

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

241227

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August 2, 2016  
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Public Record

**Petition by National Railroad Passenger  
Corporation for Relief Pursuant to  
49 U.S.C. § 24095**

STB Finance Docket No. 36048

**EXPEDITED CONSIDERATION  
REQUESTED**

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

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*Counsel for Massachusetts Bay  
Transportation Authority*

The Massachusetts Bay Transportation Authority (“MBTA”), by and through its undersigned counsel, respectfully moves pursuant to 49 C.F.R. § 1104.7(b) for the Surface Transportation Board (the “Board”) to extend the time for MBTA to file its reply to National Railroad Passenger Corporation’s (“Amtrak”) Petition for Relief Pursuant to 49 U.S.C. § 24905 (“Petition”) until after the Board rules upon MBTA’s Petition to Hold Proceeding in Abeyance Pending Parallel District Court Litigation, filed concurrently herewith.

The Surface Transportation Board (the “Board”) has discretion to extend the time period for replies upon request and with good cause. 49 C.F.R. § 1104.7(b). Good cause exists for the MBTA’s requested extension, as the Board has recognized in prior decisions holding in abeyance the deadline for filing a reply pending the Board’s ruling on a motion to stay proceedings. *See, e.g., Pennsylvania Railroad Company – Merger – New York Central Railroad Company (Arbitration Review)*, Docket No. FD 21989 (Sub-No. 4) (STB served September 3, 2009). Here, MBTA has petitioned the Board to hold this proceeding in abeyance pending parallel, first-filed district court litigation (the “District Court Litigation”), which challenges the constitutionality of the statutory provision under which Amtrak seeks relief in this action, 49 U.S.C. § 24905. Notably, MBTA’s challenge to § 24905 raises two of the same grounds that recently caused the D.C. Circuit to strike down a related statutory provision. *See Assoc. of Am. Railroads v. Dep’t of Transp.*, 821 F.3d 19 (D.C. Cir. 2016). MBTA’s petition for abeyance is currently pending and, if granted, would obviate the need for MBTA to file a reply until after the District Court Litigation is resolved, if at all. Waiting for a decision from the Board on MBTA’s petition for abeyance before requiring MBTA to file its reply thus strongly serves the important interest in conserving the resources of the MBTA, a taxpayer-funded state government entity. Should the Board grant this motion but ultimately deny MBTA’s petition for an abeyance,

MBTA is prepared to file its reply within ten (10) business days of service of the Board's ruling. Thus, granting MBTA's request will not cause undue delay.

MBTA's counsel conferred with counsel for Amtrak about this extension on August 1, 2016. Amtrak declined to assent to this motion.

WHEREFORE, and in view of the foregoing, MBTA respectfully requests that the Board extend the time for MBTA to file its reply to Amtrak's Petition until after the Board rules upon MBTA's Petition to Hold Proceeding in Abeyance Pending Parallel District Court Litigation.

DATED: August 2, 2016

Respectfully submitted,

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By its attorneys,

/s/ Kevin P. Martin

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CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of August, 2016, a copy of the foregoing MOTION TO EXTEND TIME FOR MBTA TO FILE A REPLY TO AMTRAK'S PETITION FOR RELIEF PENDING BOARD'S CONSIDERATION OF MBTA'S PETITION FOR AN ABEYANCE was served via e-mail, as agreed upon by the Parties, upon the following:

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