

January 29, 2021

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Via E-Mail

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

ENTERED
Office of Proceedings
January 29, 2021
Part of
Public Record

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

Dear Ms. Brown:

I represent Petitioner National Railroad Passenger Corporation (“Amtrak”) in the above-referenced matter. I am writing in response to the January 19, 2021 letter from counsel for Respondent Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Commuter Railroad Corporation (collectively, “Metra”). Metra’s letter identified at least 20 “errata” in its reply brief filed on June 24, 2020.

Amtrak appreciates that Metra recognizes the errors in its filings. However, Metra’s letter does not fully correct the errors in its reply brief, nor attempt to explain the meaning of those errors. Nor does Metra’s letter correct the errors in the verified statements it submitted in support of its reply brief. Indeed, even with the errata, Metra continues to overstate by [REDACTED] the impact of Amtrak’s proposal for the Great Hall. While Amtrak provides context and greater explanation of the errors below, the most important takeaway is that Metra concedes some of the statements in its briefing were incorrect, which also means calculations in Metra’s brief and verified statements were incorrect.

Metra’s errors primarily relate to its incorrect characterization of certain spaces in the Concourse Level of the Headhouse Building, which in turn led Metra to misstate Amtrak’s position concerning Metra’s share of Station Operations and Maintenance costs. The parties have stipulated that those costs will be calculated based on the parties’ relative usage of areas of Chicago Union Station.

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In its reply brief, Metra characterized the Great Hall as comprising the entire Concourse Level of the Headhouse Building, an area of roughly [REDACTED] square feet. That is incorrect: the Great Hall is just one room on that floor, and covers roughly [REDACTED] square feet. Metra's mistake caused it to misstate Amtrak's position regarding calculation of the costs allocated to Metra. After Amtrak pointed out this error to Metra, the parties met and conferred about the issue. Metra now agrees that it incorrectly characterized the Great Hall, misstated its square footage, and misstated Amtrak's position. But Metra's incomplete errata introduce a new error into its reply brief.

The parties agree that Station Operations and Maintenance costs should be allocated using spatial analysis. Under the parties' agreed approach, the Board will determine the "Amtrak sole-benefit" square footage, the "Metra sole-benefit" square footage, and the "common benefit" square footage. The common benefit square footage is then divided between the parties based on another allocation factor, which the parties have stipulated is 83% to Metra / 17% to Amtrak. The total square footage allocated to a party is then divided by the total square footage allocated to both parties, resulting in the percentage of Station Operations and Maintenance costs that party must bear.

At issue here is Amtrak's proposed spatial allocation for the Concourse Level of the Headhouse Building. To the right is what Amtrak proposed for that floor in its opening brief. (Miller V.S. Ex. 16 at Amtrak0000181.) The proposed Amtrak sole-benefit areas are blue, common benefit are yellow.

The Great Hall is the vertically oriented rectangle in the center. As stated on the drawing itself, it is [REDACTED] square feet, and Amtrak has proposed designating it as a common-benefit area, since both parties and their passengers can and do use it. Amtrak also proposed designating other spaces in the Concourse Level of the Headhouse Building totaling about [REDACTED] square feet—also yellow—as common benefit areas. And with the blue areas, Amtrak proposed designating about [REDACTED] square feet as Amtrak sole-benefit.



In footnote 12 of its opening brief, Amtrak noted that “[i]n an attempt to reach a resolution” before filing the proceeding, “Amtrak’s June 2019 proposal also allocated only 15% of the Great Hall to Metra” and 85% to Amtrak. (Amtrak Opening Br. at 26 n. 12.) While Amtrak was willing to do this as part of an overall resolution with Metra, Amtrak proposes in this proceeding to treat the Great Hall like any other space in Chicago Union Station. Thus, because the Great Hall is a common benefit area, the Board should allocate 83% of its square footage to Metra, rather than 15%. Amtrak’s designation of the Great Hall as common benefit space should not have surprised Metra, because it and its experts agree that Metra and its passengers use and benefit from the Great Hall—the criterion for whether a space provides a common benefit.

