall be defined in the customary broad sense of such words to include, by way of illustration only and not by way of limitation, the following items, whether printed, electronic, electronically stored, reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged or otherwise exclusive of discovery; namely, notes, correspondence, Communications of any nature (including e-mails, PDAs, or postings on Internet websites or bulletin boards), letters, telegrams, memoranda, facsimiles, notebooks of any character, summaries or Records of personal conversations, diaries, routing slips or memoranda, reports, publications, ledgers, invoices, specifications, graphs, charts, drawings, sketches, audio and video recordings, or Records of meetings, reports or summaries of interviews, reports or summaries of investigations, tallies, tabulations, opinions or reports of consultants’ forecasts, agreements and contracts including all modifications or revisions thereof, reports or summaries of negotiations, brochures, pamphlets, advertisements, advertising layouts, circulars, trade letters, and press releases. The term “Document” includes all drafts of any Document, and revisions of drafts of any Document, electronic mail, other data compilations of any kind, and all copies that differ in any way from the original (including any notations, underlining, or other markings). The term “Document” includes all information stored in machine-readable form or accessible through computer or other information retrieval systems.

13. “Drawing” means any graphic or pictorial representation, whether technical or non-technical, in any form of Document.

14. “Government” means the United States Government or any division, department, or other associated entity thereof, including the Department of Transportation, the Federal Railroad Administration, and the Surface Transportation Board.

15. “GTW” means Grand Trunk Western Railroad Company.

16. “Host Rail Lines” means all lines owned, leased, or otherwise held by, and all rights to use such properties of others held by, the Host Railroads.

17. “Host Railroads” means either IC or GTW, or IC and GTW collectively, and any of their subsidiaries, predecessors, or successors, or all divisions thereof, and any and all Individuals, present and former officers, directors, representatives, agents, employees, partners, attorneys, independent consultants or experts, or other Persons acting or purporting to act on behalf of them, or who acted or purported to act on their behalf.

18. “Host Railroads Revised Proposal” refers to the Document drafted by the Host Railroads captioned “CN’s Revised Proposal For Changes To The Amtrak – CN Operating Agreement” that is dated July 20, 2013.

19. “Host Responsible Delay” or “HRD” means the following Amtrak train delays on the Host Rail Lines coded on Amtrak Conductor Delay Reports: FTI (freight train interference), PTI (passenger train interference), CTI (commuter train interference), DSR (slow order delays), DBS (debris delays), RTE (routing delays), DMW (maintenance of way delays), and DRT (detour delays).

20. “IC” means Illinois Central Railroad Company.

21. “Identify” means a statement of:

(a) In the case of a Person other than a natural Person, its name, the address of its principal place of business, its telephone number, and the name of its chief executive officer;

(b) In the case of a natural Person, his or her full name (Including full middle name), date and place of birth, and social security number (or social insurance number for a Canadian citizen), last known home telephone number and home address, last known business telephone number (Including extensions) and business address, last known cellular or mobile telephone numbers, the positions held by each Individual and Dates of service in each position, and the name and position of each such Person's immediate supervisors in each position; and

(c) In the case of a Communication, its Date, its type (*e.g.*, telephone conversation, letter, electronic mail or meeting), the place where it occurred, the identity of the Persons who made it, the identity of the Persons who received it or who were present when it was made, and the subject matter(s) discussed.

22. "In connection with" means Related to, referring to, describing, evidencing, constituting, or otherwise discussing.

23. "Include" and "Including" shall be interpreted in every instance as being illustrative of the information requested, shall be read as meaning "including, but not limited to," and shall not be interpreted to exclude any information otherwise within the scope of these requests for production.

24. "Individual" means any Person (of any gender), firm, corporation, unincorporated association, governmental departmental or agency, or other organization.

25. "Person" is defined as any natural Individual, public or private corporation, partnership, governmental entity, or other business association, and all legal entities.

26. "Policies, practices, and procedures" should be read inclusively to encompass any company policy, practices, procedures, guidance, rules, code, guidelines, protocol instructions, or

similar information, and any Document setting forth any of the above, including deskbooks and manuals, regardless of how titled and regardless of whether it has been formally adopted.

27. “Relates to,” “Related to,” or “Relating to” means Documents or information that support, constitute, form the basis of, memorialize or evidence the information otherwise described or requested. “Relates to” means directly or indirectly referring or pertaining to, discussing, describing, reflecting, containing, examining, analyzing, studying, reporting on, commenting on, evidencing, constituting, showing, considering, recommending, Concerning, recording or set forth in, in whole or in part.

28. “Third Party” refers to any and all entities or Persons, Including railroad companies, and the agents and employees of such entities, other than the Host Railroads and Amtrak.

29. “2011 Operating Agreement” means the Operating Agreement dated May 1, 2011, between Amtrak on the one hand and the Host Railroads on the other hand.

30. “2013 Service Level” has the same meaning as such term is used in the “Host Railroads Revised Proposal” defined above.

31. “Witness” means any Individual whose knowledge or testimony has been or may be used to prepare, present, or prove the Host Railroads’ case.

32. The connectives “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of discovery request all responses that might otherwise be construed to be outside of its scope.

GENERAL INSTRUCTIONS

1. In accordance with 49 C.F.R. §1114.29, the Host Railroads are required to supplement its responses to each request if it obtains information upon the basis of which (1) the

Host Railroads know that the response was incorrect when made, or (2) the Host Railroads know that the response though correct when made is no longer true or complete and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

2. In answering each request, the Host Railroads are requested to furnish all information and Documents, within their knowledge or belief, however obtained, that is within their possession, custody or control or the possession, custody, or control of their attorneys, investigators, consultants, agents or other representatives acting on their behalf, or that appears in their Records, Including information and Documents obtained through discovery in this or any other litigation.

3. The Documents produced in response to these requests shall be (i) organized and designated to correspond to the categories in these requests or, if not, (ii) produced as they are maintained in the normal course of business, and in either case (a) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents from each file, and each file shall be Identified as to its owner and custodian; and (b) all Documents that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies.

