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Date: March 11, 2025

Case: Docket No. FD 35743

SURFACE TRANSPORTATION BOARD

Docket No. FD 35743,

APPLICATION OF THE NATIONAL RAILROAD PASSENGER

CORPORATION UNDER 49 U.S.C.

Section 24308(a)-CANADIAN NATIONAL RAILWAY COMPANY

TECHNICAL CONFERENCE

Tuesday, March 11, 2025

10:00 a.m.

395 E Street, S.W.

Washington, DC 20423

1   Attendees:

2   Kathryn J. Gainey (Illinois Cental Railroad Company

3   and Grand Trunk Western Railroad Company (together,

4   (CN))

5   Davon M. Collins (CN)

6   Michael A. Matteucci (CN)

7   Scott Kuxmann (CN)

8   Rachel E. Klumpp (CN)

9   M. Rapik Saat (CN)

10   David A. Hirsh (Dentons (outside counsel for CN))

11   Shannon Y. Shin (Dentons (outside counsel for CN))

12   Jim Blair (National Railroad Passenger Corporation

13   (Amtrak))

14   Kyle Montgomery (Amtrak)

15   Christopher S. Perry (Amtrak)

16   Jerry A. Cuomo (Landman Corsi Ballaine & Ford P.C.

17   (outside counsel for Amtrak))

18   Timothy J. Collazzi (Landman Corsi Ballaine & Ford

19   P.C. (outside counsel for Amtrak))

20   Ian Anderson (Surface Transportation Board (STB))

21   Rollin Brendenberg (STB)

22   Anika Cooper (STB)

 1   (ATTENDEES CONTINUED):

 2   Chris Falcone (STB)

 3   Sarah Fancher (STB)

 4   Lindsay Gower (STB)

 5   Adam Kress (STB)

 6   Erik Light (STB)

 7   Victoria Miller (STB)

 8   Madison Saniuk (STB)

 9   Derek Van Becelaere (STB)

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1   P R O C E E D I N G S

2   MR. FALCONE: Okay. I think we'll go

3   ahead and get started. Good morning. For the

4   benefit of the Court Reporter, my name is Chris

5   Falcone. I'm an attorney with the Board's Office of

6   Proceedings. Welcome to this technical conference

7   where we'll be discussing the Board's request for

8   additional information raised in its February 19

9   decision.

10   For the purposes of this technical

11   conference, our focus will be on addressing technical

12   questions you have regarding the Board's anticipated

13   information requests. It's also an opportunity for

14   you to provide information related to the

15   feasibility of responding to these requests. Thank

16   you for the information you have already provided in

17   your letters responsive to the February 19 decision.

18   For the benefit of our Court Reporter,

19   please speak clearly into your microphone and

20   identify yourself each time you speak. The Court

21   Reporter is welcome to interject if he can't hear,

22   which does happen, so if that happens, let's address

1   his concern. A transcript of the hearing will be

2   provided to participants after the close of the

3   technical conference with an opportunity to propose

4   appropriate redactions before being placed in the

5   docket for this proceeding.

6   If the parties present any documents or

7   slides during this conference, we ask that these be

8   emailed to us following the conference along with

9   whatever confidential designations you may have. As

10   the February 19 decision noted, we will not be

11   discussing the merits of any terms either party has

12   proposed for the new operating agreement. Related to

13   that point, while staff can provide information

14   clarifying the anticipated information requests, it

15   cannot say how the Board would view or respond to a

16   particular explanation given in response to an

17   anticipated information request. That determination

18   is up to the Board.

19   Similarly, while you are welcome to

20   provide information regarding the feasibility, this

21   is not the appropriate forum to present arguments as

22   to whether the Board should inquire into any

1   particular subject matter in the anticipated

2   requests. Those arguments can be made in your

3   submission to the Board after it finalizes the

4   information requests. Nor will Staff tell you based

5   upon concerns you may raise about feasibility that

6   you will not have to provide a response to a

7   particular information request or otherwise discuss

8   any future actions the Board may take in this

9   proceeding.

10   To that end, there were some questions

11   raised in your letters that Staff cannot address at

12   this time, but we will endeavor to discuss all of the

13   technical topics that we can. We appreciate your

14   broader questions, but the focus today is

15   necessarily on technical clarification and

16   feasibility. Once again, we welcome you all and look

17   forward to a fruitful and open discussion. If we're

18   still going at 12:30, we'll plan to take a lunch

19   break at that time.

20   First, we ask that each individual

21   introduce themselves and please identify your

22   particular area of expertise as it relates to this

1 technical conference. We'll start with STB Staff,

2 who will give their names in the office in which they

3 work.

4   MS. SANIUK: Madison Saniuk with the

5 Office of Proceedings.

6   MS. COOPER: Anika Cooper, General

7 Counsel.

8   MR. BREDENBERG: Rollin Bredenberg,

9 Office of Economics.

10   MR. KRESS: Adam Kress, Office of the

11 General Counsel.

12   MR. ANDERSON: Ian Anderson, Office of

13 Economics.

14   MR. COLLINS: Davon Collins, Regulatory

15 Counsel, CN.

16   MS. KLUMPP: Rachel Klumpp, Passenger

17 Operations, CN.

18   MR. KUXMANN: Scott Kuxmann, Passenger

19 Operations, CN.

20   MR. MATTEUCCI: Mike Matteucci, Interline

21 Services, CN.

22   MR. HIRSH: David Hirsh, Dentons, outside

1   counsel for CN.

2   MS. GAINEY: Kathryn Gainey, head of CN's

3   Global Regulatory Affairs.

4   MS. SHIN: Shannon Shin at Dentons,

5   outside counsel to CN.

