

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Public Record

**Petition by the National Railroad Passenger
Corporation For Relief Pursuant to
49 U.S.C. § 24905**

STB Finance Docket No. 36048

**AMTRAK'S REPLY TO MBTA'S MOTION TO EXTEND TIME TO FILE A
REPLY TO AMTRAK'S PETITION FOR RELIEF PENDING
BOARD'S CONSIDERATION OF MBTA'S PETITION FOR ABEYANCE**

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National Railroad Passenger Corporation (“Amtrak”) submits this reply in opposition to the Massachusetts Bay Transportation Authority’s (“MBTA”) Motion to Extend Time to File a Reply to Amtrak’s Petition for Relief Pending Board’s Consideration of MBTA’s Petition for Abeyance.

On August 2, 2016, the MBTA filed a *second* request to extend its time to reply to Amtrak’s Petition for Relief Pursuant to 49 U.S.C. § 24905. Such extensions may be granted, in the Board’s discretion, only if the MBTA can establish that “good cause” exists. 49 C.F.R § 1104.7. Amtrak does not generally object to motions for extensions of time when requested as a courtesy to counsel or to the other party, as demonstrated by the fact that it already consented to the MBTA’s first request for an extension of time to file its reply. Indeed, Amtrak agreed to the MBTA’s first request, in good faith, because the MBTA represented that it needed additional time to prepare a motion for abeyance and reply simultaneously, and *that it would file a reply to Amtrak’s petition* on August 15, 2016.¹ Instead of proceeding as promised, the MBTA now comes forward with this second request for an open-ended extension. This request, however, is a clear attempt to delay these proceedings. Good cause does not exist to delay these proceedings any further.

Amtrak will make a separate and full response to the MBTA’s petition for abeyance within the deadline set forth by 49 C.F.R. § 1104.13. In the meantime, the MBTA should be required to reply to Amtrak’s petition within the time limits that *the MBTA itself requested*. The MBTA was fully aware of the pending District Court action and its intention to file a petition for abeyance when it filed its first request for an

¹Assented to Mot. to Extend Time for MBTA to File a Reply to Amtrak’s Pet. For Relief Pursuant to 49 U.S.C. § 24905 at 2 (July 29, 2016) (“MBTA respectfully requests that the Board extend the time for MBTA to file its reply to Amtrak’s Petition from July 14, 2016 to August 15, 2016”).

extension on July 29th. The MBTA has not demonstrated that anything has changed since its first request or that good cause exists to justify further delay beyond that which was used to justify its first request. The mere fact that the contemplated motion for abeyance has now been filed, without more, is insufficient. *See, e.g., Cent. Power and Light Co. v. S. Pac. Transp. Co. P.E., et. al. (Decision)*, Docket Nos. 41242, 41295, 41626, 1996 WL 529460 (STB served Sept. 18, 1996) (denying extension for reply where one of the related cases was at the time of the request for the extension being held in abeyance).

A second extension now would serve no purpose other than to delay for delay's sake. As directed by Congress, Amtrak and the state of Massachusetts have been working together *for over four years* alongside the U.S. Department of Transportation and other state representatives that comprise the Northeast Corridor Commission ("NECC") to "develop a standardized policy for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation." 49 U.S.C. §24905(c)(1)(A). After years of multilateral negotiations and exhaustive efforts to fashion a cost sharing policy that complied with Section 212, the NECC formally adopted the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy ("Uniform Policy") in October 2015. At any point during the policy-making period, the MBTA could have raised the constitutional issues that it is now seeking to litigate in federal court. It is only now – years later and at the eleventh hour – that the MBTA raises these issues for the first time in a transparent effort to avoid its financial obligations under the Uniform Policy and to further delay payment of the

MBTA's responsibility for shared costs that the NECC has collectively determined should be paid to Amtrak.

As Congress recognized, the timely payment of such shared costs is critical to Amtrak's financial health and ongoing viability. If the Board were to permit the open-ended delay of this proceeding requested by the MBTA, Amtrak would suffer considerable financial harm. Every day that the Board's decision is delayed, Amtrak goes without reimbursement for services provided to MBTA, which places an undue, one-sided, and increasingly problematic financial strain upon Amtrak. Simply put, the MBTA's unending delay tactics have pushed the parties into an urgent financial standoff that can only be resolved by the Board. Amtrak needs a resolution, and it needs it soon, which is why it filed its petition on June 24, 2016.

Notably, the MBTA does not claim that it cannot file its reply in the timeframe to which it originally agreed. Indeed, it even states that it would be willing to file a reply within ten (10) business days after the Board's ruling on the abeyance motion, which necessarily means that the MBTA will be preparing its reply in advance of a ruling in any event. Consequently, granting additional time for the MBTA at this stage hardly allows real conservation of MBTA resources. Furthermore, the MBTA's requested extension would allow the MBTA to have, at a minimum, *over two months* to reply to Amtrak's petition, and likely even longer.² This is too much delay for the Board to sanction in these circumstances. *Cent. Power and Light Co.*, 1996 WL 529460 at *2 (denying request for 58-day extension because it would "unduly delay resolution of these proceedings").

² Amtrak filed its petition on June 24, its reply to the MBTA's Petition for Abeyance is due August 22, and the MBTA proposes following with its reply ten days thereafter. Therefore, the soonest the MBTA might reply under its proposed extension would be September 1.

Amtrak agreed to the initial extension in good-faith because it expected the MBTA to make a meaningful, timely response to its petition and believed that agreeing to the short extension would be the most expeditious route to the resolution of Amtrak's petition. The only purpose served by this second extension request by the MBTA is to keep delaying and stretching out these proceedings for as long as possible. Given the significant actual economic harm resulting to Amtrak if the MBTA were allowed to pursue this litigation strategy, Amtrak respectfully requests that the Board deny the MBTA's motion.

August 5, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, August 5, 2016, caused to be sent by electronic mail a copy of Amtrak's Reply to MBTA's Motion to Extend Time to File a Reply to Amtrak's Petition for Relief Pending Board's Consideration of MBTA's Petition for Abeyance to:

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