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January 22, 2021

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: **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 Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation (collectively “Metra”) is the **Supplemental Statement of Metra** made in accordance with the procedural order served on December 8, 2020.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Metra

RAW:bs

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36332

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

**SUPPLEMENTAL STATEMENT OF THE
COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY AND THE NORTHEAST ILLINOIS
REGIONAL COMMUTER RAILROAD CORPORATION**

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Dated: January 22, 2021

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**SUPPLEMENTAL STATEMENT OF THE
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Pursuant to the order of the Surface Transportation Board (the “Board”) served in this proceeding on December 11, 2020, Respondents Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation (collectively, “Metra”) offer this Supplemental Brief addressing unresolved contract terms identified in the joint December 15, 2020 filing of Petitioner National Railroad Passenger Corporation (“Amtrak”) and Metra.

BACKGROUND

As the record reflects, this Amtrak-initiated proceeding involves a dispute between Metra and Amtrak over the terms and conditions that should govern Metra’s use of Chicago Union Station (“CUS”), a facility that Amtrak “owns”¹ but at which the substantial majority of trains and passengers using the station historically have been attributable to Metra.

¹ *Commuter Rail Division of the Regional Transportation Authority & Northeast Illinois Regional Commuter Railroad — Petition for Declaratory Order — Status of Chicago Union Station*, FD 36171 (STB served Aug. 22, 2018), 5 (“Amtrak would need to show that the statutory language exempting it from much of the Interstate Commerce Act specifically enables it to take actions that cause **another regulated carrier’s facilities to be removed from the Board’s jurisdiction without any agency review or approval**”)(emphasis in original).

In Opening Statements and Replies filed, respectively, on May 20, 2020 (with redacted, public versions filed on May 27, 2020) and June 24, 2020 (with redacted, public versions filed on July 1, 2020), the parties briefed the Board on areas of dispute surrounding the compensation to be paid by Metra for the use of Amtrak-provided CUS facilities and services to the extent the parties were unable to reach agreement. By way of a joint stipulation filed on February 7, 2020, the parties listed non-compensation terms (or the “other terms”) of an agreement to govern Metra’s use of CUS, and issues surrounding the form of the operating agreement, for which, pursuant to its authority under 49 U.S.C. § 24903(c)(2) “the Board must impose” conditions. February 7, 2020 Joint Stipulation, 1, 4.

In a subsequent joint stipulation filed on June 19, 2020, the parties agreed generally that the Board should not address the contract form of agreement and other terms issues at that time, but should await the parties’ efforts to reach an agreement on those issues through negotiation supported by Board-sponsored mediation. June 19, 2020 Joint Stipulation at 2-3. The parties agreed that other terms and form issues that remained unresolved at the conclusion of mediation “shall be submitted to the Board for disposition . . .” Id., 3. The Board initiated mediation on July 6, 2020, facilitating an accord on the vast majority of the contract form and other terms issues, but mediation ended with certain terms left unresolved. Accordingly, the parties jointly returned to the Board requesting a procedural schedule providing for the presentation of unresolved CUS contract form and other terms (later set forth in a Supplemental Issues List tendered to the Board on December 15, 2020) for the agency’s consideration. The Board adopted the proposed supplemental briefing schedule, but did not indicate whether it would (or could) impose non-compensation terms where the parties have thus far been unable to reach a negotiated accord.

ARGUMENT

I. LIMITED BOARD INTERVENTION COUPLED WITH GUIDANCE ON HOW BEST TO ACCOMMODATE COMPETING INTERESTS IN ACHIEVING BALANCED CONTRACT TERMS MAY BE MORE IN LINE WITH THE BOARD PRACTICE AND ITS SECTION 24903(c)(2) MANDATE.

While the parties have agreed to briefing on unresolved contract form and other terms issues, Metra believes that each of the items on the Supplemental Issues List are capable of resolution through renewed negotiation efforts. Indeed, many of the items on the Supplemental Issues List are of a variety that contracting parties ordinarily can and do resolve privately, as is reflected in the mediation and ensuing stipulation, and the discussion in Section II-G, below. Metra is mindful that the Board may construe its Section 24903(c)(2) mandate to extend to compensation Metra must pay to Amtrak for the use of CUS only, leaving it possible that – (1) the Board lacks authority to “determine” non-compensation terms (such as those on the Supplemental Issues List); or (2) the absence of a clear statutory mandate to prescribe non-compensation terms may leave the Board with the discretion to prescribe such terms, which the Board may opt not to exercise in favor of continued, private negotiation.

But the Board should not simply dismiss this briefing phase even if it is unable or disinclined to prescribe contract terms upon which the parties thus far do not agree. Rather, the Board should seize the opportunity to offer perspective and guidance that could steer the parties toward resolution of their contract terms differences privately. Metra is confident that the Board’s perspectives and expectations on individual (as-yet-unresolved) contract issues would be extremely helpful.