6   MR. SAAT: Rapik Saat, Regulatory

7   Costing, CN.

8   MR. COLLAZZI: Timothy Collazzi, Landman

9   Corsi Ballaine & Ford, outside counsel for Amtrak.

10   MR. CUOMO: Jerry Cuomo, Landman Corsi

11   Ballaine & Ford, outside counsel for Amtrak also.

12   MR. PERRY: Christopher Perry, Amtrak Law

13   Department.

14   MR. BLAIR: Jim Blair, Amtrak Host

15   Railroads.

16   MR. MONTGOMERY: Kyle Montgomery, Amtrak

17   Host Railroad Group.

18   MS. MILLER: Victoria Miller with the

19   Office of Proceedings.

20   MR. VAN BECELAERE: Derek Van Becelaere

21   with the Office of Proceedings.

22   MS. GOWER: Lindsay Gower with the Office

1 of General Counsel.

2   MR. LIGHT: Erik Light, Office of the

3 General Counsel.

4   MS. FANCHER: Sarah Fancher, Office of

5 Proceedings.

6   MR. FALCONE: Okay. Thank you. Chris

7 Falcone again. We will now turn to addressing the

8 questions raised by the parties. I'll go through

9 each of the questions submitted, proceeding by topic

10 area, addressing CN's questions on a particular

11 topic first, followed by Amtrak's questions on that

12 topic. When discussing a particular question, we'll

13 be putting it on the screens here for everyone's

14 reference, but we do not plan to read the questions

15 aloud. Discussion on each question will begin by

16 Staff providing a response. The parties will then

17 have the opportunity to ask follow-up questions or

18 seek additional clarification.

19   First topic is, on time performance and

20 CN's schedule about schedule status. This is one of

21 those questions where the information sought is

22 regarding future determinations by the Board.

1 Therefore, we can't speak to this. And next would be

2 Amtrak's question on schedule status as well. Again,

3 Staff can't respond to this question to the degree it

4 would require us to speak to what the Board might do

5 if the schedule disputes remain unresolved, but

6 Amtrak's question here mentions they would like to

7 discuss the disputed schedules. So if there is

8 anything else Amtrak would like to say about these

9 schedules, please do so now.

10   MR. CUOMO: Sure. And thank you very

11 much, Mr. Falcone. It was in general a largely

12 open-ended question. We had some of the same

13 questions that were posed by CN, which at the end of

14 the day it's as stated in the last sentence of our

15 letter, which is really what are the Board's

16 expectations for a response from the parties with

17 respect to that the schedules need to be certified.

18   As you know, there are disputed

19 schedules, six, at issue here, and we have ideas on

20 how we think those schedules should be handled as

21 part of an operating agreement that the Board may

22 implement. I'm not sure if that's something that's

1 appropriate for us to go into at this conference or

2 if it's just something we address in our written

3 submission, but we just wanted some more information

4 around what the Board's expectations were from the

5 parties with respect to a response to that particular

6 question.

7   MR. FALCONE: Okay. I will say, these

8 proposed information requests are not final, and so

9 we will take into account the issues raised by your

10 questions here, so they might look a little different

11 when they're finalized, but again, we can't

12 speculate as to what the Board might do when they

13 finalize these questions.

14   MR. CUOMO: And just if I can give you a

15 touch more color --

16   MR. FALCONE: Sure.

17   MR. CUOMO: -- just from our perspective

18 on what we're kind of thinking through. As you know,

19 from the FRA's final rule on metrics and standards,

20 there was a process set forth where schedules were

21 disputed. There was an ADR process, which I believe

22 both sides have gone through and we've still landed

1   with disputed schedules. And although COTP applies

2   to those disputed schedules, we weren't sure if the

3   Board was going to require, as an absolute

4   requirement, that there be certified schedules as

5   part of an operating agreement. And if there is, I

6   think CN had the same question that we did that now

7   that we've gone through the ADR process that was

8   required by the final rule, what did the Board have

9   in mind for us to try and reach a mutual agreement on

10   a certified schedule if that's what the Board is

11   absolutely going to require.

12   MR. FALCONE: Okay. Understood.

13   MR. CUOMO: Yep. Thank you.

14   MR. HIRSH: Could I respond briefly?

15   MR. FALCONE: Yes.

16   MR. HIRSH: A couple of points.

17   MR. FALCONE: Oh, yes.

18   MR. HIRSH: Just -- David Hirsh. I

19   think the parties had an opportunity in their

20   extensive prior pleadings to discuss the

21   possibilities of what would happen in the event they

22   did not reach agreement on the schedules. So I want

1   to confirm that the next filings we make are not

2   intended, should not be making proposals for changes

3   to the operating agreement or prior proposals the

4   parties have made. In other words, go to the merits

5   and make arguments like that in response to this

6   question, and I would hope that the follow-up

7   decision by the Board would make that clear.

8   Secondly, it's not correct that we went

9   through the FRA process for these six schedules.

10   MR. FALCONE: Okay.

11   MR. HIRSH: We reached impasse where CN

12   wanted to follow that process, part of which included

13   the issuance of a written decision at the end of the

14   non-binding mediation, and Amtrak refused to agree to

15   have any kind of written decision, instead asked for

16   a one-day mediation cap that would not result in a

17   written decision, which in our view could allow a

18   very non-productive one-day meeting. So, we never

19   ended up actually going through the non-binding

20   mediation for these six schedules.

21   MR. FALCONE: Right. Yes. I believe

22   that was in your briefs.

