



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
www.nysdot.gov

JOAN McDONALD  
COMMISSIONER

ANDREW M. CUOMO  
GOVERNOR

232530

July 2, 2012

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

ENTERED  
Office of Proceedings  
JULY 3, 2012  
Part of  
Public Record

RE: *Canadian National Railway Co. – Abandonment Exemption  
Niagara County, NY - STB Docket No. AB 279 (Sub No. 6X)*

Dear Ms. Brown:

The New York State Department of Transportation (“NYSDOT”) submits the following comments regarding the proposed abandonment by Canadian National Railway company (“CNR”) of its track on the U.S. portion of the Whirlpool Rapids Bridge and adjacent track in Niagara Falls, New York (the “Line”).

NYSDOT is an agency of the State of New York who’s mission is to ensure that those who live, work and travel in New York State have a safe, efficient, balanced and environmentally sound transportation system. CNR’s petition raises a number of issues of direct interest to NYSDOT.

**CONTINUATION OF INTERNATIONAL INTERCITY PASSENGER SERVICES**

While no freight traffic has moved over the Line in a number of years (CNR Petition at 4), Amtrak has operated Trains 63 and 64, (the “Maple Leaf”) on the Line, providing daily service between New York City, NY and Toronto, ONT, in cooperation with VIA Rail Canada (“VIA”). Amtrak and VIA, having received prior notice of CNR’s intention to file for abandonment of the Line, are negotiating an agreement with the Niagara Falls Bridge Commission (“NFBC”), owner of the Whirlpool Rapids Bridge, for continued use of the Line for rail passenger operations. NYSDOT has also been advised by Amtrak that Amtrak and CNR are in negotiations regarding the conveyance of CNR’s physical assets and other interests of the Line to Amtrak.

Pursuant to Section 209 of the Passenger Rail Improvement and Investment Act of 2008 (“PRIIA”), Amtrak’s Maple Leaf service will transition to a state supported service on October 1, 2013. At that time, NYSDOT will assume fiscal responsibility for the continued operation of “Maple Leaf” service. While NYSDOT is not actively participating in these negotiations, the terms negotiated will directly impact the costs assigned to NYSDOT under the Section 209 policy recently adopted by the Board.<sup>1</sup> NYSDOT has been briefed by Amtrak on the status of negotiations (including proposed financial and other terms) between Amtrak, VIA and NFBC for use of the Line and between Amtrak and CNR for conveyance of CNR’s physical assets and has no objection to the terms proposed.

**RAIL NETWORK REDUNDANCY**

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<sup>1</sup> See *Amtrak Petition for Determination of PRIIA Section 209 Cost Methodology*, STB Finance Docket No. 35571 (STB served March 15, 2012)

The Niagara River forms a natural border between the United States and Canada and is a formidable natural barrier to all forms of ground transportation. At the same time, the Buffalo-Niagara region is a significant gateway for international trade, with a total of more than \$81.9 billion worth of goods utilizing the region's border crossings in 2011 alone, representing approximately 17% of all US-Canada trade. Of that total, more than \$11 billion worth of goods crossed the border by rail.<sup>2</sup>

As recently as 2002, there were three active rail bridges connecting the Buffalo-Niagara Region of western New York with southern Ontario (the subject Whirlpool Rapids Bridge, the adjacent Canada Southern Bridge immediately to the south, both connecting Niagara Falls, NY with Niagara Falls, ONT, and the International Bridge between Buffalo, NY and Fort Erie, ONT). The abandonment of the Line across Whirlpool Rapids Bridge had the potential to reduce the number of active rail crossings of the Niagara River to one, raising significant concerns about the ability of the rail network to recover from natural or man-made disasters.

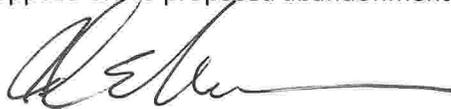
Fortunately, the agreements contemplated between Amtrak, VIA, NFBC and CNR will preserve the Line as an active, passenger-only rail corridor. NYSDOT is not aware of any current negotiations between the parties regarding use of the Line as a detour route in the event the International Bridge was ever rendered unusable. Nevertheless, acquisition of the Line by Amtrak (and the similar acquisition of CNR's interests in Canada by VIA) will preserve the opportunity to negotiate such agreements should the need ever arise.

**PROCEDURAL ISSUES**

CNR has requested that the subject proceeding be exempted from the OFA requirements of 49 U.S.C. § 10904, that it be exempted from the public use procedures of 49 U.S.C. § 10905, and that the petition receive expedited handling. NYSDOT supports all three of CNR's requests for the reasons set forth in CNR's petition.

In light of the foregoing, NYSDOT does not oppose CNR's proposed abandonment

Sincerely,



John E. Rondinaro  
Director  
Office of Integrated Modal Services

cc: Victoria Rutson, Chief, Section of Environmental Analysis  
Thomas DeSantis, City of Niagara Falls

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<sup>2</sup> USDOT Research and Innovative Technology Administration (RITA) Bureau of Transportation Statistics

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

From:  
Keith D. Martin, Assoc. Atty.  
NYSDOT, 50 Wolf Road, Albany, NY 12232

Date:  
July 3, 2012

Re: STB Docket No. AB 279 (Sub No. 6X)

Enclosed for service by regular US Mail please find NYSDOT's submission dated July 2, 2012 in the above-captioned matter. This submission consists of two pagers together with this cover.

Sincerely,  
KDM

*I hereby certify that I have served all parties of record in this proceeding with this document by United States mail.*

  
Dated: July 3, 2012  
Keith D. Martin, Esq.  
NYSDOT Office of Counsel

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- Cc:  
J. McLachlan, NYSDOT ✓  
J. Rondinaro, NYSDOT ✓  
R. Hessinger, NYSDOT ✓  
R. Rybak, NYSDOT ✓