Whether or not the Board were to choose to impose contract terms, the agency – and the parties – must be guided by the Congressional policies underlying Section 24903(c). That statute requires that agreements between Amtrak and commuter rail authorities reflect the

priorities of the 3-R Act.² In turn, the 3-R Act lists as among its goals “the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service.”³ The U.S. Court of Appeals for the Second Circuit has observed this Congressional policy favoring a balancing of the public interests that Metra and Amtrak each advances. *Metropolitan Transp. Auth. v. ICC*, 792 F.2d 287, 296 (2d Cir. 1986) (recognizing that the Rail Passenger Service Act § 402 – now included as part of Section 24903 – entrusts this agency with upholding the public convenience and necessity in connection with Amtrak’s use of the facilities of other railroads or regional transportation agencies, and with defending against “unfair or oppressive” compensation terms in contracts governing such use) (quoting *Thompson v. Tex. Mexican Ry.*, 328 U.S. 134, 147 (1946)).⁴ This well-recognized policy of public interest balancing supports the proposition that neither Amtrak’s nor Metra’s contract prerogatives should hold primacy, and that Amtrak’s ownership of the CUS facilities does not entitle it to assert unfettered priority over Metra service any more so than Metra as the predominant station user may so claim priority over Amtrak. In this proceeding, it would greatly aid the parties’ negotiations for the Board to enunciate its views on unresolved issues to aid the parties in

² 49 U.S.C. § 24903 (permitting Amtrak to enter into agreements with commuter authorities in order to “carry out . . .the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 701 *et seq.*”) [also known as the “3-R Act”].

³ 45 U.S.C. § 716(a)(7).

⁴ This sort of balancing is reflected in the general, mutually-accepted premise that, if Metra desires to increase its use of Amtrak services at CUS, Metra must pay for the increased costs that Amtrak incurs to provide such services – precisely as 49 U.S.C. § 24903 contemplates.

achieving balanced contract terms, recognizing, and fairly accounting for, the sometimes competing public interests in local and intercity passenger rail service.⁵

Most of the items on the Supplemental Issues List can be resolved by way of the parties' redoubled efforts to negotiate and accommodate the public interests that each advances under its respective transportation service mandates. For this reason and others offered above, Metra has concluded that it will not argue for Board intervention on a number of Supplemental Issues List items. This is reflected in the limited unresolved issues briefing to follow.

However, in some cases, the parties' inability thus far to reach an accord stems from the sort of imbalance of priorities that Congress advised against in Section 701(a)(3). In those specific cases, Board guidance clearly is needed. Metra will discuss in the section following the principles driving Metra's proposals on a handful of key, unresolved issues, and, in so doing, it will offer its specific contract terms to illustrate how its proposal would appropriately balance interests in keeping with the Congressional policy underlying Section 24903(c)(2). The Board may, at its option, address contract terms balance either by imposing specific contract terms (if it can) or, as may be more appropriate under the circumstances, it could offer its perspective and guidance on the policies and principles that should inform the parties in renewed efforts to negotiate terms.

⁵ See 45 U.S.C. § 701(a)(3) ("The public convenience and necessity require adequate and efficient rail service . . . throughout the Nation to meet . . . the service requirements of passengers, [and] States and their political subdivisions . . .").

II. THE PRINCIPLES GUIDING METRA'S PROPOSED CONTRACT TERMS DISCUSSED HEREIN APPROPRIATELY BALANCE METRA'S AND AMTRAK'S RAIL PASSENGER SERVICE INTERESTS.

A. Any provision governing equipment layovers should provide for operational flexibility and reasonably protect Amtrak and Metra service, and should avoid unnecessary, capacity-consuming train movements (Supp. Issue No. 1).

To date, the parties have been unable to reach terms to govern Metra equipment layovers at CUS platform tracks, despite the fact that decades of past practice can and should inform a flexible standard that reasonably accounts for Amtrak's station needs and Metra's. The sticking point appears to be Amtrak's desire to impose arbitrary and unnecessary time restrictions on Metra equipment layovers untethered to a demonstrable Amtrak need for the platform track that Metra may be occupying. Amtrak and Metra platform dwell times are, and have been a non-issue, especially with traffic levels on both railroads down considerably. Even under pre-Covid traffic levels, Amtrak did not need access to certain CUS platform tracks, and Amtrak historically has allocated designated platform tracks at CUS for Metra's primary or exclusive use. Thus, in practice, Amtrak would be indifferent to whether or not Metra held its trains indefinitely on platform tracks designated for Metra's use, as such practices would not materially impact Amtrak operations.⁶ In fact, given years of experience without issue, one could argue that no layover standard is needed.⁷

But Metra hopes and expects that Metra and Amtrak ridership will increase, perhaps to a degree in the future where Metra equipment layovers become a relevant consideration. If that were to happen, Metra platform occupancy should fairly account for Amtrak's and Metra's respective platform track demands. In no event, however, should CUS

⁶ Metra Reply Statement, V.S. Oppenheim, 7.

⁷ Id., 9-11.

operating terms limit Metra or Amtrak to arbitrary, unnecessary and unsupported layover time limits – such restrictions should be need-specific.⁸ For that reason, Metra would ask the Board to recognize that a layover provision permitting Metra to hold equipment at CUS station platform tracks for as long as circumstances warrant, subject to a requirement that Metra equipment layovers not interfere with Amtrak operations strikes the appropriate balance.