1   MR. HIRSH: It could have happened

2   subsequent to the brief, so it's worth mentioning

3   that it never happened. The other thing I think

4   might be worth mentioning is we did resolve one issue

5   with respect to the Illini/Saluki schedules. I think

6   subsequent to the pleadings.

7   MR. FALCONE: Okay.

8   MR. HIRSH: That was we redistributed

9   recovery time, which is a critical change in order to

10 modify the schedules to work well with Customer OTP

11 versus an Endpoint OTP, which they were originally

12 developed for, and that went into effect in January

13 2023, I believe, and it has had a beneficial effect

14 on COTP since that time.

15   MR. FALCONE: Okay. That schedule is one

16 of the certified?

17   MR. HIRSH: No. I am talking about the

18 six schedules that are uncertified, four to

19 Illini/Saluki and two for the City of New Orleans.

20   MR. FALCONE: Okay.

21   MR. HIRSH: This refers to the four for

22 the Illini/Saluki.   There are other disputes with

1   respect to those schedules.

2   MR. FALCONE: So it's not --

3   MR. HIRSH: So they remain uncertified.

4   MR. FALCONE: Right.

5   MR. HIRSH: Yes, all six remain

6   uncertified.

7   MR. BLAIR: Actually, this is Jim Blair.

8   I am from Amtrak. In the context of the final rule,

9   they're disputed, not uncertified. There is a

10 category --

11   MR. FALCONE: Yeah, turn on your mic,

12 please.

13   MR. BLAIR: There is a category and the

14 final rule that allows an uncertified schedule.

15 These are disputed. That's a separate category, just

16 for clarification.

17   MR. FALCONE: Okay. I think we'll move

18 on to incentives and penalties and CN's question

19 about penalty and payment data. So Staff can't

20 comment on whether the Board might decide to reduce

21 the scope of this request, but if CN would like to

22 provide some additional information regarding

1   feasibility, Staff would welcome that. In

2   particular, we'd be interested in the time and

3   resources CN believes it would take to fulfil the

4   current request, how CN would propose to modify the

5   request, the time and resources it believes it would

6   take to fulfil a modified request.

7   If you have that information and why CN

8   believes data provided under such modified request

9   would provide the Board with a representative sample

10   of the outcomes, its proposed incentive and penalty

11   scheme would generate. So if you want to address

12   some or all of those.

13   MR. HIRSH: Thank you. We're happy to

14   address that. We appreciate the opportunity to do

15   so. So we've been working hard to sort of plot out

16   the steps and assess and identify and obtain the

17   resources necessary to meet the Board's request.

18   During the pendency of the proceeding, the parties of

19   course have been proceeding under the current

20   incentive penalty system that's in place under the

21   existing agreement.

22   So going back to employ the modifications

1   that we had proposed to respond to the Board's

2   interim decision, it requires considerable work.

3   Among other things, we need to account for the

4   addition of the Blue Water and the Wolverine services

5   which had been under -- as folks of their conversant

6   with the operating agreement will recognize, it's

7   been under a different sort of incentive penalty

8   system and the parties had agreed that that should

9   get merged together with the other ones. But, of

10   course, it's never been in the system prior to this.

11   So that's one of the modifications we

12   need to make. We have to account for the new and

13   modified relief items. For the first time, we have

14   to apply relief items on a segment-specific basis

15   because we're now measuring at checkpoints along the

16   way rather than at the end point. I'm just trying to

17   give you a flavor for the things we're looking at and

18   doing. We have to account for late and early

19   arrivals because we have multipliers for that.

20   One of the things the Board had asked us

21   to do in the interim decision was to have a lateness

22   sort of a multiplier, and we had proposed that in

1 sort of an extreme early arrival multiplier on the

2 other side. And then we have to deal with key

3 factors that need updating. We may have a couple of

4 questions for you on that, recognizing you may not be

5 able to answer them.

6   Factors such as checkpoint weighting and

7 the RTB base. The RTB, that's the Recovery Time

8 Base, is a complicated thing, but it basically allows

9 you to have a share of Recovery Time that's split

10 between the parties so that the host or CN in this

11 case doesn't take all the recovery time for itself.

12   And, of course, we have to apply a new

13 penalty and incentive table, including the

14 application for the first time of a 70 to 79 percent

15 range, which previously had been kind of a zero

16 middle ground where there was no incentives or

17 penalties. So that's some of the tasks that we have

18 to do. I guess I would like to pause for a second

19 before I continue, just ask a couple questions

20 related to a couple items that I just mentioned. So

21 our proposal, not surprisingly, had a lag in things

22 like the checkpoint weights.

1   So it said, so for 2024, ordinarily you

2   would've used 2023, the actual passenger numbers to

3   do the weighting for the checkpoints for 2024, and

4   then you would kept moving 2025, use 2024. Now going

5   back and looking at 2024 where we have the actual

6   2024 weights available.

7   MR. FALCONE: Uh-huh.

8   MR. HIRSH: It makes sense to us that we

9   would use the 2024 weights, instead of using 2023 as

10 technically our process would require. We have a

11 similar point for the RTB, the weighting of that,

12 which is based on delays. We would suggest, and

13 again, I don't know if you could respond to this, it

14 just makes sense to us, we would use actual 2024

15 weights for that rather than 2023. So that's a

16 question we would ask and I'll pause. You can tell

17 me if you have an immediate reaction to that or

18 can't respond to that or?

19   MR. FALCONE: I mean, I can't say what

20 the Board would ask you to submit. I guess, it does

21 raise the question for me, is the reason you would

22 use delayed data, is just too difficult to use real

1   time.

2   MR. HIRSH: No, what I'm saying is --

3   MR. FALCONE: No, I understand.   You're

4   saying you now have it, but I guess, why is it the

5   proposed procedure that you would use delayed data

6   normally?