4. The Host Railroads are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously. In the event that the Host Railroads object to any of these requests on the basis of a contention that it is overbroad or unduly burdensome for any reason, the Host Railroads shall respond to that request as narrowed in such a way as to not render it overbroad or unduly burdensome and state the extent to which the request has been narrowed.

5. State if no Documents exist that are responsive to a particular request.
6. Produce Documents responsive to any individual request or part of a request as soon as possible and without waiting to produce Documents responsive to other specifications whenever possible.
7. To the extent that the Host Railroads ascertain or are aware of the existence of information or Documents responsive to these requests that are not within its possession, custody or control, or the possession, custody or control of their attorneys, or others acting on their behalf upon reasonable inquiry, then Identify the custodian or possessor of such information or Documents; Identify the location of such information or Documents; and summarize the substance of such information or Documents.
8. Unless otherwise stated in an individual request, the following requests encompass the entire time period of January 1, 2008 to the present.
9. If any Documents or Communications called for by a request are withheld by the Host Railroads on the basis of a claim of privilege or work product, state in a privilege log the basis for withholding such Documents or Communications and the nature of the Documents or Communications withheld.
 - A. For each Document Identified on your privilege log, state:
 - (i) the Document's control numbers, if any;
 - (ii) all authors of the Document;
 - (iii) all addresses of the Document;
 - (iv) all recipients of the Document or of any copies of the Document, to the extent not Included among the Document's addresses;
 - (v) the Date of the Document;
 - (vi) a description of the subject matter of the Document;

- (vii) the nature of the type of privilege that you are asserting for the Document (e.g., “attorney-client privilege”);
- (viii) the request(s) to which the Document is responsive;
- (ix) the Document control numbers, if any, of any attachments to the Document, regardless of whether any privilege is being asserted for such attachments; and
- (x) whether the Document has been produced in redacted form.

B. For each Document or Communication, your privilege log shall also state the following information:

- (i) a description containing the full name, title, and employer or company affiliation of each author, addressee, and recipient Identified on your privilege log;
- (ii) a statement that all attorneys were acting in a legal capacity with respect to the withheld Document or Communication;
- (iii) the type of privilege being asserted;
- (iv) a description of the subject matter of each Document or Communication which shall describe the nature of the Document or Communication in a manner that enables Amtrak to assess the applicability of the privilege claimed; and
- (v) for each Document or Communication withheld under a claim that it constitutes or contains attorney work product, state whether the Host Railroads assert that the Document or Communication was prepared in anticipation of litigation or for trial and, if so, Identify the anticipated litigation or trial upon which the assertion is based.

Produce all non-privileged portions of any responsive Document or Communication (Including non-privileged or redactable attachments) for which a claim of privilege is asserted, except where the only non-privileged information in the Document or Communication has already been produced. Note where any redactions in the Document or Communication have been made.

REQUESTS FOR ADMISSION

1. Admit that Chicago, Central & Pacific Railroad Company is a wholly owned

subsidiary of CCP Holdings, Inc.

2. Admit that CCP Holdings, Inc. is a wholly owned subsidiary of Illinois Central Corporation.

3. Admit that IC is a wholly owned subsidiary of Illinois Central Corporation.

4. Admit that Illinois Central Corporation is a wholly owned subsidiary of Grand Trunk Corporation.

5. Admit that GTW is a wholly owned subsidiary of Grand Trunk Corporation.

6. Admit that Grand Trunk Corporation is a wholly owned subsidiary of Canadian National Railway Company.

REQUESTS FOR PRODUCTION

1. All Documents and data relied on by the Host Railroads in connection with the Host Railroads Revised Proposal.

2. For the time period commencing from the conclusion of the time period for the 2013 Service Level up to the present, please provide all Documents and data in the same categories or data fields used by the Host Railroads in the Host Railroads Revised Proposal.

3. For the time period January 1, 2008 to January 31, 2013, please provide all Documents and data in the same categories or data fields used by the Host Railroads in the Host Railroads Revised Proposal.

4. All Documents Related to the determination of the incremental costs of delays to freight trains on the Host Rail Lines that the Host Railroads claim are attributable to Amtrak.

5. All Documents Related to the determination of the fully allocated costs of delays to freight trains on the Host Rail Lines that the Host Railroads claim are attributable Amtrak.

6. All Documents supporting the Host Railroads' calculation in the Host Railroads Revised Proposal of the incremental cost of delays to freight trains Related to the City of New Orleans and Illini/Saluki services at the 2013 Service Level.
7. All Documents supporting the Host Railroads' calculation in the Host Railroads Revised Proposal of the fully allocated cost of delays to freight trains Related to the City of New Orleans and Illini/Saluki services at the 2013 Service Level.
8. All Documents Relating to the extrapolations and calculations made by the Host Railroads of the total alleged incremental costs of delays to freight trains for all of Amtrak's services on the Host Rail Lines at the 2013 Service Level.
9. All Documents Relating to the extrapolations and calculations made by the Host Railroads of the total alleged fully allocated costs of delays to freight trains for all of Amtrak's services on the Host Rail Lines at the 2013 Service Level.
10. All Documents Relating to causes of delay to freight trains on the Host Rail Lines other than any Document responsive to Requests For Production Nos. 6 through 9 above.
11. All Documents Relating to the compensation or other payments that the Host Railroads received from Amtrak pursuant to the 2011 Operating Agreement.
12. All Documents Relating to the Host Railroads' analysis or consideration of the terms of compensation for any facilities or services provided to Amtrak.
13. All Documents Concerning the Host Railroads' Policies, practices, and procedures Relating to the Dispatching of passenger trains and freight trains on the Host Rail Lines Including (a) Documents Relating to junctions, interlockings, and crossings; (b) Documents provided to Dispatchers for use while Dispatching, Including any Dispatching deskbook or manual; (c) Documents used in the training or education of Dispatchers; (d)

Documents Concerning best practices for Dispatchers; (e) Documents Concerning any criteria by which Dispatchers or their managers are evaluated or compensated; and (f) Documents reflecting or discussing changes to the Host Railroads' Policies, practices, and procedures Relating to Dispatching of passenger trains and freight trains on the Host Rail Lines.

