

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 28, 2023
Part of
Public Record

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**

PETITION TO INTERVENE OF CANADIAN PACIFIC KANSAS CITY LIMITED

Pursuant to 49 C.F.R. § 1112.4 and the Board's decision in this proceeding served July 11, 2023 (the "July 11 Decision"), Canadian Pacific Kansas City Limited ("CPKC") hereby petitions to intervene. CPKC's primary interest in this matter derives from the fact that the Amtrak Sunset Limited service at issue here traverses an average of 124 miles of rail lines between Beaumont, Texas and Rosenberg, Texas (just west of Houston) over which CPKC's rail carrier subsidiary The Kansas City Southern Railway Company operates pursuant to trackage rights granted by the Board in the UP/SP merger proceeding.¹ Amtrak's complaint explicitly asserts issues with respect to this segment, and more generally the segment is encompassed within the scope of the Board-initiated investigation and the potential scope of proposed relief.

¹ The UP lines between Houston and Beaumont are operated directionally, with eastbound trains using UP's Beaumont Subdivision (for a distance of 128.6 miles between Rosenberg and Beaumont) and westbound trains using UP's Houston Subdivision (for a distance of 120.7 miles between Beaumont and Rosenberg). These segments are primarily owned by UP (or jointly owned by UP and BNSF) and jointly dispatched by UP's and BNSF's Spring Dispatching Center.

In addition, CPKC owns and dispatches 1.8 miles of the Sunset Limited's route from the connection between KCSR and UP (at Tower 31) on the east side of the Neches River Bridge to Beaumont (on the west end of the Neches River Bridge). CPKC also operates over 1.2 miles of CN trackage in New Orleans that is used by the Sunset Limited.

CPKC is intervening for the purpose of staying apprised of the arguments and evidence offered in this proceeding – much of which CPKC anticipates will be subject to the Protective Order. CPKC believes that such intervention is necessary to place it in a position to evaluate whether any of the positions taken by the “involved” parties, or relief that may be proposed by those parties or the Board, might implicate CPKC’s interest in preserving its ability to conduct efficient operations over its trackage rights between Rosenberg and Beaumont (including the directionally-operated lines between Houston and Beaumont) that are a vital link in CPKC’s network.

CPKC does not anticipate taking any position on the merits of the issues raised in this proceeding. Accordingly, it does not anticipate seeking discovery, submitting evidence or argument, or seeking any relief in this proceeding, but reserves its right to do so in the event positions taken by other parties, or relief proposed by the Board, would implicate CPKC’s ability to operate over trackage used by Amtrak’s Sunset Limited service.

CPKC’s interest in the proceeding supports intervention, and its involvement in the case would cause no delay and would prejudice no other party

BACKGROUND

On December 8, 2022, Amtrak filed a complaint against UP and BNSF seeking relief related to the on-time performance of the Sunset Limited, which operates between New Orleans and Los Angeles, primarily over lines of UP. Amtrak’s 64-page complaint repeatedly calls out the Houston-Beaumont segment as one that Amtrak regards as subject to particularly high “freight train interference” (or “FTI”) delays.²

² See footnote 8 below.

The July 11 Decision initiated an investigation and also added two additional “parties involved” based on their roles with respect to the operation of the Sunset Limited: Southern California Railroad Authority (“SCRRA”), which owns a short segment of trackage over which the train operates in Los Angeles, and New Orleans Public Belt Railroad Corporation (“NOPB”), which owns and maintains trackage in the New Orleans area over which the Sunset Limited operates. *See* July 11 Decision at 10.

The Board also expressly noted that third parties interested in this investigation could seek intervention “under the 49 CFR § 1112.4 standard so that the proceeding is not unduly burdened.” *Id.*

Having monitored the proceeding since it was instituted and observed the practice of the parties to designate nearly all factual material as confidential or highly confidential under the Board-entered Protective Order,³ CPKC has concluded that it must become a formal participant in these proceedings, and thus be eligible for access to confidential material in the case, in order to assess whether any issues or evidence adduced by the parties might implicate CPKC’s interest in efficient operations on the lines it uses between Beaumont and Rosenberg.

³ UP, for example, redacted most of the list of stations/mileposts that it filed on July 13 in response to the Board’s Information Request Appendix A – Part II. Docket No. NOR 42175, Letter from Michael L. Rosenthal to Cynthia T. Brown (filed July 18, 2023). The Board has subsequently directed UP to show cause why the redacted information should remain confidential. *See* Decision served Aug. 18, 2023, at 5-6. CPKC takes no position on that issue, and expects that, whatever the outcome as to the redacted station names, UP and other parties likely will designate considerable portions of the factual material exchanged in this proceeding as confidential.

DISCUSSION

The governing standard provides that the Board may grant intervention by a party with an interest in the proceeding when intervention “[w]ill not unduly disrupt the schedule” and “[w]ould not unduly broaden the issues.” 49 C.F.R. §1112.4(a).⁴

CPKC’s proposed intervention clearly meets that standard. As a significant user of rail lines between Rosenberg and Beaumont that Amtrak’s Complaint has placed in issue (and as the owner of a short segment over which the Sunset Limited operates in Beaumont), CPKC has a legitimate and significant interest in this proceeding. CPKC’s participation will not disrupt the schedule for the proceeding or broaden the issues raised herein. CPKC anticipates playing a largely passive role – staying apprised of the arguments and evidence offered by other parties, and speaking up only in the event that positions taken by those parties have the potential to affect adversely CPKC’s operations over those rail lines.