7   MR. HIRSH: Well, because while we're

8   running in 2024, we don't yet know what the weights

9   of the checkpoint, we don't have a ridership history

10 in 2024 while we're actually doing 2024.   So we use a

11 recent period as the history just for that weighting

12 as an example, because it also allows us to have an

13 idea going in as the relative weights and we can

14 operate more efficiently to make sure that where we

15 know one station is the biggest station to try to do

16 what we can to expedite and be sure that that

17 station's hit.

18   So there's some use in terms of our

19 operations to have an idea in advance, rather than,

20 in other words, operating and finding out after the

21 fact this station had more passengers than you

22 thought.   So that's just a practicality.   We're

1   flexible on that, but that was our proposal was to

2   use a one-year lag.

3   MR. FALCONE: Yeah.

4   MR. HIRSH: So you get the point, which

5   is now we don't have to do that. We actually know

6   what 2024 was. We're pretty neutral on this. We

7   just want to do what you guys want. We could do

8   either way.

9   MR. FALCONE: Okay.

10   MR. HIRSH: I guess there's a similar

11 point on the schedules themselves. We did have that

12 one change. One substantive change in the

13 Illini/Saluki schedules, where we redistributed

14 recovery time. I guess we used the 2024 schedule, so

15 maybe we don't have a question with that, with the

16 RTB percentages. So, okay. I'll move on. As I

17 said, I tried to lay out some of the steps that we

18 have to do and it's laborious, but we have some good

19 news. And the good news is, we think that we can

20 automate most of this work, and once it's automated,

21 it should make it feel easy for us to apply this

22 whole incentive penalties scheme as we do right now,

1 because it's quite similar for future months and

2 years. To do that, however, there's a lot of

3 programming necessary, so that automation will take

4 some time.

5   Once we do it, we also need to test it.

6 In addition to that, some tasks do have to be done

7 manually and it's going to take time to sort of catch

8 up because we haven't been doing it over the whole

9 year to catch up and do a prior year. It's not super

10 heavy, but there is some manual aspect to it. And

11 the expertise required to do that resides primarily

12 in our two Amtrak-dedicated people who are here

13 today, which is Scott and Rachel over here, Scott

14 Kuxmann and Rachel Klumpp, both of whom have

15 extensive experience working with the operating

16 agreement and with the delays, the relief items and

17 the data. They understand all this, so they're a

18 critical part of this and not something that we can

19 just plug somebody else in.

20   Of course, at the same time, they have to

21 hold down their full-time jobs managing Amtrak's

22 ongoing operations, but they've begun mapping out a

1 strategy to perform the manual part, and they'll also

2 work on the cost calculations as I'll get to for the

3 incremental cost side, which is our other big labor

4 task. So, I'm jumping ahead to, I think, the

5 question that you asked right now, and we'll get to

6 the incremental costs, and obviously we will do both

7 of these things at the same time in series. We're

8 not going to do one and then do the other.

9   So, in series, we think that we can do

10 everything without having to do shortcuts, which we

11 were worried about. We thought maybe we'd have to

12 find some ways to do shortcuts so that we could get

13 this done in less than eight months, but we think we

14 can do everything in about 90 days. Yes. And we're

15 very fortunate to have Rapik here helping us with

16 that as I guess we'll discuss. He's been a

17 game-changer for us.

18   MR. FALCONE: Okay. So should I take

19 that to mean that you're not proposing narrowing this

20 request?   MR. HIRSH: That is kind of the

21 good news, I think, that we believe that we can

22 pretty much do the whole thing.

1   MR. FALCONE: Okay.

2   MR. HIRSH: And with the organization and

3   the application of resources and a lot of overtime by

4   these guys, yeah, we think we could do the whole

5   thing.

6   MR. FALCONE: Okay. Thank you.

7   MR. CUOMO: Mr. Falcone, if you want, I

8   know we didn't list this as a question in our letter,

9   but I don't envy Rachel and Michael over there with

10   the work they need to do. Kyle Montgomery from Host

11   Railroads, he's here. He'll be taking the laboring

12   oar on doing these calculations for us based on the

13   methodology we proposed, and I don't think we have

14   any problem with the sort of 90-day horizon that Mr.

15   Hirsh mentioned. We think we can do ours fairly

16   readily.

17   MR. FALCONE: Okay. Thank you. All

18   right, we'll move on. The next question is CN's,

19   about the Adirondack route. So we understand CN's

20   statement here. Again, we can't speculate about the

21   Board's ultimate conclusion, but we will take this

22   statement into account.

1   MR. HIRSH: Chris, can I ask a question?

2   MR. FALCONE: Yeah.

3   MR. HIRSH: It might be useful, and I

4 don't know if the Amtrak side is prepared to address

5 this, but it strikes me as quite possible that they

6 would agree with this.

7   MR. FALCONE: Uh-huh.

8   MR. HIRSH: And I don't know, but Jim and

9 others down there, do you guys agree about the

10 Adirondack?

11   MR. BLAIR: It is -- what's the question?

12   MR. HIRSH: The question is whether or

13 not the Adirondack should be put into the operating

14 agreement, even though it's a CNR service and has its

15 own agreement.

16   MR. PERRY: Chris Perry from Amtrak. I

17 don't think we're going to be answering substantive

18 questions today. I want to keep this focused, as the

19 Board wanted, on technical clarification, so.

20   MR. HIRSH: Fair enough.

21   MR. FALCONE: Okay. Next is Amtrak's

22 question about host responsible delays. Specifically

1   delays at interlockings is not controlled by CN. We

2   understand Amtrak's position that you don't believe

3   you have the information necessary to respond to this

4   request. So again, we'll take that into account when

5   these information requests are finalized, but we

6   can't provide any conclusions here today.

