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**BY E-FILING**

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

**RE: FD 35851, GREAT CANADIAN RAILTOUR COMPANY  
LIMITED d/b/a ROCKY MOUNTAINEER-Petition for Exemption  
from 49 U.S.C. Subtitle IV**

Dear Ms. Brown:

I am e-filing on behalf of Petitioner Great Canadian Railtour Company Limited d/b/a/ Rocky Mountaineer a corrected version of its Responses to the Board's March 4, 2015, decision in the above-captioned matter. The version filed on April 10, contained an error in the wording at the bottom of page 6 and the top of page 7. I apologize for any inconvenience.

Sincerely yours,



John D. Heffner

cc: David Coburn, Esq.  
William H. Herrmann, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35851**

**GREAT CANADIAN RAILTOUR COMPANY LIMITED  
d/b/a ROCKY MOUNTAINEER**

**PETITION FOR EXEMPTION FROM  
49 U.S.C. SUBTITLE IV**

**CORRECTED VERSION  
RESPONSES TO BOARD'S MARCH 4, 2015 DECISION**

John D. Heffner  
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(202) 742-8607

Dated: April 13, 2015

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35851**

**GREAT CANADIAN RAILTOUR COMPANY LIMITED  
d/b/a ROCKY MOUNTAINEER**

**PETITION FOR EXEMPTION FROM  
49 U.S.C. SUBTITLE IV**

**CORRECTED VERSION  
RESPONSES TO BOARD'S MARCH 4, 2015 DECISION**

Pursuant to a decision of the Surface Transportation Board (“the Board”) served March 4, 2015, Great Canadian Railtour Company Limited d/b/a Rocky Mountaineer (“Rocky Mountaineer” or “Petitioner”) files this response to the questions raised by the Board’s decision.

As background, Rocky Mountaineer had originally filed a petition with the Board for an exemption from all of the provisions of Subtitle IV of the I.C.C. Termination Act (“ICCTA”). At the Board’s direction, Rocky Mountaineer had filed its Petition to authorize the extension of the operation of its deluxe excursion passenger train between points in Western Canada and Seattle, WA. Petitioner

provided that service over BNSF's line for the 2014 Season with Amtrak furnishing train operating crews and host railroad access.<sup>1</sup> BNSF fully cooperated in those arrangements with Amtrak.

On November 20, BNSF filed the subject reply in opposition to the petition. On January 29, 2015, the very day the Board issued a decision instituting a proceeding under 49 U.S.C. § 10502(b), the parties met in Chicago to resolve their differences. Petitioner believes that it has come to a satisfactory understanding with BNSF on the appropriate nature of the relief sought by Petitioner.<sup>2</sup> Nevertheless, in a desire to be thorough, Petitioner will respond to each of the questions posed in the March 4 decision.

Petitioner has read the Board's recent ruling in *Pullman Sleeping Car Company, LLC-Petition for Exemption From 49 U.S.C. Subtitle IV*,<sup>3</sup> as well as the Board's prior decision in *American Orient Express Railway Company, LLC-Petition for Declaratory Order*, FD 34502 (slip op. STB served Dec. 29, 2005, cited as *AOE*) where the Board first asserted jurisdiction over private charter and excursion passenger railroad service. Petitioner believes that these decisions confer jurisdiction over Petitioner's service and authorize the Board to grant Rocky Mountaineer a full Subtitle IV exemption to enable it to continue providing service

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<sup>1</sup> Rocky Mountaineer operated one test train in 2013.

<sup>2</sup> Amtrak has now filed with BNSF a request to operate Rocky Mountaineer's train between Vancouver, BC, and Seattle, WA, for the 2015 Season and BNSF has agreed to that request.

<sup>3</sup> Docketed as FD 35738 (STB served February 5, 2015, and cited as *Pullman*).

subject to appropriate agreements with Amtrak (for train operating crews and host railroad access rights) and with BNSF for access.

Simply stated, in *Pullman* the Board took jurisdiction over an interstate excursion or charter passenger service provided by a private entity over the national freight network where Amtrak handles the service in a regularly scheduled Amtrak train and granted that service an exemption from most provisions of Subtitle IV of the ICC Termination Act. Moreover, the *Pullman* decision allowed that carrier to provide service on a nationwide and continuing basis without having to come back to the Board each time for a route change, addition, or deletion. Rocky Mountaineer interprets *AOE* as granting the Board jurisdiction over an excursion service where Amtrak provided the operating crews and freight railroad access rights. While that decision just involved an exemption from the entry requirements of 49 U.S.C. §10901, Petitioner believes that its service is entitled to the same Subtitle IV exemption granted in *Pullman*. Rocky Mountaineer would use Amtrak to furnish train operating crews and, through Amtrak's agreement with BNSF, host railroad access.

