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February 7, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W., Room 1034
Washington, DC 20423-0001

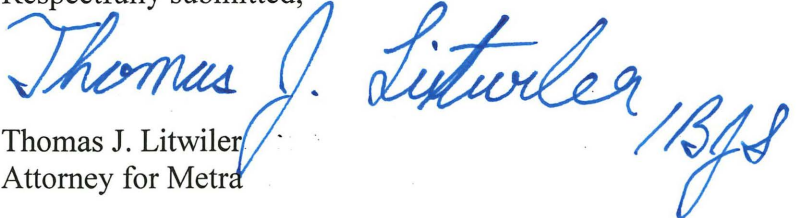
Re: **Docket No. FD 36332**
National Railroad Passenger Corporation -- Petition
For Proceeding Under 49 U.S.C. § 24903(c)(2)

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding on behalf of the National Railroad Passenger Corporation ("Amtrak") and the Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation (collectively "Metra") is the **Joint Submission Regarding List of Issues for Determination**, dated February 7, 2020.

Counsel for Amtrak has authorized this filing on its behalf. Please feel free to contact me should any questions arise regarding this matter.

Respectfully submitted,


Thomas J. Litwiler
Attorney for Metra

TJL:bs

Attachment

cc: Neil K. Gilman, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36332

NATIONAL RAILROAD PASSENGER CORPORATION –
PETITION FOR PROCEEDING UNDER 49 U.S.C. § 24903(c)(2)

**JOINT SUBMISSION REGARDING
LIST OF ISSUES FOR DETERMINATION**

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**ATTORNEYS FOR
COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY AND NORTHEAST
ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION**

Dated: February 7, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36332

NATIONAL RAILROAD PASSENGER CORPORATION –
PETITION FOR PROCEEDING UNDER 49 U.S.C. § 24903(c)(2)

**JOINT SUBMISSION REGARDING
LIST OF ISSUES FOR DETERMINATION**

Petitioner National Railroad Passenger Corporation (“Amtrak”) and Respondents the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively, “Metra”; Amtrak and Metra collectively, the “Parties”) jointly file this Submission Regarding List of Issues for Determination.

This matter arises under 49 U.S.C. § 24903(c). The Parties have not agreed to the terms of an agreement under Section 24903(a)(6) for Metra’s use of the Chicago Union Station (“CUS”) properties. Thus, the Board must impose terms, including compensation, on the Parties. *See* 49 U.S.C. § 24903(c)(2).

Within that framework, the Parties request the Board determine the following issues and sub-issues:

1. Legal Issues

1.1 The primary legal issue is the interpretation and application of 49 U.S.C. § 24903. In connection with that, one or both of the Parties may ask the Board to address the following legal issues (without concession by the other Party that any particular issue is an appropriate issue to raise before the Board):

1.1.1 What costs incurred by Amtrak are for the sole benefit of Metra or the common benefit of Amtrak and Metra;

1.1.2 What costs incurred by Amtrak must be allocated to Metra;

1.1.3 Whether costs must be specific, quantifiable and verifiable;

1.1.4 What factors reasonably reflect the relative use of rail property; and

1.1.5 Whether the selection of appropriate factors by the Board is sufficient to avoid cross-subsidization.

1.2 While the Parties have endeavored to define certain specific issues in section 1.1, the identification of these issues is without prejudice to the Parties' positions on other legal questions or mixed questions of law and fact implicated in resolving the issues in Section 2 *et seq.*

2. Compensation.

Section 24903 requires the Board to determine appropriate compensation from Metra to Amtrak for costs Amtrak incurs for the sole or common benefit of Metra. The Board's compensation analysis will focus on common-benefit costs. The Board must determine (a) the amount of costs Amtrak incurs for the common benefit of Metra; and (b) how much of those costs should be allocated to Metra.

The Parties agree that the non-capital costs in dispute fall within the following categories: (1) Maintenance of Way, (2) Train Dispatching, (3) Policing, (4) Station Operation and Maintenance, and (5) Ground Power. The Parties concur regarding the allocation methodology (although not the amount of costs) for Maintenance of Way and Train Dispatching, and will apply that methodology upon the Board's determination of the allocable costs. The Parties identify the following issues that the Board must determine:

2.1 Maintenance of Way.

2.1.1 An annual amount of maintenance of way costs Amtrak incurs solely for Metra or for the common benefit of Amtrak and Metra at CUS. The Parties agree that for purposes of this proceeding, the amount should be based on 2016 and 2017 fiscal year costs, with an escalation factor as determined pursuant to 2.6 below.

2.2 Train Dispatching.

2.2.1 An annual amount of train dispatching costs Amtrak incurs solely for Metra or for the common benefit of Amtrak and Metra at CUS. The Parties agree that for purposes of this proceeding, the amount should be based on 2016 and 2017 fiscal year costs, with an escalation factor as determined pursuant to 2.6 below.

2.3 Policing.

2.3.1 An annual amount of policing costs Amtrak incurs solely for Metra or for the common benefit of Amtrak and Metra at CUS. The Parties agree that for purposes of this proceeding, the amount should be based on 2016 and 2017 fiscal year costs, with an escalation factor as determined pursuant to 2.6 below.

2.3.2 The proportionate share of those costs to be allocated to Metra, including the appropriate factors for making such a determination.

2.4 Station Operations and Maintenance.

2.4.1 An annual amount of station operating and maintenance costs Amtrak incurs solely for Metra or for the common benefit of Amtrak and Metra at CUS. The Parties agree that for purposes of this proceeding, the amount should be based on 2016 and 2017 fiscal year costs, with an escalation factor as determined pursuant to 2.6 below.

2.4.2 The proportionate share of those costs to be allocated to Metra, including the appropriate factors for making such a determination.

2.5 Ground Power

2.5.1 Whether the cost of electricity based for 480-volt ground power at CUS is a compensable expense.

2.5.2 The amount Metra should pay for 480-volt ground power, including an escalation factor as determined pursuant to 2.6 below.

2.6 Index of Costs

2.6.1 Determination of an appropriate adjustment to 2016--2017 fiscal year costs to the Parties' agreed effective date and for subsequent annual adjustment of allocated costs.

3. Capital Expenditures

3.1 Whether the Board should (a) order that the Parties agree on capital expenditures as they arise, or another methodology to be proposed by Metra for calculation and

allocation of capital costs that Amtrak incurs; or (b) adopt Amtrak's proposed Tier 1 and Tier 2 Capital contribution requirement that includes a fixed annual amount for capital renewal projects plus an additional amount to be used based on agreement of the Parties.

4. Other Terms of the Parties' Agreement.

- 4.1 Should the Board adopt and mandate some or all of the terms proposed in Amtrak's June 2019 proposed agreement, including but not limited to duration, liability, indemnity, and insurance terms, and if so, which terms.

5. Form of Agreement

- 5.1 Should the Board adopt and impose an entirety of a contract between the Parties, beyond those terms decided by the Board?
- 5.2 If so, what nature and form of contract should be adopted and imposed?

WHEREFORE, the Parties make the foregoing Joint Submission Regarding List
of Issues for Determination.

Respectfully submitted,

By: /s/ Neil K. Gilman

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