7   MR. CUOMO: Mr. Falcone, just, I just

8   wanted to make sure that what we were saying was

9   clear, and I know maybe when the Board issues a

10 subsequent list of requests for information, if

11 perhaps they can address this. And that's the issue

12 that we raised about what is controlled and what is

13 not controlled by CN. We've done a lot of briefing

14 on that.

15   MR. FALCONE: Yes.

16   MR. CUOMO: I think the Board understands

17 what we believe are interlockings controlled by CN.

18 So if we can get some clarification perhaps on that,

19 I think that would help both sides.

20   MR. FALCONE: Okay. Thank you.

21   MR. CUOMO: Thank you.

22   MR. FALCONE: Okay. Next, we have

1 Amtrak's question regarding "Do Not Counts". Again,

2 we understand Amtrak's position regarding "Do Not

3 Counts", that they don't believe that the operating

4 agreement should include those provisions. And so

5 we'll take Amtrak's position into consideration when

6 finalizing these, but we can't comment beyond that.

7 And what do you --

8   MR. HIRSH: Chris, thanks. One comment

9 we'd like to make on this is, first of all, we think

10 Amtrak's fully capable of addressing this issue if it

11 has a position and it chooses to do so, whether or

12 not it's part of its proposal, these are provisions

13 that largely exist in the agreement today. And they

14 can address it based on their experience and based on

15 their projection of how the agreements would work.

16   And they themselves raise concerns in

17 their own filings about the need to have some minimum

18 duration. So this is a familiar issue to them. We

19 think if they do want to address this, they should

20 address it in their response. And our concern is

21 that it be very clear that if they choose and they

22 say they don't have arguments to make on this, that

1   they don't show up for the first time on reply.

2   MR. FALCONE: Okay. Understood. Thank

3   you.

4   MR. CUOMO: Yeah, and understood. Our

5   point is, we can certainly in a vacuum put together

6   our thoughts on what a minimum threshold should be.

7   Our larger question is obviously the Board is

8   endeavoring to put together a unified, cohesive

9   operating agreement. In our proposal, as a package,

10   DNCs, as you know, are not a feature of it. Our

11   position was simply we're not really sure how much

12   use that would be because any sort of minimum

13   threshold that we come up with or propose, it won't

14   fit anywhere within the cohesive whole of our

15   Appendix 5 incentive and penalty system because DNCs

16   aren't featured.

17   But, of course, we'll be guided by if the

18   Board wants us to provide that estimate with the

19   understanding that it's not going to work as part of

20   what we're proposing as a package, we can certainly

21   endeavor to do that.

22   MR. FALCONE: Okay, thank you.

1   MR. HIRSH: One further comment on that.

2 The -- the question asked about DNC provisions

3 proposed by CN. The answer that I'm hearing from

4 there is about their own proposal. So the question

5 is trying to address DNCs in CN's proposal, and

6 that's what we're saying. Obviously, they can and

7 they have in their filings.

8   MR. FALCONE: Okay. Unless anybody has

9 anything else on that, I'm going to move on to

10 incremental costs. And for that, I'm going to turn

11 it over to Madison.

12   MS. SANIUK: Right. Good morning. I'm

13 Madison Saniuk with the Office of Proceedings. And I

14 will start with CN's questions about the cost

15 estimates. In the last order, we asked for estimates

16 of the incremental freight train delay costs that CN

17 claims are incurred by CN and chargeable to Amtrak.

18 And in response to this request, CN did raise

19 concerns with the burden involved in providing

20 incremental freight delay, freight train delay costs

21 for each quarter of actual operations for calendar

22 year 2024. And I understand you proposed estimating

1   costs by looking at a one- to two-month sample period

2   in 2024, or by simplifying aspects of CN's

3   methodology or by doing both of those things.

4   There were some other aspects to the

5   question, but we're not really able to speak to how

6   the Board would use the information or discuss any

7   future actions they might take based on it. But we

8   do want to hear your concerns about the burdens of

9   your request and whether there's a less burdensome

10   way to provide the information. Of course, you

11   mentioned earlier that you thought you could respond

12   to this data request and the -- the payment and

13   penalty data request within about 90 days. Are you

14   still proposing to use a shorter sample period or a

15   simplified methodology? Like, is that what the

16   90-day estimate is based on?

17   MR. HIRSH: So this is another, I would

18   say, good news story. I don't think we're going to

19   need to do shortcuts on this either. And what's

20   happened is the Board knows and saw that we had a

21   pretty labor-intensive process when we produced our

22   first set of incremental costs trying to -- in

1   meeting the rigorous standards that the Board had

2   established in its interim decision.

3   And that effort had covered just one

4   month in December 2019. It was led by outside

5   consultants who worked with a variety of in-house CN

6   teams. We knew that if that methodology were

7   applied on a daily basis as we went along, it would

8   be labor-intensive, but it would be reasonably

9   doable. But the thought of doing this work for a

10 lengthy retroactive period was kind of daunting.

11 Well, fortunately CN has recently added to its team

12 Dr. M. Rapik Saat, who's here today, who's now a

13 Senior Manager of Regulatory Costing as he noted.

14   And Dr. Saat, whose PhD is in Civil

15 Engineering, was formerly professor at the University

16 of Illinois Urbana-Champaign, as well as Director of

17 Operations Analysis at the AAR. And among his other

18 skills, he's highly respected as a data and

19 statistical analyst. With his knowledge and his

20 access to various CN systems internally and its

21 mainframe, he has been able to pretty quickly move

22 forward with setting up teams to automate the process

1   of identifying the incremental freight delay costs

2   and with -- in costing those delays. So all of that

3   following the methodology that was laid out in our

4   prior pleadings.