The three issues on which the Board has sought Rocky Mountaineer's responses are: (1) why an exemption permitting Rocky Mountaineer's proposed operations should be granted when Rocky Mountaineer has no contract with BNSF to operate over the line; (2) if BNSF were to contractually agree to permit Rocky

Mountaineer's service for the 2015 season only, what expectation would Rocky Mountaineer have to continue seasonal service over BNSF's line beyond 2015; and (3) whether BNSF would have any means of removing Rocky Mountaineer from the line if the Board were to authorize Rocky Mountaineer to provide rail passenger service and exempt it from all Subtitle IV requirements permitted by the statute, including exit licensing.

The Board's questions and Petitioner's responses are as follows:

**(1) why an exemption permitting Rocky Mountaineer's proposed operations should be granted when Rocky Mountaineer has no contract with BNSF to operate over the line.**

Response: While it is factually correct that Rocky Mountaineer does not have a direct contract with BNSF, Rocky Mountaineer has an agreement with Amtrak to provide charter service for the 2013 (limited test run), 2014, and 2015 Seasons and BNSF has concurred in that service. Rocky Mountaineer envisions the possibility of signing additional agreements with Amtrak to provide service for years beyond 2015 and possibly for other routes or services. Rocky Mountaineer recognizes and appreciates that it cannot provide service without an agreement with Amtrak and concurrence from BNSF to accommodate the service. It is for that reason that Rocky Mountaineer anticipates further meetings with Amtrak and BNSF representatives to explore mutually acceptable arrangements for future years and services. Rocky Mountaineer has explained that it must make its service

arrangements sometime in advance and BNSF has advised Petitioner of some of the practical logistics issues it faces in the future arising from capacity constraints on BNSF's line between Seattle and Vancouver. Nevertheless, the parties are meeting in a cooperative spirit and hope to resolve these issues in a mutually beneficial manner.

With respect to Amtrak's Petition to Intervene submitted to the Board on March 25, 2015, Rocky Mountaineer takes no position as to the merits of Amtrak's statutory rights to operate special trains and charter trains pursuant to 49 U.S.C. §24308. However, Rocky Mountaineer does want to make it clear that we appropriately contracted with Amtrak to operate our charter trains for the 2013, 2014, and 2015 seasons and will continue to negotiate with Amtrak for continued charter train service beyond 2015.

**(2) if BNSF were to contractually agree to permit Rocky Mountaineer's service for the 2015 season only, what expectation would Rocky Mountaineer have to continue seasonal service over BNSF's line beyond 2015?**

Response: Since Amtrak and BNSF presently have in place arrangements to permit Rocky Mountaineer to provide service for 2015, Petitioner recognizes that it would have to negotiate with Amtrak to provide service after the 2015 summer tourist season. As such, Rocky Mountaineer and Amtrak have established in good faith a cooperative relationship to negotiate for continued service beyond

2015. Petitioner recognizes that Board operating authority is *permissive*<sup>4</sup> and that it cannot provide service without such arrangements. Having timely Board authorization will permit Petitioner to institute service expeditiously when reaching future arrangements to operate special or charter trains in conjunction with Amtrak over BNSF's lines.

**(3) whether BNSF would have any means of removing Rocky Mountaineer from the line if the Board were to authorize Rocky Mountaineer to provide rail passenger service and exempt it from all Subtitle IV requirements permitted by the statute, including exit licensing.**

Response: Granting Petitioner a Subtitle IV exemption encompasses "exit" authority, the need to seek Board approval for any discontinuance of or change in service, which Amtrak service is not subject to in any event. A Subtitle IV exemption would give Petitioner the ability to change (or even eliminate) service to meet market need in accord with whatever commercial arrangements were in place with Amtrak, and between Amtrak and BNSF unencumbered by any question of regulatory requirements. Thus, granting the Subtitle IV request would facilitate the type of flexibility required here.

Accordingly, Rocky Mountaineer requests that the Board promptly conclude this proceeding and grant it an exemption from the requirements of Subtitle IV consistent with Pullman, authorizing its continued service with Amtrak on BNSF

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<sup>4</sup> See, e.g., *Massachusetts Coastal Railroad, LLC-Acquisition-CSX Transportation, Inc.*, FD 35314 (STB served December 21, 2009, slip op. at 2, footnote 2).

tracks between points in Canada and the United States using Amtrak to furnish train operating crews and host access rights subject to commercial agreements between Rocky Mountaineer and Amtrak

Respectfully submitted,



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Dated: April 13, 2015

**CERTIFICATE OF SERVICE**

I, John D. Heffner, have served <sup>corrected</sup> a copy of the Great Canadian Railtour Company Limited d/b/a/Rocky Mountaineer Responses to the Board's March 4, 2015 Decision by first class United States Mail and electronic mail on this 10<sup>3</sup>th day of April, 2015:

David H. Coburn  
Partner  
Step toe & Johnson  
1330 Connecticut Avenue, NW  
Washington DC 20036

William H. Herrmann  
VP and Managing Deputy General Counsel  
National Railroad Passenger Corporation  
(AMTRAK)  
60 Massachusetts Avenue, NE  
Washington, D.C. 20002

/s/ John D. Heffner  
John D. Heffner

Dated: April 10<sup>3</sup>, 2015