

309296

ENTERED
Office of Proceedings
February 28, 2025
Part of
Public Record

February 28, 2025

BY E-FILING

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

Re: ***Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(A) — Canadian National Railway Company (Docket No. FD 35743)***

Dear Ms. Brown:

Attached for filing in the above-referenced docket is the List of Attendees and Specific Technical Questions for March 11, 2025 Technical Conference.

Sincerely,

/s/ David A. Hirsh

David A. Hirsh

*Counsel for Illinois Central Railroad Company and
Grand Trunk Western Railroad*

Attachment

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**LIST OF ATTENDEES AND SPECIFIC TECHNICAL QUESTIONS
FOR MARCH 11, 2025 TECHNICAL CONFERENCE**

Kathryn J. Gainey
Davon M. Collins
CN
975 F Street, N.W., Suite 301
Washington, DC 20004
kathryn.gainey@cn.ca
davon.collins@cn.ca

David A. Hirsh
James M. Guinivan
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500
david.hirsh@dentons.com
james.guinivan@dentons.com

Shannon Y. Shin
DENTONS US LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606
(312) 876-3453
shannon.shin@dentons.com

Counsel for Illinois Central Railroad Company and Grand Trunk Western Railroad

February 28, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**LIST OF ATTENDEES AND SPECIFIC TECHNICAL QUESTIONS
FOR MARCH 11, 2025 TECHNICAL CONFERENCE**

Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (together, (“CN”)), by and through their undersigned counsel, hereby submit this List of Attendees and Specific Technical Questions per the Board’s decision served February 19, 2025 Decision (“Decision”).

I. ATTENDEES

A. In-Person Attendees

- 1) Kathryn J. Gainey (CN)
- 2) Davon M. Collins (CN)
- 3) Michael A. Matteucci (CN)
- 4) Scott Kuxmann (CN)
- 5) Rachel E. Klumpp (CN)
- 6) M. Rapik Saat (CN)
- 7) David A. Hirsh (Dentons)
- 8) Shannon Y. Shin (Dentons)

B. Additional Attendees

CN may also wish to bring or call additional individuals to advise on technical questions raised by the National Railroad Passenger Corporation (“Amtrak”) or by the Board in connection with the Technical Conference.

II. SPECIFIC TECHNICAL QUESTIONS

A. On-Time Performance and Schedules: Schedule status

The Decision states “[c]ertified schedules will be required by the Board as the basis for a new OA.” (Decision, at 2.) The schedules for the two trains in Amtrak’s City of New Orleans service and the four trains in its Illini/Saluki service are not certified as per FRA’s final Metrics & Standards rule (49 C.F.R. § 273.3), and CN and Amtrak reached impasse regarding the schedules and the dispute resolution process. What procedure, if any, does the Board propose to encourage the parties to reach agreement and certify those schedules? If the parties are unable to resolve their differences regarding the schedules for one or more trains prior to a revised operating agreement (“Revised Operating Agreement”) otherwise being finalized, will the Revised Operating Agreement be permitted to take effect as to services for which all trains have certified schedules? (The following services have schedules that have been fully certified: Blue Water, Lincoln, Lincoln/Missouri, Texas Eagle, and Wolverine. These services include 18 of the 24 Amtrak trains under the Operating Agreement.)

B. Incentives and Penalties: Payment and penalty data

The Decision orders the parties each “to provide the calculations and underlying data for incentive and penalty payments for calendar year 2024 based on their proposed methodologies.” (Decision, at 2.) CN currently is assessing the time and resources associated with modifying its systems and collecting and reviewing the data necessary to meet this request and will be prepared to discuss same at the Technical Conference. To facilitate a meaningful discussion of how CN can respond to this request in a complete and timely manner that addresses the Board’s purpose in seeking this information (recognizing that neither party is seeking retroactive application of a revised incentive/penalty provision), CN asks the Board to consider the extent to which there might be flexibility regarding the scope of this request.

C. Incentives and Penalties: Adirondack route

The operating agreement at issue in this proceeding is between IC and GTW, on the one hand, and Amtrak, on the other hand. Amtrak’s Adirondack service is not operated over the lines of either IC or GTW. It is instead operated over the lines of Canadian National Railway Company (“CNR”), which is neither a party to this proceeding nor a party to the operating agreement at issue in this proceeding. CNR and Amtrak are parties to a separate agreement that sets forth in detail the

terms and conditions for Amtrak's operation of the Adirondack service on CNR's track. For these reasons, CN asks the Board to withdraw the portion of Incentives and Penalties Request No. 3 relating to the Adirondack route. (Decision, at 2.)