5   So, some of the critical tasks he and his

6   team are working on are to automate extraction of

7   delay information from our SRS database. He's

8   working with a CN team to do that. Pulling and

9   processing electronics data that adds a lot of

10   precision to all of the costing work and the

11   assessment of delays themselves, pulling and matching

12   the crew information, pulling and matching the car

13   hire costs. And updating locomotive costs, in

14   accordance with R-1 information.

15   So, this is a major step forward for us

16   in making our proposed methodology much faster,

17   easier and less expensive to implement. When this

18   programming is complete, this automation means that

19   the process can be applied almost as efficiently to a

20   full year as to a month. So, we believe the work

21   that this advancement will allow us to not have to

22   take shortcuts on this. It's not impossible that

1   there are some places we might suggest a minor

2   change here or there, but fundamentally, if we do

3   that, it's because we've seen an opportunity to

4   actually improve or make the processes more

5   conservative.

6   And again, our thought is we can do this

7   within the same 90-day period. I should have

8   mentioned that not all aspects of this can be

9   automated. Some delays, for example, we would still

10 be pulling replays for foreign locomotives. And

11 that, again, is a pretty laborious task. And the

12 work would largely fall here on Rachel. So, she

13 would do double duty and working on the incentive

14 penalties, but also work with others to pull that

15 kind of information. So, we're very hopeful that the

16 Board will establish a timeframe that would let us

17 complete that automation process. I think that, in a

18 sense, moots some of the questions we had otherwise

19 asked about shortcuts.

20   MS. SANIUK: Okay. And just a follow-up

21 question then, would the programming, the automation

22 still -- would it still be feasible using that to

1   provide the underlying calculations and assumptions

2   that it's based on?

3   MR. HIRSH: Yes, we will document what we

4   produce in a way that one can follow. Rapik, do you

5   agree with that?

6   MR. SAAT: Yeah.

7   MR. HIRSH: We've talked about assuring

8   that we'll document to the standards that the Board

9   requires.

10   MR. SAAT: I'm going to follow the same

11   format, and in the past of all the workpaper that we

12   can look at each record and verify the actual delay

13   events.

14   MR. ANDERSON: Yeah, I think it would

15   just be helpful that everything is transparent,

16   clear, traceable. We don't want to reverse-engineer

17   from an Excel file. So, a narrative that reads from

18   beginning to end, that would make things much quicker

19   for the Board. If there's any computer code, similar

20   idea, not trying to decipher things, but really just

21   reading from the top to the bottom from a defined

22   starting point input to an ending point output.

1   MR. HIRSH: Our goal will be to set it up

2   so that essentially you can replicate.

3   MR. FALCONE: Yes.

4   MS. SANIUK: Okay. And so are there any

5   other questions on this request?

6   MR. HIRSH: I will say this does require,

7   we're going to do extensive testing to make sure that

8   everything's working together. Because this is a new

9   automated process, we would not object to getting

10   more than 90 days to be sure that we get it right.

11   MS. SANIUK: How much additional time do

12   you think you'd be looking at?

13   MR. HIRSH: I think one more month would

14   help us have greater assurance. Because there

15   remains uncertainties, we work very hard to assess

16   things at this point, but sometimes you run into

17   something that's unexpected and to debug and et

18   cetera, that would give us some added assurance.

19   MS. SANIUK: All right. So there are no

20   other questions. I'll move on to the questions about

21   the per mile charge. And we'll start with the CN

22   question. I think it's item (e) on their response

1   pages 3 and 4. All right. So I think CN asked if

2   the proposed per mile charge should be fixed for the

3   duration of the new operating agreement or

4   adjustable. And also I guess whether the parties

5   need to propose a methodology for those adjustments

6   if they're proposed.

7   And they're also interested in whether a

8   reasonable cost per hour freight train delay would be

9   something they can propose in addition to, or instead

10   of, a cost per freight train mile. So again, I'm not

11   really able to discuss any future actions the Board

12   might take in this proceeding or what specifically

13   they would require in the final information request.

14   But I guess as -- what kind of additional details do

15   you think you would need to answer the question, the

16   technical conference order?

17   MR. HIRSH: So a couple points on this.

18   First of all, the discussion we just had about our

19   efforts on the general incremental costing affects

20   this, because given the burden of doing it in

21   December 2019, largely by hand, by an outside

22   consultant who couldn't integrate his efforts with

1 the CN teams in the mainframe, and we had suggested

2 ourselves, it would be nice if we didn't have to go

3 through that and we were able to kind of reach

4 agreement or have some standard number that would

5 allow us to do that without all the effort.

6   Given the efforts we're making to

7 automate it, I think it makes this less important to

8 us because I think we can do the real thing rather

9 than have to go to some kind of a flat rate. And of

10 course that's economically a stronger approach. Now

11 if we do want to talk about this, though, I guess we

12 would be asking whether the Board, in its next order,

13 might sort of broaden the request to allow for things

14 that are not simply per Amtrak train mile charge

15 based.

16   We can do that. We see various ways, if

17 we wanted to go to a simplification that we could

18 approach that. We're still beginning to consider the

19 issue. But you could go from anything from a single

20 unchanging per train mile to apply for the full term

21 to assuming variations are permissible for either

22 cost calculation changes, indexing for that, or

1   trying to implement and include factors that might

2   affect the level of delay. So, if we do that, those

3   kinds of approaches allow you to have sort of a more

4   of an estimate that's a per hour delay kind of

5   approach, which is closer to what's actually

6   happening.