Metra has used CUS platform tracks to hold some of its equipment during the mid-day hours, minimizing empty outbound and inbound equipment moves at CUS, and accounting for Metra’s limited equipment-holding tracks outside of (and proximate to) CUS. Allowing Metra equipment to lay over at CUS as long as that does not interfere with Amtrak’s presumably-dynamic platform track needs would avoid unnecessary Metra train movements to and from CUS (thereby conserving facility capacity),⁹ enhance safety, eliminate the need for duplicative off-site equipment storage capacity until the need genuinely were to arise (if ever), and reduce the risk of Metra passenger train departure delays that might be occasioned by unforeseen delays in routing empty Metra passenger trains back to CUS platforms. Requiring Metra equipment to lay over elsewhere – all while CUS has adequate space to accommodate extended dwells – would do nothing but increase congestion in the CUS terminal area and increase safety risks. Allowing equipment to lay over as needed on CUS platform tracks provided such layovers do not adversely affect Amtrak CUS service would reduce costs, since otherwise arbitrary and unnecessary train movements could very well be factored into Metra’s allocation of station costs in the future.

⁸ Metra is unaware of any internal platform track occupancy time restrictions that Amtrak may apply to its own trains at CUS.

⁹ Metra Reply Statement, V.S. Oppenheim 8-11.

If the Board were to opt not merely to offer its perspective on the appropriate considerations for a train layover provision, but to prescribe a contract specific term, then Metra would propose the following:

Metra shall not store any equipment in CUS during overnight hours except for one “protect” locomotive and one consist. Metra may request in writing a temporary right for additional equipment overnight at CUS which will be evaluated by Amtrak and permitted unless it materially interferes with Amtrak intercity service. Metra trains shall not dwell at CUS in such a manner as to interfere with Amtrak service.

Such a provision – (1) recognizes implicitly the present lack of a platform track capacity conflict; (2) provides an equitable and adaptable standard to address and resolve currently non-existent platform track capacity issues; and (3) balances the parties’ interests, while assuring Amtrak protections against avoidable service interference. Moreover, as a matter of operational fact, Amtrak dispatchers will retain the discretion to direct Metra trains away from platform tracks if and when a need were truly to arise.¹⁰

B. Metra’s operational schedule merits protection from arbitrary changes (Supp. Issue No. 3).

For more than 40 years, the parties have worked together to establish train service schedules at CUS to meet the respective needs of commuter and intercity passenger rail service. They have done so cooperatively and without significant incident. Indeed, Amtrak initiated this proceeding primarily over a disagreement about CUS cost allocation, not train scheduling. Metra’s Standard Schedule – agreed to and stipulated to by the parties – balances the need of 30 million annual commuters (in a typical year) with Amtrak’s intercity obligations.¹¹ Amtrak’s

¹⁰ Id., V.S. Oppenheim 9-11.

¹¹ Jan. 2020 Joint Stipulation, 7 (“Metra shall at all times have the right to increase its service levels from the Reduced Schedule to restore some or all trains under the Standard Schedule with 30 days advance written notice to Amtrak of each such schedule increase. Amtrak may require that the times for Metra trains returning to the Standard Schedule be adjusted to

current or proposed intercity services have never been impaired, let alone, forbidden. V.S. Oppenheim, 10 (“We have never had trouble expanding service. I can think of one incident in the past two decades where Amtrak wanted to add an additional River Runner train to St. Louis . . . Any operational issue was resolved by Metra adjusting the Southwest Service train’s departure time by less than 5 minutes . . . Amtrak has never approached me – for information, or for advice – on their intention to establish such an operating schedule that would result in either constraints on train capacity or on passenger capacity”).

The balance the parties long have struck recognizes the key distinctions (reflected in applicable federal law) between the needs of commuter and intercity passenger service. 49 U.S.C. § 24102 (defining commuter service as high-frequency during rush hours). At CUS, 90% of the rail users are commuters. Amtrak Opening Statement, 5. The Standard Schedule accounts for the relative weight of the public necessity; it reflects a normative value Amtrak recognizes must be re-implemented for commuter service to meet the public necessity. Jan. 2021 J.S., *id.* Thus, the Standard Schedule is “standard” in nearly every sense of the word.¹²

If the Board nevertheless were to opt to set a standard for scheduling (other than what the parties have agreed to as the Standard Schedule),¹³ then Metra proposes that the Board formalize the balancing regime that has served well to date as follows:

avoid track capacity conflicts so long as the total Metra peak and non-peak trains are not reduced from the number under the Standard Schedule.”). Note that the “Reduced Schedule” in the above quote refers to the current schedules under which Metra has adjusted its services to reflect reduced, Covid-19-driven commuter passenger volumes.

¹² *New Oxford Am. Dictionary*, “standard (n.): . . . 2. an idea used as a measure, norm, or model in comparative valuations. (adj.): 1. Used or accepted as normal or average.”

¹³ This of course, does not address service expansion by Metra. That is a topic dealt with separately in this filing.

To the extent necessary to avoid conflicts with Amtrak’s existing or future scheduled rail passenger service, Metra shall revise its operating schedule upon sixty (60) days written notice to Metra. However, in no event shall the daily overall number of Metra trains be reduced nor shall the morning and evening peak period operating schedules be revised without Metra consent.