In its reply brief and supporting verified statements, Metra and its experts make several misstatements regarding Amtrak’s proposed allocation of the square footage of the Great Hall. Metra asserted that “[b]y [its] last-minute maneuver, Amtrak ... has declared in its opening statement that the entire 120,040 square feet of the Great Hall should be considered an area commonly benefitting both passenger carriers.” (Metra Reply Br. at 28.) Metra’s witnesses Thomas Crowley and Robert Mulholland made the same misstatement in support of Metra’s reply brief. *See* Reply Verified Statement of Thomas Crowley and Robert Mulholland at 11-12. As explained and shown in the station map above, the Great Hall is not 120,040 square feet, and Amtrak did not ask the Board to designate the entire 120,040 of the Concourse Level of the Headhouse Building as commonly benefitting both Amtrak and Metra. Metra’s suggestion that Amtrak had somehow acted in bad faith with its spatial designations is badly wrong.

In its errata, Metra attempts to correct its misstatements by substituting the term “Great Hall Building Concourse” for “Great Hall,” and asserting that Amtrak asked the Board to designate “nearly” all of the square footage as common-benefit. Metra also revises downward the purported effect of Amtrak’s classification of the Great Hall as common-benefit square footage. Metra asserts that the change in that classification resulted in an increase in Metra’s allocable costs of about \$1.6 million, as opposed to the \$2.4 million increase Metra claimed in its reply brief. *See* Errata Letter at 1, 2 (“the final line’s reference to \$2.4 million should be \$1.6 million”). Metra does not explain this calculation, and it has no support from Mr. Crowley or Mr. Mulholland, whose errors on this point Metra has not corrected. In fact, Metra’s new figures are still incorrect.

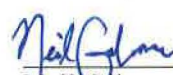
Amtrak’s pre-suit offer to Metra to allocate the approximately [REDACTED] square feet of the Great Hall 15% to Metra and 85% to Amtrak would have resulted in about a [REDACTED] decrease in the costs allocated to Metra. That is demonstrated in an Amtrak internal spreadsheet showing the difference in dollars between (i) Amtrak’s 85%/15% proposal for the Great Hall and (ii) treating the Great Hall as a common-benefit space (i.e., what Amtrak is proposing now). That spreadsheet—Amtrak0005990—is actually cited in Metra’s reply brief at page 28. Thus, the actual shift in costs is about [REDACTED], a calculation shown in documents Metra itself already submitted to the Board. Metra’s current position—that Amtrak’s change in its proposal regarding the Great Hall allocation method resulted in a \$1.6 million shift in costs—clearly

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remains incorrect, as do Metra's references to "\$3 million footnotes."¹ Metra has now overstated that amount to the Board twice—the first time, in its reply brief, fourfold; and the second time, in its errata, nearly threefold.

Metra's errata submission, standing alone, makes it difficult to understand exactly what Metra is correcting. And the submission hides the fact that the corrections themselves are flawed. Metra's errata offers a new calculation with no supporting documentation, and, even with the corrections, Metra continues to misstate Amtrak's position.

Sincerely,


Neil Gilman

PRK

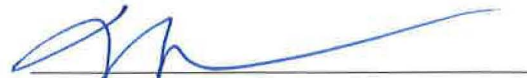
cc: Parties of record

CERTIFICATE OF SERVICE

I hereby certify that I have this day, January 29, 2021, caused copies of the foregoing to be served by electronic mail on:

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¹ That smaller adjustment makes sense—at [REDACTED] square feet, the Great Hall is approximately [REDACTED] of Metra's estimate of allocable square footage. (See Metra Opening Br. at 32.) No method of allocating that amount of square footage could have a \$1.6 million effect on the costs.