14. All Documents Concerning the Host Railroads' Records management and retention policies affecting all Documents and Records Related to Dispatching Policies, practices, and procedures on the Host Rail Lines.

15. All Communications between and among current or former employees of CNR or the Host Railroads Concerning Dispatching Policies, practices, and procedures on the Host Rail Lines.

16. All Documents Related to any investigations or disciplinary actions concerning Dispatching on the Host Rail Lines.

17. All Communications between CNR or the Host Railroads and any Third Party, or between CNR or the Host Railroads and the Government, Concerning Dispatching Policies, practices, and procedures on the Host Rail Lines.

18. All Documents logging or recording decisions made by Dispatchers on the Host Rail Lines.

19. All Documents Concerning the Host Railroads' Records management and retention policies affecting all Documents and Records Related to the performance of Amtrak trains on the Host Rail Lines Including Communications regarding the performance of individual trains and performance in the aggregate.

20. All Documents Relating to inaccurate reporting or altering of Documents in any fashion Relating to payments to or from Amtrak.

21. All Documents Relating to any instances or alleged instances of (a) a fraudulent, knowingly false or inaccurate statistical report made by CNR or the Host Railroads to shareholders or regulators, (b) any fraudulent or knowingly false billing made by CNR or the Host Railroads for services or provision of rail line access or usage to Amtrak or any other passenger railroad, (c) any whistleblower complaints or lawsuits Relating to CNR or the Host Railroads, and (d) any investigations of or by CNR or the Host Railroads regarding (a) through (c) above.

22. All Documents Relating to any request by the Illinois Department of Transportation to CNR or the Host Railroads regarding the potential use of the Host Rail Lines or other rail lines or facilities of CNR for intercity passenger rail service, Including requests for any freight schedules, employee timetables, track charts, rail tables, geometry car data, rail flaw detection data, derailment locations data, signal diagrams, and bridge clearance measurements.

23. All Documents Relating to the Host Railroads' or CNR's calculation of, remittance of, and all other administration Related to, the performance and penalty payment terms described in Appendices V and VI of the 2011 Operating Agreement.

24. All Documents Recording or Documenting, for both individual Amtrak trains and in the aggregate, (a) the movements of Amtrak trains on the Host Rail Lines, (b) delays experienced by Amtrak trains on the Host Rail Lines, or (c) the alleged cause(s) of delays experienced by Amtrak trains on the Host Rail Lines.

25. All Documents, Including the Host Railroads' internal memoranda, Concerning HRD or any other standard used to calculate or analyze Amtrak train delay, for both individual Amtrak trains and in the aggregate.

26. All Documents Concerning the development, including modeling, of passenger or freight schedules on the Host Rail Lines.

27. All Documents Concerning the development, including modeling, of proposed network capacity requirements Related to Amtrak trains on the Host Rail Lines.

28. All Documents Relating to any operating plan for the Host Rail Lines in effect between January 1, 2012 and the present, Including all Documents specifying the time period(s) to which such plan applies.

29. All Documents Relating to the formulation and implementation of any operating plan for the Host Rail Lines in effect between January 1, 2012 and the present.

30. All Documents Relating to any operating plan in effect between January 1, 2012 and the present for Amtrak trains operating on the Host Rail Lines.

31. All Documents Relating to any operating plan in effect between January 1, 2012 and the present for freight trains operating on the Host Rail Lines, Including all freight train schedules.

32. All Documents Relating to freight train schedules that the Host Railroads have considered or analyzed, but not used, in implementing any operating plan in effect between January 1, 2012 and the present for the Host Rail Lines, Including all Documents Relating to the reasons(s) why such freight train schedules were or were not used or implemented.

33. All Documents Relating to any operational changes that the Host Railroads have analyzed or considered for the purpose of increasing or decreasing delays to passenger or freight trains on the Host Rail Lines, Including all Documents Relating to the reason(s) the Host Railroads did or did not implement any such operational changes.

34. All Documents Relating to any capital investments that the Host Railroads have considered to increase or decrease delays to passenger or freight trains on the Host Rail Lines, Including all Documents Relating to the reason(s) the Host Railroads did or did not choose to make any such capital investments.

35. All Documents Relating to any efforts by the Host Railroads or CNR to obtain funds from federal or state sources for capital expenditures on the Host Rail Lines.

36. All agreements with freight customers using any portion of the Host Rail Lines in which the Host Railroads' compensation varies depending on the time or timeliness of the delivery of (a) inbound products or commodities, or (b) the availability of loaded cars for unloading, or empty cars for loading of customer products or commodities.

37. All Documents Relating to any costs the Host Railroads incurred In connection with the Host Rail Lines that the Host Railroads assert would have been, or would be, avoidable within three (3) months of when any such costs were incurred if Amtrak did not operate on the affected portion(s) of the Host Rail Lines.

38. All Documents Relating to the proposal by the Host Railroads to make the 1.2-mile segment of Host Railroads' line in Battle Creek, MI (between CP Gord and CP Baron) an Amtrak-Host Railroads joint facility.

39. All Documents Related to Amtrak schedule change requests, including any analyses thereof.

40. All Documents Related to any and all rules or algorithms utilized to select the data relied on in the Host Railroads Revised Proposal.

41. All Documents Related to data dictionaries, the interpretation of data fields, or the creation of data fields utilized with regard to the Host Railroads Revised Proposal.

