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August 15, 2023

BY E-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

ENTERED
Office of Proceedings
August 15, 2023
Part of
Public Record

Re: *Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C.
§ 24308(f)—For Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2*
(Docket No. NOR 42175)

Dear Ms. Brown:

Attached for filing in the above-referenced docket is Illinois Central Railroad Company's Motion to Modify Proposed Briefing Schedule.

Sincerely,

/s/ David A. Hirsh

David A. Hirsh

Counsel for Illinois Central Railroad Company

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP.
UNDER 49 U.S.C. § 24308(f) – FOR SUBSTANDARD PERFORMANCE OF
AMTRAK’S SUNSET LIMITED TRAINS 1 AND 2

MOTION TO MODIFY PROPOSED BRIEFING SCHEDULE

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP.
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MOTION TO MODIFY PROPOSED BRIEFING SCHEDULE

Illinois Central Railroad Company (“CN”) hereby requests that the Board modify its intended briefing schedule in this proceeding, and that it allow 60 days for all parties to reply to the National Railroad Passenger Corporation’s (“Amtrak”) opening statement. The requested modification would create a more fair and reasonable schedule without prejudicing any party.¹

In its July 11, 2023 decision (“Decision”), the Board stated that after discovery closes it “will issue a procedural schedule that will include an opening statement from Amtrak (~45 days after discovery ends), an opportunity for replies (~30 days after Amtrak’s opening is due), and a rebuttal from Amtrak (~15 days after replies are due).” Decision at 13. Under that Stage One schedule, Amtrak would have the entire discovery period (potentially 120 days) plus an additional 45 days after the close of discovery to prepare an opening statement. By contrast, replying parties would have just 30 days to review and assess Amtrak’s arguments and evidence,

¹ CN is authorized to state that the New Orleans Public Belt Railroad Commission for the Port of New Orleans, Southern California Regional Rail Authority, and Union Pacific Railroad Company (“UP”) each consent to this motion, and BNSF Railway Company does not oppose it. CN informed Amtrak and offered to confer, but did not receive a response at the time of filing.

formulate their own arguments, develop their own evidence, and draft and file replies. Amtrak is then permitted rebuttal, while no provision is made for a further Stage One filing by the replying parties.

CN respectfully submits that this schedule provides insufficient reply time. This proceeding presents novel issues of critical importance to the freight railroad industry and the thousands of shippers and businesses that rely on it. In order to provide adequate time for parties to prepare the arguments and evidence necessary for thorough replies to Amtrak's opening submission, and as a matter of fundamental fairness, parties should be given a total of at least 60 days to respond to Amtrak's claims. In the context of this proceeding, the addition of 30 days reply time is not excessive and will not prejudice Amtrak or any other party.

UP has already made the case for requiring 60 days of reply time.² Although CN has limited involvement with the Sunset Limited service, as previously explained,³ it has a strong interest in the broad policy issues presented in this proceeding and faces uncertainty regarding the particular arguments that may be directed at it.⁴ Further, as a matter of procedural fairness and efficiency, the deadline should be extended equally for all replying parties.

² See Union Pacific Railroad Company's Motion for Reconsideration, at 7-9 (filed July 27, 2023).

³ Resp. of Illinois Cent. R.R. Company to Amtrak's Compl. & Proposed Procedures, at 7-8 (filed Jan. 27, 2023).

⁴ Amtrak argued in response to UP's Motion for Reconsideration that a request to modify the reply time is premature before the Board issues a final scheduling order. Amtrak Reply to UP Motion for Reconsideration, at 4-6 (filed Aug. 9, 2023). But the Board has sufficient information to act now, and no meaningful events prior to Amtrak's filing its opening are anticipated that would affect the Board's decision. If Amtrak wishes to later meet and confer with other parties on the schedule, granting CN's motion will not impede that. CN is seeking modification of the schedule now, rather than awaiting Amtrak's opening filing, in order to avoid the inefficiency and uncertainty of not knowing until after the reply period begins to run the time it will have to marshal its evidence and arguments.

Accordingly, CN respectfully requests that the proposed briefing schedule be modified to allow all parties 60 days to respond to Amtrak's opening statement.

Respectfully submitted,

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Attorneys for Illinois Central Railroad Company

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CERTIFICATE OF SERVICE

I, James M. Guinivan, hereby certify that I have, this 15th day of August, 2023, caused the foregoing Motion to Modify Proposed Briefing Schedule to be served upon all parties of record, and upon the Administrative Law Judge assigned to this proceeding, by U.S. first-class mail or a more expeditious method of delivery.

/s/ James M. Guinivan
James M. Guinivan