The Board can see exactly how this works in practice. When Amtrak wanted to add service to St. Louis and sought a commuter service scheduling adjustment, Metra revised its non-peak schedule for its Southwest Service. V.S. Oppenheim, id. Where Metra has less flexibility – such as in the provision of rush hour “peak period” service serving the expectations of 90% (or at least a significant majority thereof) of CUS rail users – Metra would be permitted to protect the critical aspect of its service; rush hour is what makes commuter service an essential public good. Though it is patently unclear that any standards other than the Standard Schedule needs to be set, Metra’s proposal effectively balances the distinct public needs for commuter and intercity service in the event of any future conflict.

C. Metra should be permitted to increase its commuter service at CUS unless empirical operating data and modeling clearly demonstrate that such increases would interfere with existing and reasonably foreseeable future Amtrak service (Supp. Issue No. 4).

The parties agree that Metra may reinstate trains to and from CUS up to pre-Covid commuter schedules and frequencies – the parties refer to this pre-Covid CUS Metra schedule as the “Standard Schedule” – but they have been unable to agree upon the circumstances under which Metra could expand its train service to and from CUS beyond the Standard Schedule. If Metra were to seek to expand its commuter rail operations beyond the Standard Schedule at some point in the future, Metra would be guided by four concepts intended, as always, to balance the interests of the parties. First, simply restricting Metra to the Standard Schedule as an absolute cap, untethered to Amtrak service levels and actual CUS capacity to absorb increases, would be arbitrary and unfair. Second, while Amtrak should be entrusted

certain discretion in determining whether to permit Metra trains over the Standard Schedule, it should exercise that discretion reasonably under the circumstances of the demand, and must base its decision on data that is objectively defensible. Third, Amtrak should not serve as the sole arbiter of whether a refusal to accommodate additional Metra trains is reasonable. Fourth, Metra's request to exceed the Standard Schedule should account for Amtrak's five-year traffic forecasts in modeling CUS fluidity in light of Metra-proposed train increases and Amtrak-forecasted train counts and schedules, such that, if empirical traffic data and analysis shows no material impact to Amtrak operations, Amtrak should not refuse the request.

To that end, Metra proposes the following:

If Metra desires to increase the number of trains it would operate beyond that permitted by the Standard Schedule, Metra will provide Amtrak with a written request of the same, and will include with that request a proposed service schedule accounting for the increase. Metra shall be permitted to increase its daily train movements by 5% over the Standard Schedule. Amtrak shall provide a written response to each Metra request to increase traffic above the Standard Schedule within sixty (60) days. Any request to increase Metra's traffic shall be deemed approved if Amtrak fails to provide such written response. If Metra requests an increase in train movements over the 5% threshold, then, at Amtrak's request, Metra shall undertake standard RTC^[14] traffic modeling based upon existing Amtrak traffic levels and reasonable 5-year forecasts of Amtrak's future CUS traffic levels as set forth in Amtrak's five-year operations plan. Metra shall be responsible for the costs of RTC traffic modeling. Amtrak shall be entitled to review the data, model, and RTC modeling results. Amtrak shall grant requests to increase Metra's traffic if RTC modeling indicates no material interference with Amtrak current and 5-year forecasted traffic. Requests supported by RTC modeling will be deemed granted within thirty (30) days of Metra's presentation of an RTC modeling report if Amtrak fails to provide a written response.

¹⁴ RTC refers to "Rail Traffic Controller," a dispatching simulation software program that is used to determine network capacity, permit an assessment of network flow impacts resulting from additional trains and train schedule changes. RTC can be used to assess railroad system capacity, avoid operational bottlenecks, and determine when and where capital infrastructure may be needed. See <http://berkeleysimulation.com/index.php>, and see also <http://www.rlbadc.com/litigation-support/rtc/>.

The above is merely one articulation of the standard that could govern prospective traffic increases over the Standard Schedule, and it accounts for Metra’s internal assessment that CUS could absorb a 5% increase in Metra service without materially impairing Amtrak service. Metra can be flexible, and is very willing to work with Amtrak on some mutually-acceptable variation of the concepts embodied in the above proposed contract term. But Metra is concerned that Amtrak may, in the absence of the sort of protections set forth above, withhold consent to train increases despite the absence of empirical evidence of material adverse impacts upon Amtrak’s current or reasonably forecasted future service at CUS.

D. In the interest of continuing and advancing CUS fluidity, Metra should have at its disposal the same dispatching technology and functionality as Amtrak possesses (Supp. Issue No. 8).

For years, Amtrak has provided Metra with access to Amtrak’s CUS dispatching feed, allowing Metra to view certain station monitors showing CUS dispatching activities and corresponding train movements in real time, providing Metra the computer software and license necessary to view remotely and in real time the same information as displayed on the aforementioned station monitors. The software program Amtrak supplied also allowed Metra to “play back” Amtrak’s CUS dispatching activities – a replay of CUS dispatching events. But, more recently, Amtrak changed the dispatching feed arrangement to preclude Metra from using the play back function. Yet access to the dispatching feed and play back functions are critical to CUS fluidity, since Metra has played, and continues to play, a critical role in Amtrak’s provision of dispatching services. V.S. Oppenheim, 10 (“Amtrak provides Metra with a dispatch feed and laptop in part so I can monitor and provide help to Amtrak.”).¹⁵

¹⁵ Amtrak agrees that its dispatching efforts must be “reasonably” oriented towards on-time performance, and the parties have committed to meet monthly to review dispatching performance. Jan. 19, 2021 Joint Stipulation (“Jan. 2021 J.S.”), 8.