INTERROGATORIES

1. If any of your responses to Requests for Admission Nos. 1 through 6 was anything other than an unqualified admission, please describe with particularity the corporate structure in which the entity identified in the relevant Request for Admission is placed.
2. Identify each Person who supplied information for, was consulted in connection with, or participated in the preparation of the responses to the above requests for production of Documents and the answers to these interrogatories. As to each such Person, identify the request(s) and answer(s) for (or in connection with which) he or she was consulted, supplied information, or participated.
3. Identify each Person who has, claims to have, or is likely to have, knowledge, information, or Documents potentially relevant to the Application.
4. Describe with particularity the knowledge, information, or Documents that the Host Railroads believe each such Person identified in response to Interrogatory No. 2 above possesses.
5. Identify all Witnesses the Host Railroads may rely upon or refer to in the course of this proceeding.
6. Describe with particularity the subject matter and the substance of the anticipated testimony for each Witness identified in response to Interrogatory No. 4 above.
7. Describe with particularity all of the Host Railroads' Records management and retention policies affecting Documents and information potentially relevant to the Application.
8. Identify and describe with particularity all of the Host Railroads' Records management systems that may contain any Documents or information potentially relevant to this Application.

9. Identify all current or former employees or other representatives of the Host Railroads who created, edited, authorized, or may presently be in possession of any Documents potentially relevant to this Application.

10. As to each employee or other representative Identified in response to Interrogatory No. 9 above, Identify the time period during which he or she exercised his or her role, the role he or she served, the functions he or she performed, and the Documents he or she possesses or is likely to possess.

11. Describe with particularity the process for creating, drafting and amending the Host Railroads Revised Proposal Including the process by which categories or types of data were considered, actually used, and not used in the Host Railroads Revised Proposal, the process by which it was decided to focus on costs Related to the City of New Orleans and Illini/Saluki services as opposed to other Amtrak routes on the Host Rail Lines, and the process or procedures for selecting the specific time periods relied on in the Host Railroads Revised Proposal.

12. With regard to the 2013 Service Level, describe with particularity the specific time period covered or Included and the reasons for the selection of that time period.

13. With regard to the 2013 Service Level, describe with particularity the specific categories of information or data fields Included within the 2013 Service Level, all the reasons those specific categories or data fields were Included, and a description of any data field or category of information that was considered but not Included in the 2013 Service Level.

14. With regard to operations on the Host Rail Lines between January 1, 2012 and the present, describe with particularity the performance of freight trains against the operating plan and schedule applicable to those freight trains.

Dated: November 6, 2013

Respectfully submitted,

/s/Linda J. Morgan

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/s/William H. Herrmann

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EXHIBIT 11

BEFORE THE
SURFACE TRANSPORTATION BOARD

Application of the National
Railroad Passenger Corporation
Under 49 U.S.C. § 24308(a) --
Springfield Terminal Railway
Company, Boston and Maine
Corporation, and Portland
Terminal Company

Finance Docket No. 33381



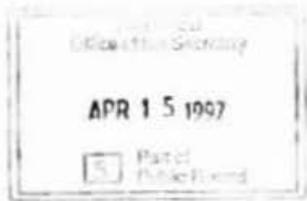
NATIONAL RAILROAD PASSENGER CORPORATION'S
OPENING EVIDENTIARY SUBMISSION

VOLUME 1 OF 2
VERIFIED STATEMENTS

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Eric Von Salzen
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Passenger Corporation



April 14, 1997

TABLE OF CONTENTS

Verified Statements:

James L. Larson

Brett L. Rekola

Bruce G. Willbrant

William W. Whitehurst, Jr.

Evelyn Toni Mulder

VERIFIED STATEMENT OF
JAMES L. LARSON

Amtrak's proportion of the liability exposure steadily increasing and the freight railroads' exposure declining.

During 1972-1974, Amtrak employees took over virtually all ticket, baggage and passenger handling responsibilities. Then in the period 1974-1975, Amtrak employees took over on-board service responsibilities (coach, sleeping car, lounge car and dining car). Amtrak personnel assumed most maintenance-of-equipment responsibilities during 1975-1976. Finally, during 1982-1989, Amtrak took over employment of virtually all train and engine crews.

The net effect of this evolution is that the freight railroads have been left with little liability exposure under the no-fault allocation to which they and Amtrak have adhered for some 25 years now. It follows that the same would be true as to Guilford under the Proposed Operating Terms; in this regard, it should be noted that Amtrak will fully staff its operations over the Plaistow-Portland line, and will not utilize any Guilford employees.

Appended as Attachment 1 to this statement is a chart that identifies the 13 freight railroads over which Amtrak currently operates, notes the dates the current operating agreement (or extension of an earlier operating agreement, as the case may be) with each was entered into and when it expires, and shows in general summary how the no-fault allocation provided for in each agreement works. The only significant variation is that under some agreements Amtrak pays \$0.0734 per passenger train

mile and the freight railroad assumes all trespasser liability, under other agreements Amtrak and the freight railroad split trespasser liability and Amtrak pays \$0.0367 per passenger train mile, and under still other agreements Amtrak assumes trespasser liability and pays the freight railroad nothing. (Amtrak is proposing the first approach for the Guilford arrangement, but would be willing to agree to either of the other two approaches).

It should be noted that each new agreement negotiated since 1995 includes a "most favored nations" clause comparable to that included in the Proposed Operating Terms proposed by Amtrak here. It allows the freight railroad in question to opt prospectively for any liability/indemnity provision agreed to by Amtrak with another freight railroad different from that contained in its own operating agreement with Amtrak. This provision has made Amtrak unwilling to give any railroad a uniquely favorable liability provision out of recognition that any adverse cost consequences associated with such a provision would be potentially multiplied by the total number of agreements to which Amtrak is a party. The freight railroads benefit from this uniformity in that they each obtain consistent liability treatment, and no single freight railroad enjoys either a relative advantage or disadvantage in its liability dealings with Amtrak.

In view of the widespread acceptance by the freight railroad industry of the no-fault allocation of liability and indemnity responsibility proposed by Amtrak in the Proposed

Operating Terms, this is the best and most appropriate method of dealing with the liability-related avoidable costs associated with Amtrak's operations over the Plaistow-Portland line.

2. Public Policy Favors Amtrak's Proposed No-Fault Allocation. There are strong public policy reasons that support the no-fault allocation of liability and indemnity responsibility proposed by Amtrak. For one thing, this approach leaves both Amtrak and Guilford with liability exposure (although Guilford's exposure is minuscule compared to that of Amtrak), and hence each has a direct financial incentive to operate safely and with due care. Each party benefits from this shared incentive, as does the public generally.