7   So again, coming back less important for

8   us now because we think we can probably do the whole

9   deal. We don't really need to have that. There

10   might be still some benefits to it. If the Board

11   remains interested in this, we would just ask that

12   maybe it broaden its question to allow us more leeway

13   to consider and possibly make different proposals.

14   MS. SANIUK: Thank you. So, do you have

15   any thoughts on how long it would take to respond to

16   this request?

17   MR. HIRSH: We don't see this as adding

18   time beyond the periods that we've discussed up to

19   this point.

20   MS. SANIUK: All right. Thanks. So, any

21   other questions from CN on this? All right. Great.

22   Let's move on to the Amtrak question. And so Amtrak

1   would like to discuss the Board's directive to

2   provide a reasonable per Amtrak train mile charge.

3   So, what would you like to discuss?

4   MR. CUOMO: Yes. Open-Ended request.

5   So, from a technical perspective, what our concern is

6   about that question is, and I'm sure you're all

7   familiar with the incremental costs that are being

8   sought, there are costs related to things like fuel

9   costs, crew costs that are driven by data that is

10   exclusively within CN's possession -- fuel costs,

11   crew benefits, things of that nature. We just don't

12   have visibility into that.

13   So from that perspective, the Board

14   having posed the question to us to provide a per mile

15   charge, we're struggling to see how we would have the

16   data to provide any useful response to the Board on

17   that. Simply stated, we just don't have the data to

18   provide that response. That's the technical piece of

19   it, certainly I'm sure it's not lost on anybody here

20   that we don't believe a per mile charge is consistent

21   with the Board's very strict requirements, the

22   rigorous requirements that Mr. Hirsh had referred

1   to.

2   So, using that as a surrogate, we view

3   that as sort of inconsistent with the August 2019

4   award. But I don't want to stray too much into the

5   merits per Mr. Falcone's directive. But really the

6   practical issue for us as far as our upcoming

7   response to the request for information is we just

8   don't know that we have enough information to provide

9   any meaningful response on this.

10   And I guess our suggestion would be

11   whether the Board perhaps can consider whether maybe

12   this question maybe more appropriately should be

13   directed exclusively to CN and perhaps not to Amtrak.

14   And obviously once CN turns in their submission,

15   we'll provide a response and any thoughts that we

16   have on their per mile charge. But whether we can

17   come up with our own per mile charge has the

18   difficulties that I outlined.

19   MS. SANIUK: Okay, thank you.

20   MR. HIRSH: I would just make one quick

21   comment, which is this is asking for methodological

22   approach as we understood it, that it doesn't have to

1   be driven by immediate specific data. And so I just

2   raised the same point I raised previously on the "Do

3   Not Counts". If they have thoughts on the

4   methodology, they should express those in their

5   response and not save everything for reply so that we

6   have no chance to respond to them.

7   MR. CUOMO: Well, we're not trying to

8   save anything for reply. We just don't know that

9   there's anything that we can say in our opening

10   submission on this.

11   MS. SANIUK: All right, thank you.

12   Anything else that you wanted to raise on this

13   request or any other questions?

14   MR. CUOMO: Nope, that's it from us.

15   MS. SANIUK: Okay. then I guess I'll

16   turn it back over to Chris.

17   MR. FALCONE: Great. So lastly, we have

18   miscellaneous stuff. We'll start with Amtrak's

19   question about reopener. Again, can't say what we

20   think the Board might determine is a reasonable

21   reopener requirement. I don't know if you had

22   anything else you wanted to add on that.

1   MR. CUOMO: So the order itself refers to

2   or asks both parties to specifically address a

3   possible reopener that was linked to amendments

4   to, or changes to, the lookback provision. I guess,

5   and we obviously had a fundamentally different view

6   certainly from CN about --

7   MR. FALCONE: Uh-huh.

8   MR. CUOMO: -- what the Board was

9   inviting as far as concrete action, if there was

10   underperformance on any of the routes. Seems to us

11   from the order that the Board is of the mind that the

12   proposals that we made and that CN made are not

13   really what the Board had in mind. So is it -- I

14   guess we wanted to get a little more feedback on what

15   the Board thought would be reasonable, and if you

16   can't provide that, that's fine.

17   I guess my one question would be, and

18   maybe the Board can clarify this in a subsequent

19   order -- I trust that the concrete action that they

20   might find acceptable, it's not limited to use of

21   the lookback provision, meaning there could be other

22   concrete action outside a change or an amendment to

1   the lookback terms that the Board might employ as

2   reasonable concrete action. And if you can't answer

3   that today, that's absolutely fine.

4   If the Board could clarify that, I think

5   it would help us here on the Amtrak side to come up

6   with a set of concrete proposals for concrete action

7   that isn't in the realm of sort of what was a

8   non-starter, I guess, in the Board's view that we

9   proposed last time. So we would ask for that. I

10   guess that bit of clarification would be helpful to

11   us.

12   MR. FALCONE: Okay. Noted. Is there

13   anything you wanted to say on that?

14   MR. HIRSH: I would say that from our

15   perspective the request was fairly clear that it

16   wasn't limited. It talked about concrete action in

17   order to resolve potential future performance

18   disputes and to prevent sustained poor performance.

19   That certainly to our mind went beyond fiddling with

20   the lookback itself. And of course we made a

21   proposal that really started off with assessing

22   what's going on on the ground.