Moreover, Metra is willing to agree to pay Amtrak a separate (and duplicative) monthly fee for access to the dispatching feed (with access to play back), even though Metra believes that the dispatching feed service was subsumed within the dispatching costs allocated among the parties by previous stipulation.

Accordingly, Metra proposes the following provision, which track the original Amtrak proposal, accounts for the current dispatching feed arrangements, and adds a provision restoring Metra's access to feed play back functionality:

Amtrak shall provide to Metra real-time access with play-back capacity to view the movement of Metra Commuter Rail Service operations in and out of CUS from the "glass house" locations established at the track level adjacent to tracks 4 and 19. Train data from the Amtrak CUS Dispatching Operations Center shall also be made available to be fed directly to two off-site laptops assigned to Metra authorized personnel (glass house monitors and laptops collectively the "Dispatching Feed"). Metra recognizes that Dispatching Feed system outages may occur due to planned or unplanned work at CUS. Where feasible, Amtrak will endeavor to communicate to Metra in advance of any potential activities that may impact the Dispatching Feed. Section 12.6 compensation includes the Dispatching Feed, Amtrak-provided equipment exclusively used by Metra, repair, replacement, licenses, software upgrades, cabling, and installation.

Moreover, Metra is willing to agree to pay Amtrak a separate (and duplicative) monthly fee for access to the dispatching feed (with access to play back) based upon the actual costs Amtrak incurs in providing Metra with dispatching feed access, even though Metra believes that the dispatching feed access was included within the dispatching costs allocated among the parties by previous stipulation.¹⁶

¹⁶ May 18, 2020 Joint Stipulation, ¶ 2 (Dispatching "includes costs Amtrak designates and accounts for as costs attributable to providing dispatch services over the CUS shared-use territory plus the allocated costs associated with the maintenance of the dispatch center."). See also, Exhibit A, Amtrak First Set of Interrogatories (Excerpt) (stating "Dispatching . . . refers to the monitoring, directing, and coordinating of Train Movements by authorized personnel at Chicago Union Station."). Amtrak's providing the dispatching feed is quite obviously (1) a service and (2) the monitoring by of "Train Movements" by "authorized personnel."

E. Each party should be held to its obligations under this agreement, and accountable for its negligent acts or omissions that subject the other party (or both) to serious service disruption (Supp. Issue No. 10).

If as has happened over the years, either party negligently acts, or fails to act, in a way that results in significant train service disruption at CUS, the parties have been left without prescribed recourse. Amtrak's performance of services to Metra is essentially valueless if those services are not responsibly carried out. On the other hand, the possibility that Metra could disrupt Amtrak service is not clearly factored into the cost allocation methodologies the parties' have proposed, though such events could constitute a recoverable cost under 49 U.S.C. § 24903. Absent a measure of accountability, the respective duties of the parties to each other are meaningless; the public interests of each railroad are placed at risk.

Amtrak's stewardship of CUS offers prime examples of circumstances where Amtrak's carelessness destroyed an entire evening commute at CUS. As just one such example, Amtrak recently undertook upgrades to its dispatching server during Metra's busiest time at CUS: the evening rush hour. It assured Metra that the server upgrades would not affect Metra rush hour service due to Amtrak's plans to have a dispatching system back up in place just in case the upgrades went awry. The upgrades went badly, and there was no backup system. In addition to a technical failure, a workman fell on the electrical panel, leaving CUS dispatchers without working computers or any means to dispatch trains to and from CUS, stranding thousands of rail passengers. Metra Reply Statement, V.S. Oppenheim, 8. Metra's recourse options under the governing agreement? None, aside from the prospect of costly, protracted litigation over consequential damages and the contract issues and affirmative defenses likely to ensue. Accountability, ensuring the "efficient movement consistent with safe operations" pursuant to 45 U.S.C. § 716 is warranted.

With this in mind, Metra asks the Board to consider and potentially prescribe a measure by which the parties' may hold one another accountable for negligent acts or omissions so serious in scope that they trigger invocation of the CUS Service Disruption Plan. Such a regime might resemble the following:

Where the negligent act or omission of a party results in the implementation of the Service Disruption Plan, the other party may recover as liquidated damages for (i) delayed trains, one-half of; and (ii) cancelled trains, the whole of; each Pro Rata Fare effected by the Service Disruption. The Pro Rata Fare is calculated as the proportion of air-line miles to be travelled within the Chicago Metropolitan Region (as defined under 70 ILCS 3615/1.03) relative to the air-line miles between the origin and destination for the relevant fare.

This provision – or similar guidance or provision regarding accountability – is objective and reciprocal. The Service Disruption Plan is administered by Amtrak's agent in the interest of alleviating station overcrowding; it is only enacted in extreme circumstances and thus serves as an objective indicator that something has gone seriously wrong at CUS. (Exhibit B). The standard is even-handed, differentiates between late trains and cancelled ones, and includes a mileage-based equalization factor.

Whether this or a similar such standard embracing similar principles, each party must contractually commit itself to “do no harm,” and to stand in some measure accountable for significant failures to protect and serve the public interest in commuter and intercity rail passenger service.

