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Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: **Application of the National Railroad Passenger Corporation Under 49 U.S.C.
§ 24308(a)—Canadian National Railway Company**

Dear Ms. Brown:

I am writing on behalf of BNSF Railway Company (“BNSF”), a non-party in the above-referenced case, to address a discovery dispute between Illinois Central Railroad Company and Grand Trunk Western Railroad Company (together “CN”) and Amtrak that involves an operating agreement between BNSF and Amtrak in effect between May 2011 and October 2013. Specifically, I am responding to statements by CN in its February 12, 2014 Motion to Compel that question the commercial sensitivity of BNSF’s operating agreement with Amtrak. *See* CN Motion to Compel at 20-21. As I explain below, BNSF considers BNSF’s operating agreement with Amtrak to contain commercially sensitive terms, and if the agreement is to be produced in discovery, the information should be designated as “Highly Confidential” information subject to the protective order that has been issued in this proceeding.

The operating agreement between BNSF and Amtrak that is sought by CN in discovery contains mutually negotiated commercially sensitive contractual information. The operating agreement was privately negotiated with Amtrak and sets out terms that reflect the commercial relationship between Amtrak and BNSF. The agreement contains information on costs, fees and compensation terms that are inherently sensitive commercial information.

BNSF has been involved in many proceedings at the Board involving discovery of confidential contracts. Our experience has been that when such contracts are produced, they are designated as “Highly Confidential” subject to protective orders that the Board issues in the proceeding. Indeed, the Board has recognized in the past that the integrity of its discovery procedures requires careful protection of highly sensitive commercial and proprietary information. I understand that a protective order has been issued in this proceeding that allows for the designation of discovery materials to be “Highly Confidential.” If BNSF’s operating

agreement with Amtrak is to be produced in discovery in this proceeding, it should be designated as "Highly Confidential" subject to the protective order.

Finally, I note that CN's discovery request to Amtrak for information relating to Amtrak's operating agreements with freight railroads is quite broad. BNSF does not object to the production of its main operating agreement with Amtrak, so long as it is designated as "Highly Confidential." But BNSF does not believe it would be appropriate or necessary to go beyond the production of the main operating agreement to produce other agreements between BNSF and Amtrak that would also be commercially sensitive.

Please contact the undersigned if you need further information.

Sincerely,

BNSF RAILWAY COMPANY

David T. Rankin

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Senior General Attorney

cc: Counsel of Record