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228790

February 7, 2011

Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

FEB - 7 2011

Part of
Public Record

Re: Amtrak Emergency Routing Orders, Docket No. EP 697

Dear Ms. Brown:

Attached is a copy of the comments of the Association of American Railroads in the above-referenced proceeding.

Respectfully submitted,

Daniel Saphire

Attorney for the Association of
American Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD

228790

STB DOCKET NO. EP 697

AMTRAK EMERGENCY ROUTING ORDERS

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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February 7, 2011

The Association of American Railroads (AAR) submits these comments in response to the Notice of Proposed Rulemaking issued by the Surface Transportation Board (Board) on January 6, 2011, seeking comments on proposed regulations governing the issuance of emergency routing orders upon application of the National Railroad Passenger Corporation (Amtrak). 76 FED. REG. 766.¹

Other than on the Northeast Corridor and a few other limited locations, Amtrak provides passenger service over the lines of the freight railroads; thus, an emergency order issued by the Board would essentially be authorizing Amtrak service over a route on the freight rail network not normally used for Amtrak service. In most cases, Amtrak service is provided in accordance with contracts that have been entered into between Amtrak and the host railroads. While these contracts differ in their particulars, they typically cover key subjects of general applicability, such as compensation paid to the host railroad, allocation of liability in the case of accidents and other losses, and operating procedures. Moreover, as the Board notes, in most cases Amtrak and the host carrier reach an agreement governing the terms of use of an alternative route in the event of an emergency. Consequently, it is anticipated that utilization of the Board's procedures on emergency routing orders will be an infrequent event.

Nonetheless, from time to time Amtrak may be in a position to seek an order from the Board when it is unable to operate over its normal route due to an emergency. As the Board states, an emergency that calls for a reroute would be an extreme situation where Amtrak is physically blocked from using its normal route due to an unusual and

¹ Amtrak also is a member of AAR, however, these comments are filed on behalf of AAR's freight railroad members and do not necessarily reflect the views of Amtrak.

unexpected situation, like a derailment or severe weather. The proposed regulations properly require Amtrak to describe the nature of the emergency. Appropriately, this will enable the Board to ascertain whether an order is warranted.

While AAR members do not anticipate any significant controversy arising from the Board's proposal, AAR wishes to raise a few points related to both the underlying principles and the procedures that should govern the issuance of emergency orders.

Principles Guiding Emergency Orders

To begin, in all cases where emergency routing authority is sought by Amtrak, certain principles should prevail. An emergency order permits Amtrak to operate, on a temporary basis, over an alternate route when the normal route has been affected by an emergency situation for a short period of time. The new route may be on the line of the same or a different carrier. In either case, it is likely that Amtrak and the host already have in place an agreement that reflects the intent of the parties with respect to Amtrak operations over the lines of the host railroad. The Board correctly notes that in many cases the parties will have agreed to terms that would govern the emergency routing situation, and any order issued by the Board should require compliance with those terms. Even if the agreement does not specifically address emergency routing situations, there is no reason why all relevant provisions of the existing agreements would not apply to operations over the new route that is used for the duration of the emergency. For example, if an existing agreement contains an indemnity allocating liability in the case of a particular type of accident, that provision should apply if such an accident were to occur during operation on an alternate route. However, an emergency routing request might call for new or different terms to meet unique situations that might

be presented where Amtrak seeks to operate temporarily on a line that normally does not accommodate passenger service. In such case, the host railroad should have the ability to ask the Board to impose special terms tailored to the unique situation facing the parties. Of course, the parties would be free to negotiate special provisions covering emergency routes as they see fit.

Along the same lines, it is imperative that Amtrak's operations over an emergency route be undertaken in accordance with all of the operating requirements and restrictions applicable to that route. Safety is the paramount goal in all situations. Thus, if the conditions of the track (e.g., track class) on an alternative route would not permit Amtrak to operate at its normal speed or adhere to its normal schedules, compliance with those limitations must be a condition of any emergency order. Indeed, some routes may not be equipped to handle Amtrak trains, and the Board should not grant emergency authority over those lines. While this may not be the ideal situation for Amtrak, there simply is no alternative consistent with safety.

Procedures for Emergency Orders

Appropriately, the Board's proposal recognizes that initial decisions in the face of an emergency must be made in a tight time frame. The Board proposes to require that replies by carriers potentially affected by an Amtrak application for emergency routing be filed within one business day after having been served with the application, service being required in a manner to ensure prompt notification. However, the Board also proposes that an initial decision on the application be issued within one business day of the filing of the application, and states that replies will be considered "as time permits." Thus, the Board acknowledges that the time frames it has proposed may not afford an

opportunity to consider any concerns raised by the carrier over whose lines Amtrak seeks to operate in the case of an emergency. This raises an issue of fundamental fairness and a related concern of the Board acting on limited information.

To avoid such unfairness, the Board should provide that initial decisions must be issued within two business days of an application's filing. This will at least provide some opportunity for the Board to consider concerns raised in the host railroad's reply. In the alternative, the Board should be required to communicate directly with host railroads before an initial order is issued, and ascertain and consider any concerns raised by the host over a pending application. While the proposed rule permits the Board to engage in normally prohibited ex parte communications with host carriers to obtain information quickly, it does not require the Board to make such an effort. Should the Board's time frames render it unable to give consideration to a host carrier's written reply, it should be obligated to obtain an affected carrier's views by other means before issuing an order.

The Board also proposes an extremely expedited schedule for appealing initial decisions and ruling on such appeals. Further, the filing of an appeal would not stay an initial decision granting an emergency routing order, an exception to the ordinary rules governing stays. Such an approach is understandable; otherwise emergency orders, which by their nature are time sensitive, could be rendered meaningless if they could be routinely stayed. However, there may be some instances when a short stay, pending an appeal, might be appropriate. Thus, the Board should retain discretion to stay an order upon a proper showing by an appealing carrier.

In addition, once an order is in place, it is not clear why appeals must be filed and disposed of with the same dispatch as the initial application. The Board should consider permitting the filing of an appeal of an emergency order within five (rather than one) business days of the service of the order. In fact, not requiring an appellant to act so quickly might provide time for the parties to work out issues or for the host to conclude that an appeal is unnecessary.

As stated above, AAR is confident that just as Amtrak and host railroads have for the most part been able to address issues through agreement, they will continue to be able to do so where an emergency necessitates temporary alternative routing. However, to govern the rare instances where that may not be the case, the Board should clarify or amend its proposal as requested in these comments.

Respectfully submitted,



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