F. Amtrak should cooperate fully with Metra in retaining cost records, permitting Metra to provide all data necessary to comply with Federal Transit Administration audits (Supp. Issue No. 15).

Metra may compensate Amtrak for CUS services by way of Federal Transit Administration (“FTA”) funds supplied to Metra pursuant to 49 U.S.C. Chapter 53 and underlying appropriations made therefor – including Pub. L. No. 116-260, the Consolidated Appropriations Act of 2021 (appropriating emergency funding for transit operations due to

COVID-19 Pandemic). And as Amtrak should understand and appreciate, FTA audits the use of Chapter 53 funds on a triennial basis. 49 U.S.C. § 5307 (f). Among other things, Metra's FTA-supplied funds have been dedicated to its more than \$130 million share of capital improvements Metra has invested in projects at CUS (the 38 amendments to the Fixed Facility Agreement). Opening Statement 50 and V.S. Oppenheim, 2-3 (discussing average Metra contribution of \$4 million annually); Exhibit C.

Under the particulars of FTA practices, a triennial audit may not be initiated until sometime after the 3-year period subject thereto; a 3 year records retention is inadequate where the audit commences in year 4 or 5. In order to enable Metra to satisfy FTA's audit records requirements, Metra proposes that Amtrak retain variable and fixed cost data for five years. To that end, Metra proposes modest alterations to Amtrak's proposed Access Agreement terms as follows (principal changes underlined (additions) and stricken (deletions)):

Metra will have the right, at Metra's expense, to inspect, examine, and audit all financial books, records, and accounts of Amtrak which support the actual variable and fixed costs billed under this Agreement. ~~Fixed payment amounts are not subject to audit, with the exception of the application of the AAR Index as set forth in Section 12.10 to such fixed payment amounts.~~ Amtrak will retain all such books, records, and accounts for a period of ~~three~~ five (~~3~~) (5) years following the end of each Contract Year of this Agreement. This right to inspect, examine, and audit shall extend to auditors of FTA and any other government agencies requiring access to Amtrak records relating to the services provided by Amtrak in support of Metra's access to CUS under this Agreement, when requested by the Administration. Once an audit has been completed by Metra, a letter shall be sent to Amtrak setting forth the results of the audit. Items to which Metra does not take exception will be considered closed for the period unless Amtrak indicates in writing within ninety (90) days of the receipt of Metra's letter that certain cost items may be subject to future retroactive settlement(s) or adjustment(s). In this case, any items identified by Amtrak related to unionized labor agreements to be ratified shall be held open until the actual settlement(s) or adjustment(s) occurs, and such Amtrak claims for retroactive unionized labor agreement settlements or adjustments shall survive termination of this Agreement.

As is reflected in the proposed provision, Metra seeks to extend the document retention requirement to variable and fixed costs, each of which may be covered by FTA-supplied funds. That is because an FTA audit looks at the grant recipient's expenditures, and makes no distinction between the type of Amtrak cost to which FTA funds may be dedicated. Furthermore, Amtrak has not supplied a definition of fixed costs as part of its proposed Access Agreement, leaving unclear what costs Amtrak is intending to segregate, and why.

G. Metra has proposed to reduce through further accommodation the number of unresolved contract issues (Supp. Issues No. 14 and 16).

Having re-examined the issues, and in the interest of a comprehensive accord, Metra recently has concluded that it will accept Amtrak's proposed terms to govern dispute resolution and assignment – both discrete issues on the December 15 Supplemental Issues List. Specifically, Metra will accept Amtrak's Sections 18 (dispute resolution – Supp. Issue 14) and 25 (assignment – Supp. Issue 16) as set forth in the June 2019 Access Agreement that Amtrak had requested the Board to impose upon Metra.¹⁷ Metra had preferred, and had offered, alternative terms in place of Amtrak's original proposals on each issue, but recently has concluded that the differences between the proposals do not warrant further dispute.

CONCLUSION

Metra is grateful to have had the opportunity through Board-sponsored mediation to explore with Amtrak the non-compensation terms that would apply to a prospective agreement that – along with anticipated Board-ordered compensation – would govern Metra's use of CUS for years to come. That mediation yielded considerable fruit and conciliation, with only a comparative handful of key issues still in dispute. (Consider, for example, the scope of the

¹⁷ Amtrak Opening Statement, Suchy V.S., Exhibit 1.

“Proposed Agreement” that Amtrak has asked for the Board to impose and the extent of the parties’ December 15, 2020 joint stipulation). And although mediation has ended (at least for the time being), a path remains for the successful negotiation of lingering, unresolved issues. The Board may conclude that the time has come for it to intervene on the remaining unresolved issues from the Supplemental Issues List by imposing specific contract terms, if indeed the Board finds that it has the authority under Section 24903(c)(2) to prescribe such terms. But it is unclear at best to Metra that such time has come, if ever it does.

Metra would favor continued negotiation, recognizing that some of the obstacles currently in the way of accord stem from a sense that Amtrak, as the owner of the CUS assets, should hold its interest in CUS and its intercity service mandate as the overarching considerations, viewing Metra as a secondary, and sometimes inconvenient, facilities occupant (and consumer of Amtrak services). To be sure, Metra would rather that it were the owner of CUS (with Amtrak as a user of Metra services), a scenario that would be far more typical of the arrangements that Amtrak has with railroad station owners across the U.S. – and nearly every commuter terminal outside the Northeast Corridor. The dynamics of that arrangement could be quite different. Metra believes that the Board would best facilitate resolution by clarifying whether, and to what extent, either party holds primacy in negotiating contract terms, articulating how the agency’s views the issues presented here should bear on final contract terms.