Amtrak, in effect, is a tenant on Guilford's Plaistow-Portland line, and must look to Guilford to perform its obligations as a landlord safely and well. As set forth in Section 2.4 B. of the Proposed Operating Terms, Guilford dispatches Amtrak's trains, and under Section 2.6, all Amtrak personnel involved in the handling or movement of Amtrak trains are subject to the direction, supervision and control of Guilford. And of course, Guilford is solely responsible for maintaining the line. With control over all these areas, Guilford can do much to assure safe operations.

Of course Guilford must rely on Amtrak to do its part. In this connection, Section 2.6 of the Proposed Operating Terms specifies that Amtrak personnel are obligated to conduct themselves in compliance with Guilford operating and safety

**Summary of Principal Elements of Damage/Liability No-Fault Allocation in
Amtrak-Freight Railroad Operating Agreements**

	Amtrak Employees and Their Property	Amtrak Passengers and Their Property	Amtrak Locomotives and Other Property	Amtrak Grade Crossing Accidents	Railroad Employees and Property	Trespassers	Nonallotted Residual Injury and Damage	Amtrak Payment to Railroad
Hurlington Northern Santa Fe Entered/extended 9/1/96 Expires 8/31/2011*	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Amtrak	Railroad	\$0.00
Canadian National (Canada) Entered/extended 10/1/95 Expires 90-day notice	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.0711 per passenger train mile
CN-Grand Trunk Western Entered/extended 3/20/97 Expires 12/31/97	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.0711 per passenger train mile
Conrail Entered/extended 4/1/96 Expires 4/15/2007*	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	See Note 1	\$0.0711 per passenger train mile
CP-Delaware & Hudson Entered/extended 4/10/97 Expires 4/30/98	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.007 per passenger train mile
CP-Sea Line Entered/extended 4/10/97 Expires 4/30/97	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.0711 per passenger train mile
CSX Entered/extended 4/1/97 Expires 3/31/2002*	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Amtrak	Railroad	\$0.00
Illinois Central Entered/extended 2/1/95 Expires 1/31/2010	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Amtrak	Railroad	\$0.00
New England Central Entered/extended 4/2/95 Expires 4/1/2010	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.0711 per passenger train mile
Norfolk Southern Entered/extended 3/22/96 Expires 4/30/97	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.0711 per passenger train mile
Southern Pacific Entered/extended 3/31/97 Expires 7/29/97	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Amtrak 50% Railroad 50%	Railroad	\$0.007 per passenger train mile
Union Pacific Entered/extended 3/31/97 Expires 7/29/97	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Railroad	Railroad	\$0.0711 per passenger train mile
Vermont Rte/Clarendon & Pittsford Entered/extended 12/1/96 Expires 11/30/2011*	Amtrak	Amtrak	Amtrak	Amtrak	Railroad	Amtrak	Railroad	\$0.00

* Remains in effect unless a party requests termination.

Note 1: The Conrail agreement is unique in that it governs reciprocal liability responsibilities for Amtrak operations on Conrail lines and Conrail operations on Amtrak lines. Liability for third-party injury in joint accidents is based on which railroad's train causes the loss, or is divided equally if this cannot be determined.

EXHIBIT 12

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32467

NATIONAL RAILROAD PASSENGER CORPORATION AND
CONSOLIDATED RAIL CORPORATION--APPLICATION UNDER
SECTION 402 (a) OF THE RAIL PASSENGER SERVICE ACT
FOR AN ORDER FIXING JUST COMPENSATION

NATIONAL RAILROAD PASSENGER CORPORATION'S
STATEMENT OF EVIDENCE

VOLUME 1

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Counsel for National Railroad Passenger Corporation

Dated: August 29, 1994

TABLE OF CONTENTS

Tab Witness

VOLUME 1

A Elizabeth C. Reveal
B William W. Whitehurst

VOLUME 2

C David E. Staplin
D Jerry C. Danzig
E James L. Larson
F Richard D. Simonen
G Curtis M. Grimm

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET NO. 32467

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION
AND CONSOLIDATED RAIL CORPORATION UNDER 45 U.S.C. §562(a)

VERIFIED STATEMENT

OF

ELIZABETH C. REVEAL

My name is Elizabeth C. Reveal. I am the Chief Financial Officer and Vice President for Finance and Administration of the National Railroad Passenger Corporation ("Amtrak").

I am submitting this statement to provide an overview of the issues in this proceeding, to describe the importance of those issues to Amtrak, and to explain Amtrak's positions with respect to them. Amtrak's positions are based on data and on economic, financial and engineering analyses that are described more fully in the verified statements of William W. Whitehurst, David E. Staplin, Jerry C. Danzig, James L. Larson, Richard D. Simonen, and Curtis M. Grimm. I will summarize their principal findings and conclusions here.

reasons discussed by Conrail witness Robert Willig, by a factor (the "Willig factor") of 2.02 to produce a true incremental track maintenance cost of \$6,407,166 for 1994; and (4) by not paying comparable sums for incremental track maintenance previously, Amtrak has enjoyed a "free ride" on Conrail up to now.

For the reasons discussed below and in the verified statements and supporting exhibits and workpapers of Amtrak's other witnesses, my principal conclusions are as follows:

1. There is no merit to the claim of Conrail's witness John C. Klick, that Amtrak has enjoyed a "free ride" on Conrail in the past. The compensation Amtrak has paid Conrail has been pursuant to the terms of the contract that Conrail and Amtrak negotiated in 1976. Beginning in the early 1980s, Amtrak sought repeatedly to amend the provisions relating to compensation for track maintenance but Amtrak's efforts were consistently rebuffed by Conrail.
2. Although the contract and Section 402(a) of the Rail Passenger Service Act permit the Commission to require Amtrak to pay the incremental track maintenance costs attributable to its operations, Conrail's claim regarding the magnitude of those costs is grossly overstated, by a factor of more than seven! It is incorrect for the following reasons:
 - a. First, the WSAC model is not a proper model with which to determine the degree to which Amtrak's operations have contributed to the wear and tear of the track structure and thus to the track maintenance costs, for many reasons discussed in detail in the verified statements of Messrs. Whitehurst, Staplin and Danzig. Among other reasons --
 - i. The WSAC model is based on the erroneous contention that track maintenance does not experience economies of density above certain low traffic density thresholds. That contention is not supported by the engineering research literature and it is squarely refuted by Conrail's own MOW and traffic density data, as well as data for all other Class I U.S. railroads.

