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February 11, 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 Proceedings under 49 U.S.C. § 24903(c)(2)
Response to February 8, 2021 Motion to Strike

Dear Ms. Brown:

In its February 8, 2021, letter, Metra asks the Board to strike Amtrak's January 29, 2021, letter. Metra characterizes Amtrak's letter as an impermissible sur-reply. Amtrak's letter was not intended as such. Rather, it was intended as a response to Metra's errata, which makes significant substantive changes to Metra's briefing, albeit insufficiently, seven months after briefing has closed (something also not contemplated by the procedural schedule). Indeed, had Metra explained the need for its errata in its submission rather than purporting to change numerous sentences without context, Amtrak likely would not have needed to respond to the errata.

Amtrak is also compelled to address the faux outrage contained in Metra's letter. The issues addressed in Metra's errata were first raised by Amtrak shortly after Metra filed its reply brief, as Metra concedes in its errata. At that time, Metra acknowledged there were errors in its reply brief and stated it would correct them. The proceeding was then placed in abeyance. Once the mediation was complete and the Parties were negotiating a briefing schedule, Amtrak again asked Metra when it would file its corrections. Metra balked, leading Amtrak to suggest including the issue in the Parties' January 22, 2021 filings. Counsel for the Parties spoke and Metra ultimately changed its position, informing Amtrak that it would file an errata accounting for its square footage error. Metra takes Amtrak to task for not proposing supplemental briefing (*see* Letter from Robert A. Wimbish to Cynthia T. Brown, dated

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February 8, 2021, at 2 n.2), but this was unnecessary when Metra agreed to address the issue by making the initial filing.

Amtrak did not improperly file a sur-reply. To explain why Metra's errata contained errors, Amtrak was required to discuss Metra's original error, which Metra did not do. But Amtrak filed the response to address the errors introduced into the record by Metra's new filing. If the Board believes Amtrak's letter constitutes a sur-reply, Amtrak hereby requests that the Board consider it and deny Metra's efforts to have it stricken. The information in Amtrak's letter is important to a full understanding of the Parties' dispute, and provides important context for the errors that Metra acknowledges were included in its briefing. Metra itself should have provided that context in its submission but did not. Finally, contrary to Metra's assertion in its letter, Amtrak offered no new evidence in its letter. Whether construed as a response to Metra's errata or a sur-reply, Amtrak has no objection to Metra filing a substantive response to Amtrak's January 29, 2021, letter.

Sincerely,



Neil K. Gilman

cc: Parties of Record