In this Supplemental Statement, Metra has proposed certain important terms for the Board’s consideration, and has explained why it believes that the principles guiding its proposals are rooted in balance and fairness. At a minimum, Metra asks the Board to offer its perspective and its sense of balance and fairness as it may extend to these currently-disputed contract terms. If indeed Congressional policy underlying Section 24903 seeks a balancing of

the competing public interests that Metra and Amtrak each advances, then Metra would ask the Board to guide the parties as to how such balance might reasonably be struck going forward as they work to achieve an accord on remaining unresolved issues.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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

Dated: January 22, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36332

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

EXHIBIT A

**AMTRAK FIRST SET OF
INTERROGATORIES (EXCERPT)**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

AMTRAK’S FIRST INTERROGATORIES

Petitioner National Railroad Passenger Corporation (“Amtrak”) respectfully requests that Respondents Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad (collectively “Metra”) separately and fully answer the following Interrogatories pursuant to 49 C.F.R. § 1114.26, the Board’s Procedural Schedule in this matter, and other applicable law, and within 20 days of service of these Interrogatories.

DEFINITIONS

1. “Access Agreement” refers to an agreement between Amtrak and Metra with respect to Metra’s access and use of Chicago Union Station.
2. “Board” refers to the Surface Transportation Board.
3. “Capital,” “Capital Projects” or “Recapitalization Program” refer to system enhancements to maintain or increase reliability of passenger service operations at Chicago Union Station, including tracks, switches, interlocking, signals, platforms, systems, station concourse, and all other infrastructure used by Metra other than the Headhouse.
4. “Chicago Union Station” refers to the real property and improvements having an address at 210 S. Canal Street, Chicago, IL, 60606, including the track, switches, interlockings, signals, platforms, systems, station concourse and Headhouse, and all other infrastructure used in the operation of a railroad east from the west line of Canal Street, and west and north of the south

branch of the Chicago River, inclusive of bridges crossing the Chicago River, to Roosevelt Road with the exception of parts of Amtrak's 14th Street Yard north of Roosevelt Road. "Chicago Union Station" also includes the Station Headhouse west of Canal Street, bounded by Clinton Street, Jackson Boulevard, Canal Street, and Adams Street.

5. "Cost Allocation" refers to the methodology of sharing costs between Amtrak and Metra at Chicago Union Station.

6. "Dispatching" refers to the monitoring, directing, and coordinating of Train Movements by authorized personnel at Chicago Union Station.

7. "Documents" includes communications and refers to all written, recorded, graphic, or photographic matter, however produced or reproduced, including letters, notes, memoranda, emails, ledgers, minutes, bills, receipts, invoices, publications, presentations, slides, accounting documents, financial statements, spreadsheets, policy statements, and webpages.

8. "Headhouse" or "Station Headhouse" refers to the primary building of Chicago Union Station, containing the Great Hall, station concourse, boarding lounges, and ticketing counters, located at 210 S. Canal Street, Chicago, IL, 60606.

9. "Maintenance of Way" refers to the costs associated with the upkeep and repair of Chicago Union Station, including tracks, switches, interlocking, signals, and platforms in order to keep the infrastructure and systems functioning properly for safe train operations.

10. "Liability" refers to the allocation of responsibility for loss, injury, death, or damage, and the reimbursement of payments for such loss, injury, death, or damage.

11. "Parties" refers to Amtrak and Metra.

12. "Police" or "Policing" refers to patrolling and other security operations conducted by the Amtrak Police Department and the Metra Police Department at Chicago Union Station.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36332

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

CONFIDENTIAL EXHIBIT B

SERVICE DISRUPTION PLAN

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36332

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

EXHIBIT C

**SUMMARY OF FTA-FUNDED CAPITAL
PROJECTS**

HISTORIC METRA CAPITAL INVESTMENT IN CHICAGO UNION STATION (CUS)