- ii. There are numerous other flaws in the WSAC model's engineering equations. For example, the model fails to take any account of the different suspension systems on passenger and freight cars and the very different impacts those suspension systems have, per ton of axle load, on the track structure.

 - b. The proper model for determining Amtrak's contribution to the wear of the track structures and thus to Conrail's MOW costs is the model known as the Speed Factored Gross Ton ("SFGT") formula. That formula was developed in the 1970's on the basis of the actual MOW experience of U.S. railroads. It was adopted by the Commission and appears in its regulations as the basis for calculating commuter rail costs, it has been applied in many Commission proceedings, and it is the basis for the incremental track maintenance payments Amtrak makes to every railroad other than Conrail over which it operates. As modified in various respects by Messrs. Whitehurst and Staplin to incorporate data and findings not previously available, the SFGT formula provides the proper method for determining Amtrak's incremental costs.

 - c. There is no basis for applying any Willig adjustment factor to Amtrak's variability share of Conrail's MOW costs to determine Amtrak's incremental costs. As explained by Amtrak's witness Professor Curtis Grimm, Mr. Willig's conclusion that Amtrak's variability share does not equal its incremental costs is incorrect.

 - d. Conrail has overstated the maintenance costs properly considered in this case by approximately 20 percent. It has also overstated the tonnages operated by Amtrak on its system.
3. Application of the modified and improved SFGT formula to Conrail's corrected MOW costs shows that the annual incremental cost track maintenance cost resulting from Amtrak's operations over the Conrail lines at issue, in 1994 dollars, is \$856,511.

~~868,853~~
812,068

BACKGROUND

Amtrak's Agreements with Conrail and Other Railroads.

Amtrak was created in 1971 by the Rail Passenger Service Act, 45 U.S.C. §501 et. seq. (the "Act"), to provide passenger rail service throughout the Nation and to take over the obligations of existing railroads to provide that service. By so doing, Amtrak relieved those railroads of the very substantial financial burden those obligations had been imposing. To enable Amtrak to perform that service, Congress, in Section 402 of the Act, authorized Amtrak to enter into contracts with other railroads for the use of their tracks and facilities, and if the parties could not agree on the terms of such contracts, Section 402 empowered the Commission to order the use of tracks and facilities by Amtrak and to determine the compensation to be paid by Amtrak for such use.

When the Commission is called upon to determine the compensation to be paid by Amtrak, Section 402 requires it to set it at a level that covers the "incremental costs" that Amtrak's operations impose on the other railroad. Compensation in excess of incremental costs may be required only in consideration of the quality of the other railroad's services to Amtrak -- for example, in ensuring specific levels of on-time performance.

As Amtrak's Assistant Vice President-Operations and Planning, James Larson explains in his statement, in the 1970's Amtrak entered into contracts with most of the Class I railroads governing its operations over their lines. The basic contract

with Conrail, styled the "Off Corridor Operating Agreement", was entered into as of April 1, 1976. Under that agreement, Amtrak has paid Conrail, on a monthly basis, certain specified expenses incurred solely as a result of Amtrak operations plus an additional amount equal to five percent certain of the expenses "to cover other avoidable costs." As Amtrak has operated more and more with its own employees and equipment the amount of these payments is less than in the early years, but it is still very substantial. Currently Amtrak pays Conrail's approximately \$5.4 million per year to operate over Conrail's lines.

Initially, Amtrak's agreements with other freight railroads contained similar compensation provisions. Starting in the mid 1970's other railroads and Amtrak began amending their agreements to provide for a more definitive method for specifying and quantifying Amtrak's incremental costs. These amendments provide for, among other things, payments for incremental track maintenance costs which have been calculated on the basis of the Speed Factored Gross Ton ("SFGT") formula. They also include incentive payments by Amtrak for specified on-time performance levels. The amendments also eliminated the five percent additive provision.

By 1988 all the other railroads over which Amtrak operates had entered into amended agreements containing such provisions. Since 1988 Conrail has been the only railroad without such an agreement. As Mr. Larson attests, since the early 1980's Amtrak has repeatedly approached Conrail with proposals to negotiate an

amended agreement similar to those with the other railroads, but until recently Conrail consistently rejected such proposals and indicated that it was not interested in amending the contract.^{2/}

The Present Dispute.

The Off Corridor Agreement with Conrail, like Amtrak's contracts with most other railroads, expires in 1996. The agreement has a provision permitting either party to require renegotiation of the contract terms and, if the parties fail to agree after 90 days, to require that a joint application be filed with the Commission under Section 402(a) of the Act for "an order for the provision of such services and the use of such facilities and equipment as are provided for herein, on such terms and for such compensation as the Commission by order may fix as just and reasonable."

On August 10, 1993 Conrail gave Amtrak written notice that Conrail wished to renegotiate the compensation provisions of the contract. The parties negotiated but were unable to reach agreement, and at Conrail's request they filed a joint application in this proceeding on February 3, 1994 asking the Commission to "establish[] a new basis of compensation for Amtrak's use of Conrail's track facilities."

^{2/} Amtrak has entered into four agreements with Conrail which specifically provide for specified track maintenance payments on four different line segments. Larson V.S., p.32, n. 1. As Conrail's witness William F. Wulfhorst states (Wulfhorst V.S. pp. 2-3), compensation for these lines is not involved in this proceeding.

