



City of Niagara Falls, New York

April 11, 2016

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

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ENTERED
Office of Proceedings
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Public Record



Re: Ex Parte 728: Policy Statement on Implementing Passenger Rail OTP and Preference Provisions of 49 U.S.C. § 24308(C) and (F)

Dear Ms. Brown:

The City of Niagara Falls is famous for the Niagara River's spectacular waterfall but also the river's great gorge, site of the world's first railroad bridge in 1855. Ever since the City has experienced the ebb and flow of passenger rail, as has much of the rest of the country. There is no doubt that passenger rail ridership will continue to grow long-term. In New York State, there are dozens of railway infrastructure projects meant to improve the capacity of the state's railways generally and more specifically to increase the capability of that system to deliver more, better, faster passenger service.

To that end, governments at every level are investing hundreds of millions for improving Amtrak's On-Time Performance. Irrationally, the Surface Transportation Board (STB) has issued a "Policy Statement" on implementing preference provisions that will undermine the public's expressed desire for more better and faster passenger rail services. The effect of STB's new Policy Statement flips the burden of proof from host railroads, who must by statute seek relief from the STB, to Amtrak. This forces Amtrak to prove that a host railroad's failure to give preference did NOT 'materially lessen the quality of freight transportation' - which is almost impossible to understand, and impracticable to achieve given the extraordinary burden of proof required!

The STB's "Policy Statement" came about without hearing any evidence, without taking any public testimony, and without even undergoing any kind of formal rulemaking procedure. Yet, it fundamentally changes the rules of the game for Amtrak. STB's Policy Statement contradicts those found in the U.S. DOT's Strategic Plan: Transportation for a New Generation. U.S. DOT's stated goal is 'to maximize the public's investment in a new, multimodal, performance-based environment.' It is a Policy Statement that allows host railroads to ignore their legal obligations while making it impossible for Amtrak to seek redress from illegal behavior. Perhaps most perplexing of all, this same Policy Statement directly contradicts the intent of

Congress as expressed some 30 years ago and which has been consistently reaffirmed in law and court rulings since.

Under the metrics and standards implemented by the 2008 rail reauthorization law, Amtrak was able to achieve a 2012 on-time performance rate of 83 percent nationwide, and 71 percent for long distance trains. This level of on-time performance played a key part in allowing Amtrak to sustain its explosive ridership growth, which has led to ridership records in 10 of the past 11 years.

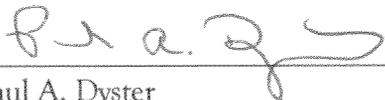
Since the metrics were struck down by the court of appeals, reported freight interference incidents nearly tripled, and Amtrak's on-time performance plummeted to 42 percent. The long distance trains were the most hard-hit; in a particularly extreme case, the on-time performance of the Capitol Limited plummeted to 1.6% in July of 2014. Amtrak reported in April 2014 that, in response to these skyrocketing delays, ridership and revenue had fallen by 15% year over year to date.

It was no coincidence that these delays followed hard on the heels of the DC appeals court ruling, and it was also no coincidence that the result unraveled a decade of record ridership.

Lost in the statistics, however, is the personal toll on our citizens who rely on – and pay for – timely and regular service on routes delayed by freight interference. Many irreplaceable personal moments have been disrupted by these delays, with crucial medical transports affected, weddings and funerals missed, and rare home visits by deployed service-members cut short or even cancelled altogether. There are thousands of such stories that prove this is more than a mere temporary inconvenience and in fact imposes real dollar costs onto vulnerable travelers. The National Association of Railroad Passengers supplied hundreds of these same stories to the STB evidencing these hardships back in 2014.

So despite all of the above, and despite federal, state, and local investments aiming to improve passenger rail service nearly everywhere (and certainly here in the City of Niagara Falls, NY where we are about to complete construction of a \$43 million intermodal railway station), it would seem clear that the STB must withdraw its "Policy Statement" in the best interest of the taxpaying and fare-paying public.

Sincerely,



Paul A. Dyster

Mayor

City of Niagara Falls, New York