- 1981 to 2019 -

Project Element	Date of first expenditure	Project Title	Metra Percentage Share of Project Cost	Metra's share of project expenditures	Metra's Unexpended Obligation	Metra's share of project costs	Metra's LTD capitalized costs as of 12/31/2018	Accumulated depreciation as of 12/31/2018	NBV of Metra's LTD capitalized costs as of 12/31/2018	Amtrak share of project costs	Total Project Cost
0547	Dec-81	BI-DIRECT. SIGNAL/CUS-A5	100.00%	1,356,350.54	-	1,356,350.54	1,356,350.54	1,356,350.54	-	-	1,356,350.54
0653	May-83	ELECTRICAL STANDBY EQUIPMENT	76.50%	938,245.78	-	938,245.78	938,245.78	938,245.78	-	288,219.29	1,226,465.07
0654	Feb-84	IMPROVE PEDESTRIAN EXITS	100.00%	854,288.55	-	854,288.55	854,288.55	854,288.55	-	-	854,288.55
1427	Mar-84	RENEW CUS INTERLOCKER	68.00%	39,857,970.87	-	39,857,970.87	39,857,970.87	39,857,970.87	-	18,756,692.17	#####
1429	Jun-84	REHAB RAIL/RANDOLPH-CANAL	66.60%	214,558.00	-	214,558.00	214,558.00	214,558.00	-	107,601.16	322,159.16
1429	Sep-85	REHAB RAIL/RANDOLPH-CANAL	100.00%	23,840.89	-	23,840.89	23,840.89	23,840.89	-	-	23,840.89
1430	Sep-85	MODIFY ADAMS STREET BRIDGE	100.00%	6,397.74	-	6,397.74	6,397.74	6,397.74	-	-	6,397.74
1451	Oct-85	RENEW SIGNAL TRANSFORMERS	22.30%	125,235.05	-	125,235.05	125,235.05	125,235.05	-	436,357.10	561,592.15
1463	Apr-85	EXTEND ADAMS ST KIOSK	100.00%	29,999.82	-	29,999.82	29,999.82	29,999.82	-	-	29,999.82
1774	Sep-89	PASSENGER INFO - DOWNTOWN STATIONS	100.00%	223,545.76	-	223,545.76	223,545.76	223,545.76	-	-	223,545.76
1870	May-89	CUS PEDESTRIAN EXITS	100.00%	1,131,481.97	-	1,131,481.97	1,131,481.97	1,131,481.97	-	-	1,131,481.97
1987	Sep-88	CUS INTERIOR RENOVATIONS	100.00%	8,044,136.16	-	8,044,136.16	8,044,136.16	8,044,136.16	-	-	8,044,136.16
2104	Jun-90	ELECTRICAL STANDBY FACILITY	100.00%	395,375.70	-	395,375.70	395,375.70	395,375.70	-	-	395,375.70
2720	Dec-00	SWITCH HEATERS	67.13%	1,635,443.55	-	1,635,443.55	1,635,443.55	1,635,443.55	-	800,789.95	2,436,233.50
3241	Oct-99	LAKE STREET INTERLOCKER (CUS TERRITORY)	88.00%	63,524,460.71	10,312.51	63,534,773.22	62,255,757.49	12,204,452.39	50,051,305.10	8,663,832.71	#####
3241	Oct-99	LAKE STREET INTERLOCKER (CUS TERRITORY)	67.13%	3,334,482.59	541.32	3,335,023.91	3,267,886.69	640,627.78	2,627,258.91	1,632,984.30	4,968,008.20
3272	May-03	CUS PLATFORMS	67.13%	781,377.85	-	781,377.85	781,377.85	703,240.07	78,137.79	382,599.28	1,163,977.13
3439	Jul-02	PASSENGER INFORMATION DISPLAYS	100.00%	2,484,943.00	-	2,484,943.00	2,484,943.00	869,730.05	1,615,212.95	-	2,484,943.00
3447	Feb-04	CUS VENTILATION SYSTEM	100.00%	921,036.35	-	921,036.35	921,036.35	690,777.26	230,259.09	-	921,036.35
3465	Apr-02	PLATFORMS AND PEDESTRIAN EXITS	50.00%	274,129.74	-	274,129.74	274,129.74	274,129.74	-	274,129.74	548,259.48
3515	Sep-02	GENERATORS AT DOWNTOWN TERMINALS	100.00%	18,499.99	-	18,499.99	18,499.99	7,400.00	11,099.99	-	18,499.99
3515	Sep-02	GENERATORS AT DOWNTOWN TERMINALS	82.00%	1,294,951.32	-	1,294,951.32	1,294,951.32	517,980.53	776,970.79	284,257.61	1,579,208.93
3694	Feb-02	MISCELLANEOUS ENGINEERING	100.00%	112,000.00	-	112,000.00	111,379.00	111,230.48	148.51	-	112,000.00
4841	Dec-18	CUS SOUTH SIDE INTERLOCKERS (Round 1)	67.13%	31,926.88	1,680,273.12	1,712,200.00	-	-	-	838,373.51	2,550,573.51
4841*		CUS SOUTH SIDE INTERLOCKERS (Round 2)	67.13%	-	2,081,030.00	2,081,030.00	-	-	-	1,018,970.00	3,100,000.00
4841**		CUS SOUTH SIDE INTERLOCKERS (Round 2)	88.00%	-	453,166.56	453,166.56	-	-	-	61,795.44	514,962.00

Totals: \$ 127,614,679 \$ 4,225,324 \$ 131,840,002 \$ 126,246,832 \$ 70,856,439 \$ 55,390,393 \$ 33,546,602 \$ 165,386,605
Weighted Average Metra Percentage: 79.72%

Note: The Metra Paid & Obligated Funds represents 100% of Metra's share. Metra's share has varied over time. The most recent number commonly used in conversation is 88% which is Metra's share of the \$66M Lake Street Interlocker.
 Note*: FFA amendment in process for switch machines
 Note**: FFA amendment in process for curved rail north side

Estimated 1

Estimated 1

CERTIFICATE OF SERVICE

I hereby certify that on this day, January 22, 2021, in accordance with the requirements of 49 C.F.R. § 1152.60(d), a copy of the foregoing **Supplementary Statement of the Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation** was served via email on the following persons:

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