EXHIBIT 13

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32467

NATIONAL RAILROAD PASSENGER CORPORATION AND
CONSOLIDATED RAIL CORPORATION--APPLICATION UNDER
SECTION 402 (a) OF THE RAIL PASSENGER SERVICE ACT
FOR AN ORDER FIXING JUST COMPENSATION

NATIONAL RAILROAD PASSENGER CORPORATION'S
STATEMENT OF EVIDENCE

VOLUME 1

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Counsel for National Railroad Passenger Corporation

Dated: August 29, 1994

TABLE OF CONTENTS

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VOLUME 1

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VOLUME 2

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D Jerry C. Danzig
E James L. Larson
F Richard D. Simonen
G Curtis M. Grimm

FINANCE DOCKET NO. 32467

VERIFIED STATEMENT OF
WILLIAM W. WHITEHURST, JR.
ON BEHALF OF
NATIONAL RAILROAD PASSENGER CORPORATION

My name is William W. Whitehurst, Jr. I am President of the firm of W. W. Whitehurst & Associates, Inc., economic consultants. The firm's offices are located at 12421 Happy Hollow Road, Cockeysville, Maryland 21030. A statement of my professional qualifications is set forth in Appendix A to this Verified Statement.

This statement deals primarily with the determination of maintenance of way costs incurred by Consolidated Rail Corporation ("Conrail" or "CRC") which are incrementally attributable to National Railroad Passenger Corporation ("Amtrak") operations over Conrail lines. On behalf of Amtrak, I have been asked to:

1. Provide an overview of the Speed Factored Gross Ton ("SFGT") formula as applied by Amtrak, the Interstate Commerce Commission ("ICC" or "Commission"), and others prior to this F. D. 32467 proceeding.
2. Evaluate the Weighted System Average Cost ("WSAC") model as presented and applied by Conrail witnesses Zarembski and Resor in this proceeding.
3. Describe certain improvements to the SFGT formula that I, in cooperation with other Amtrak witnesses, have made based on current research and data for use in this proceeding.
4. Evaluate the maintenance of way data base used by CRC in this proceeding and describe certain corrections to that data base.

operates to determine track maintenance amounts payable by Amtrak.

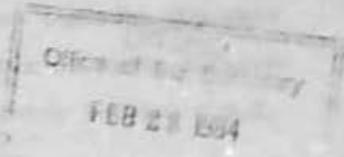
- The SFGT formula forms the basis for determining track maintenance amounts payable by Conrail in situations where Conrail operates over rail lines owned by New Jersey Transit.
- The SFGT formula is used in the San Francisco Bay area by the Southern Pacific Transportation Company ("SPTC") and the Peninsula Corridor Joint Powers Board ("PCJPB") to determine track maintenance amounts payable by SPTC to PCJPB where SPTC operates over PCJPB lines and amounts payable by PCJPB to SPTC where PCJPB operates over SPTC lines.

EVOLUTION OF SFGT
FORMULA TO DATE

The SFGT formula was first developed in 1973 on the basis of research conducted under my direction. The most comprehensive and widely circulated description of the SFGT formula is presented in the June 1977 Second Edition of Analysis of Track and Roadbed Maintenance Cost Variability, of which I was a principal author. As stated in the preface to that document, the authors of the formula viewed it as evolutionary in nature and subject to improvement as better information becomes available. And in fact, during the years subsequent to 1977, various refinements and improvements have been incorporated into the SFGT formula. As I will discuss, I believe further refinements and improvements are warranted to the formula as it was most recently applied before this proceeding in light of the most current research and data, including some of the research cited by Conrail's witnesses.

Amtrak has used the SFGT formula in its contract negotiations with U.S. railroads since it was developed. The SFGT formula as most recently used by Amtrak prior to this

EXHIBIT 14



BEFORE
THE INTERSTATE COMMERCE COMMISSION
E.D. 30426
APPLICATION
OF
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

PURSUANT TO SECTION 402(a) OF THE
RAIL PASSENGER SERVICE ACT

WITH RESPECT TO
OPERATION OF AMTRAK TRAINS ON THE HUDSON LINE
OF THE METRO-NORTH COMMUTER RAILROAD COMPANY

FILED

INTERSTATE
COMMERCE COMMISSION

FEB 28 5 37 PM '84
L.C.D.
FEE OPERATION SR.

Dated: February 24, 1984

Frederick C. Ohly
Stephen C. Rogers
National Railroad Passenger
Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

VERIFIED STATEMENT

OF

JAMES L. LARSON

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN SUPPORT OF

APPLICATION OF AMTRAK

PURSUANT TO SECTION 402 (a) OF

THE RAIL PASSENGER SERVICE ACT

WITH RESPECT TO

OPERATION OF AMTRAK TRAINS ON THE HUDSON DIVISION

OF METRO-NORTH COMMUTER RAILROAD COMPANY

Dated: February 24, 1984

Qualifications.

My name is James L. Larson. I am Assistant Vice President-Contracts in the Operating Department of the National Railroad Passenger Corporation (Amtrak). I am the Amtrak management official with primary responsibility for negotiation and administration of contractual arrangements for use of rail lines and provision of necessary services by other railroads to Amtrak in connection with the operation of Amtrak trains. In this capacity, I have been responsible for Amtrak's attempts to negotiate an operating agreement with Metro-North to cover operation of Amtrak trains on the Hudson Line of the Harlem-Hudson Lines. In addition, I am responsible for inspection of rail lines currently used by Amtrak as well as inspection of facilities over which Amtrak is considering routing new train operations.

I have been employed by Amtrak since 1973, and prior to coming to Amtrak was employed in the operating department of the Chicago and North Western Railway Transportation Company. As a result of my experience and current responsibilities, I am thoroughly familiar with the track requirements, operating factors, and the determination of avoidable costs involved in the operation of Amtrak trains on many different types of rail lines throughout the country.

Purpose of Statement.