We address below the specific elements of the Section 1112.4 standard.

1. CPKC’s Participation Will Not Disrupt the Schedule (Section 1112.4(a)(1))

CPKC anticipates that its participation in this proceeding as an intervenor will have no effect whatsoever on the procedural schedule, which the Board has recently extended at the request of Union Pacific.⁵ CPKC has no plans to serve discovery, file pleadings or evidence, or

⁴ See also, e.g., *Waterloo Ry. – Adverse Abandonment – Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook County, Maine*, Docket No. AB-124 (Sub-No. 2) (“*Waterloo/B&A Adverse Discontinuance*”) (STB served Sept. 25, 2003) (granting intervention by Montreal, Maine & Atlantic Ry. (“MMA”)); *Pro-Go Corp. – Operation Exemption – In Suffolk County, NY*, Finance Docket No. 35120 (STB served May 27, 2008) (granting intervention by New York & Atlantic Ry. where relief could affect service it provided).

⁵ See Decision served Aug. 18, 2023 (extending dates for responses to Board requests for information).

seek any relief in this proceeding.⁶ In the event CPKC does submit any evidence or argument in the proceeding, it would do so promptly following notice of a position or evidence affecting CPKC's interests, and to the extent possible will do so in line with the timeline for submission of evidence and argument by other parties.⁷

2. CPKC's Participation Will Not Unduly Broaden the Issues (Section 1112.4(a)(2))

CPKC has no interest in raising new issues in this proceeding. CPKC's only concern is that the upshot of the proceeding has the potential to implicate CPKC's operations over the Beaumont-Rosenberg lines that it shares with UP, BNSF, and Amtrak. CPKC's participation likely will be passive, and if CPKC ends up commenting it will be in response to issues raised, or proposals made, by other parties or the Board.

3. CPKC Has a Legitimate Interest in the Proceeding (Section 1112.4(b)(1))

CPKC's legitimate interest in this proceeding is unquestionable. The UP-owned and UP/BNSF-dispatched lines between Beaumont and Rosenberg over which the Sunset Limited operates are a vital link in CPKC's United States-Canada-Mexico network. Amtrak's Complaint raises issues with UP's operation of these lines, and the relief Amtrak seeks could, at least theoretically, implicate how those lines are operated in the future.⁸ CPKC has a compelling interest in ensuring that nothing arising from this proceeding diminishes the capacity available to

⁶ As noted above, CPKC necessarily reserves its right to do so in the event positions taken by other parties, or relief proposed by the Board, would implicate CPKC's ability to operate over trackage used by Amtrak's Sunset Limited service.

⁷ To facilitate CPKC's potential participation in accord with the procedural schedule, CPKC would expect to be served with discovery materials and Board investigative materials contemporaneously with other parties.

⁸ Amtrak's Complaint addresses UP's handling of the Sunset Limited in paragraphs 96 (alleging that "FTI is often clustered around major metropolitan areas (particularly Houston)"); 125 (alleging that FTI "spikes" in the "stretch between Houston and Beaumont"); and 137-38 & Map 4 (addressing delays that Amtrak attributes to UP's routing of Sunset Limited between Houston and Beaumont).

CPKC and other freight railroads on this segment, requires costly investments in capacity that do not benefit freight operations, or otherwise impedes CPKC's efficient freight operations on these lines. The likelihood that much of the evidence submitted in this case will be designated as confidential (or highly confidential) by the involved parties makes CPKC's participation in this proceeding essential.

The Board has granted intervention where parties with a legitimate interest in the subject matter of the dispute seek to intervene to "ensure that there is no dispute about its right to participate fully in [the] proceeding or its representatives' right to review material designated as Confidential or Highly Confidential under the Board's protective order."⁹

4. Whether CPKC Supports or Opposes the Relief Sought or the Action Proposed or is Otherwise Concerned with the Issues Presented in the Proceeding (Section 1112.4(b)(2))

At this time, CPKC neither supports nor opposes the relief sought by Amtrak or any proposed action. CPKC is instead "otherwise concerned" with the issues presented in the proceeding to the extent they may bear on the effective capacity or operating efficiency of the lines between Beaumont and Rosenberg over which the Sunset Limited operates, which is a vital link in CPKC's network connecting CPKC's system with Mexico.

5. CPKC's request, if any, for relief (Section 1112.4(b)(3))

CPKC does not anticipate requesting any relief in this proceeding.

⁹ *Waterloo/B&A Adverse Discontinuance*, MMA Motion to Intervene (filed Sept. 22, 2003) at 2; *see also id.* (STB Decision served Sept. 25, 2003) (granting intervention where, *inter alia*, MMA was owner of lines at issue and "intervention will give it the right to review confidential material, subject to protective order, and to participate fully in these proceedings").

CONCLUSION

For the foregoing reasons, CPKC requests that the Board grant CPKC's intervention in this proceeding so as to permit CPKC to participate fully and to receive, contemporaneously with other parties involved, access to all pleadings, discovery, and investigative materials.

Respectfully submitted,



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August 28, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2023, I caused a copy of the foregoing document to be served by email on Administrative Law Judge McCarthy and all parties of record in Docket No. NOR 42175.



David L. Meyer