1   And we think that when we talk about

2   trying to address performance issues, it's important

3   to try to figure out what's happening and ways to fix

4   that. And we had a process for collaborating

5   informally first, and then increasingly in a formal

6   way leading ultimately to an arbitration that could

7   actually make binding changes. So that was our

8   effort to at least initially do that. And then we

9   see you asking kind of further questions about

10 actual potential changes to the lookback. And so for

11 our part, I think we get the question. I think we

12 don't see a lot of issue with understanding where the

13 Board's headed or what it's seeking.

14   MR. FALCONE: Okay. Thank you. Okay.

15 We have one last question here from CN. It's

16 generally about timing. I know we've sort of said

17 some additional things about your estimated timing.

18 I don't know if that changes this question here, so.

19   MR. HIRSH: Yeah. You know, when we

20 wrote this, we were very concerned that we might need

21 six months for the costing and the incentive

22 penalties. I think we've driven that down to the

1 sort of 90 or 120 days with the cushion that we've

2 been talking about today. If that's within the

3 acceptable bounds of the Board, then I don't think

4 we'd see the need for phasing.

5   MR. FALCONE: Okay.

6   MR. HIRSH: The point we're raising, if

7 the Board wanted to receive certain items faster, we

8 could see that being accomplished through the

9 phasing.

10   MR. FALCONE: Okay. And so, just to be

11 clear, it sounds like both sides were okay with

12 approximately 90 days, maybe with an extra month for

13 the incremental cost testing?

14   MR. HIRSH: That's correct, from CN.

15   MR. FALCONE: Did Amtrak have issues?

16   MR. CUOMO: Amtrak is fine with that.

17   MR. FALCONE: Okay.

18   MR. HIRSH: Yeah, just to be clear, we

19 will test both the incremental costs, also the

20 incentive penalty side, right. Because there's a lot

21 of work going on there as well.

22   MR. FALCONE: Okay. That's all of the

1   questions. I don't know if anyone else on Staff has

2   something.

3   MR. ANDERSON: Yeah, I might have failed

4   to mention this before, but just on the

5   methodological --

6   MR. HIRSH: Sure.

7   MR. ANDERSON: Thank you. This is Ian

8   Anderson. On the methodological documentation for

9   incremental costing, et cetera, just it would be

10 helpful not only to be able to read down the page,

11 top to bottom to know what steps were taken, but just

12 any formulas or anything like that, if those could be

13 typed out in the document itself. Again, just to be

14 clear, we don't want to reverse-engineer from an

15 Excel file to kind of imagine what the formulas are,

16 the inputs and outputs. You could literally type an

17 equation in the document. That would be very

18 helpful.

19   MR. HIRSH: Okay. I think the question

20 that we're talking about would be really helpful for

21 us to be sure that we have the time to fully document

22 things because it requires some significant

1 documentation as you're suggesting.

2   MR. COLLAZZI: This is Tim Collazzi from

3 Landman Corsi. I just have a follow-up question

4 about what you're asking for as far as the inputs

5 that CN is going to be using for the automation.

6 Are you also asking that the source code be provided

7 as far as the programming that went into automating

8 the system?

9   MR. ANDERSON: I think the interest for

10 more quick evaluation of the inputs and outputs would

11 be for as much transparency as possible. So not

12 everyone is a computer coder, but if you're able to

13 read from the top of the page to the bottom and

14 understand what went in and what came out, that would

15 be ideal.

16   MR. BLAIR: This is Jim Blair from

17 Amtrak. Ian, can I follow up on that? I think to

18 Tim's point, perhaps if the Board is looking to

19 ultimately recreate the analysis or be able to

20 replicate the analysis, I presume you need both the

21 source data, to Tim's point, the coding that created

22 the extraction process, the intermediate process

1   data, any post-processing that takes place after that

2   and then the final data. Is that correct?

3   MR. ANDERSON: I mean, I think in the

4   interest of transparency, those are helpful things to

5   have. But again, the point is to be able to read

6   methodologically from the top of the page to the

7   bottom and be able to understand how the methodology

8   works, what data is input into different equations

9   and what comes out of those equations.

10   MR. HIRSH: I'd like to suggest that

11   there's value in leaving it to the parties themselves

12   in the first instance to try to document their work

13   and recognizing that follow-up questions formally and

14   informally can always happen after the fact rather

15   than trying to dictate in advance exactly what

16   parties will provide.

17   MR. CUOMO: Just a housekeeping issue,

18   we've talked about the timeframe for opening

19   submissions. I think on our side of the table here,

20   we're anticipating a fair amount of work to respond.

21   MR. FALCONE: Right.

22   MR. CUOMO: Particularly on incremental

1 costs and the like, whatever timeframe the Board sets

2 for opening submissions, if we can have a similar

3 period of time for responses, I think that would

4 facilitate more streamlined, efficient briefing.

5   MR. FALCONE: Okay. Does CN have

6 thoughts about reply timing?

7   MR. HIRSH: Obviously, traditionally

8 there's been less time for replies than for the full

9 initial filing and we would expect and I believe the

10 Board should be able to adhere to that.

11   MR. FALCONE: Okay. Anyone else on Staff

12 have anything further?

13   MR. ANDERSON: Nope.

14   MR. FALCONE: CN, Amtrak, anything?

15   MR. HIRSH: Nothing more from us.

16   MR. CUOMO: Nothing further from Amtrak.

17   MS. GAINEY: Except just to thank

18 everyone for your time today. We really appreciate

19 it. We know this takes a lot of time to prepare for

20 something like this, so thank you all.

21   MR. FALCONE: Oh, thank you. And I guess

22 that concludes the conference. Thank you all for

1   coming.

2   MR. CUOMO: Thank you.

3   MR. HIRSH: Thank you.

4   (Whereupon, at 10:58 a.m., the technical

5   conference was concluded.)

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