This verified statement is intended to serve three purposes:

1. To explain how Amtrak has developed a reasonable approximation of the avoidable

sufficiently similar to other Amtrak railroad operations that an industry average train mile figure would represent a reasonable approximation of the avoidable costs involved in Amtrak operations on this line until a figure that is based on Amtrak's actual operations on this line can be determined.

The Amtrak fiscal year 1983 average avoidable cost for all amendment agreement railroads for these residual functions of \$3.01 per train mile contrasts sharply with Metro-North's position. Metro-North has consistently asserted that the avoidable costs are irrelevant and has requested payments that equate to approximately \$15 per train mile as its "price." Metro-North has made no serious attempt to justify that figure on the basis of applicable legal standards. The difference between Amtrak's approximation of avoidable costs for operations on the Hudson Line and Metro-North's request for payments is more than \$5 million per year on the basis of current operations.

2. Incentive Performance Arrangement.

Beginning in 1974, Amtrak has included in new and renegotiated operating agreements with railroads over whose lines our trains operate provisions for payments in excess of avoidable costs based upon the quality of performance. In the years since 1974, this concept has evolved and been refined substantially on the basis of our experience. While the arrangement with each individual railroad is subject to negotiation, the basic features of the incentive arrangements have become increasingly standard.

The basic elements of Amtrak's incentive performance arrangements are as follows:

1. Trains should be operated on high quality schedules. In the absence of specifically demonstrated safety or operational problems, such schedules should be based on the maximum operating speeds permitted by applicable legal standards, including most significantly the track standards of the Federal Railroad Administration. In addition, no excessive amounts of recovery time should be included in the schedules.
2. Incentives are paid for each percentage point by which on-time performance of a train exceeds 80 percent in a month.
3. Penalties are assessed against a railroad for each percentage point by which on-time performance of a train is less than 70 percent in a month. Such penalties may not exceed the amount of incentives earned by the railroad in connection with the operation of all Amtrak trains in the preceding twelve months, so there is no risk that a railroad could ever receive less than its avoidable costs in connection with the operation of Amtrak trains.

4. For trains operated less than 400 miles, a tolerance of five minutes in excess of the time provided in the schedule is allowed in determining whether an individual trip is on time. (Although it has no application to our operations on Metro-North, a ten-minute tolerance is allowed on longer trips and performance is measured at selected intermediate stations as well as at the end point.)
5. In measuring the on-time performance of individual trips, the railroad is also given an allowance for the amount of time by which a train is late being delivered to that railroad by another operating railroad or the amount of time a train is held at Amtrak's request waiting for passengers.
6. Delays experienced on a trip for causes other than those specified in 4 and 5 above are not excused or allowed in measuring on-time performance.

Such an arrangement provides an operating railroad a good opportunity to earn substantial amounts in excess of avoidable costs if it does a good job on behalf of Amtrak. In fiscal year 1983, for example, the railroads operating Amtrak trains under

amendment agreements earned more than \$21.9 million in incentives under arrangements that are based on the features outlined above.

The fact that Amtrak's proposed arrangement does not permit a railroad to be excused for delays beyond its control is an essential element of the total performance arrangement and has generally been accepted as fair by Amtrak's operating railroads. All schedules contain a reasonable amount of extra time that allows a train to incur some operating delays and still be on time. In addition, the operating railroad can earn incentives commencing at 80 percent. Amtrak and its operating railroads recognize that some avoidable delays are likely to occur from time to time, but the railroad that does a good job in minimizing those delays and achieves 90 percent on-time performance can still earn generous incentives. It is not expected that a railroad will achieve 100 percent on-time performance. Just as a margin for error is built into the scheme through the setting of the performance base for earning incentives at 80 percent, so penalties are not assessed until performance drops below 70 percent on time. It is virtually certain that a railroad would not experience such poor performance unless it were encountering serious problems with its rail line maintenance or its operating practices, or were simply indifferent to the operation of the Amtrak trains. In addition, since penalties can only be assessed against incentives earned in the preceding twelve months, in no event will the railroad ever receive compensation that is less than its avoidable costs.

A major problem that Amtrak's proposed arrangement has overcome is the avoidance of extensive argumentation with respect to causation and duration of the various delays that inevitably occur in the operation of Amtrak trains from time to time. In spite of objections from the railroads in earlier years, Amtrak has consistently maintained that such arguments over the causation of delays, such as mechanical failures, bad weather, operating practices, and the like, are not productive and in fact are not necessary to protect a railroad's ability to earn substantial incentives. The proof of this is in the tens of millions of dollars in incentive payments that the operating railroads earn annually without segregating delays by cause. At the same time, Amtrak is also receiving materially improved performance.

Amtrak proposes that Metro-North be given the potential to earn \$2.50 per train mile if all Amtrak trains were operated 100 percent on time. Such incentive potential represents an opportunity to earn payments that are more than 80 percent of the approximate avoidable costs per train mile described earlier in my statement. The incentive rate proposed for Metro-North is higher than that received by some railroads and is lower than that received by some others. Generally, the railroads that have the ability under their contracts to earn the highest incentives have negotiated their high rates over a period of years in which schedules of Amtrak trains operated on their lines have been progressively improved (i.e., shortened as well as restructured). Amtrak has agreed to the higher rates in recognition that the

task of a railroad in delivering high on-time performance becomes more difficult when such improved schedules are implemented, and in addition the service Amtrak can provide to its customers is enhanced. I am generally familiar with the schedules and operations on Metro-North rail lines between the Grand Central Terminal and Poughkeepsie, and I do believe they are reasonably good and would warrant a rate of \$2.50 per train mile for 100 percent on-time performance.

Exhibit JLL-1 attached to my Statement sets forth the specific arrangement that Amtrak proposes the Commission adopt in this proceeding. This arrangement incorporates in detailed form the conceptual elements of an appropriate incentive/penalty arrangement described above.

CERTIFICATE OF SERVICE

I certify that I have this 12th day of February, 2014, caused a true copy of the foregoing Motion of Illinois Central Railroad Company and Grand Trunk Western Railroad Company to Compel Responses to Requests for Production of Documents, to be served by e-mail upon:

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