D. Incremental Costs: Cost estimates for incremental freight delay costs

The Decision orders CN "to provide estimates of the incremental freight train delay costs that it claims are incurred by CN and chargeable to Amtrak according to CN's proposal," including "[r]etroactively . . . for each quarter of actual operations for calendar year 2024." (Decision, at 3.) Identifying and costing incremental freight delays in accordance with CN's proposed methodology, which was designed to meet the Board's rigorous standards, is a labor intensive and time-consuming exercise, particularly if not performed on a daily, ongoing basis. (Upon Board approval of compensation for such costs, if a simplified charge has not been adopted (e.g., as suggested by the Board's reference to a per-Amtrak-train-mile charge), then CN would need additional resources to conduct this analysis on an ongoing basis.)

CN notes that the Board's request is for "estimates." Depending on the Board's purpose in making this request, use of the term "estimate" may or may not have been intended to provide more or less flexibility regarding CN's approach to meeting this request. For example, the Board may be seeking this response in order to establish the basis for awarding compensation to CN for 2024, given that CN sought such compensation on a limited retroactive basis to the date of the Board's Interim Decision (August 9, 2019). Alternatively, or in addition, the Board may be seeking an "estimate" so it may more generally gauge the anticipated level of annual compensation in the future and/or as a means of assisting it in considering the adoption of a simplified charge covering incremental freight delay costs, such as its request for a proposed "per-Amtrak-train-mile charge."

To ensure that CN marshals sufficient resources to meet the Board's expectations within an acceptable time, we seek guidance regarding the potential sufficiency of estimating costs by looking, for example, at a sample period of 2024 (one or two months, which would supplement CN's prior costing of December 2019) and/or potentially simplifying aspects of CN's full methodology. If instead the Board is seeking application of CN's full methodology for the entire year, then CN asks the Board to permit it sufficient time to do so. CN will be prepared to discuss specifics with respect to the time and resources required to fulfill this request, and will also come prepared to propose alternatives that can accomplish the Board's goal in asking for this information.

E. Incremental Costs: Per-mile charge for incremental costs

The Decision orders the parties each "to propose a reasonable per-Amtrak-train-mile charge to account for incremental freight delay costs that could be applied in lieu of requiring the calculation of actual incremental freight delay costs. . ."

(Decision, at 4.) Is the Board asking the parties to propose a per-mile charge that is fixed for the duration of the new OA, or is it asking for a per-mile charge that can be adjusted in the future to account for future fluctuations in the volume of delays and costing inputs (*e.g.*, fuel costs, labor costs, etc.). If the latter, is the Board asking the parties also to propose a methodology for future adjustments to the per-Amtrak-train-mile charge? Finally, is the Board open to considering in addition or as an alternative a proposed reasonable cost per hour of freight delay caused by Amtrak?

F. General Question

Given the great variance in time and resources associated with the requests, CN asks the Board to consider whether it would accept responsive submissions on a phased timeline. In other words, would the Board consider permitting the parties extra time to submit information responsive to the more time-consuming requests?

CN appreciates this opportunity to raise technical questions in advance of the March 11, 2025 conference and looks forward to meeting with the Board's staff and Amtrak.

Respectfully submitted,

/s/ David A. Hirsh

Kathryn J. Gainey
Davon M. Collins
CN
975 F Street, N.W., Suite 301
Washington, DC 20004
kathryn.gainey@cn.ca
davon.collins@cn.ca

David A. Hirsh
James M. Guinivan
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500
david.hirsh@dentons.com
james.guinivan@dentons.com

Shannon Y. Shin
DENTONS US LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606
(312) 876-3453
shannon.shin@dentons.com

Counsel for Illinois Central Railroad Company and Grand Trunk Western Railroad

February 28, 2025

CERTIFICATE OF SERVICE

I, James M. Guinivan, an attorney, hereby certify that I have, this 28th day of February, 2025, caused the foregoing List of Attendees and Specific Technical Questions for March 11, 2025 Technical Conference to be served by email upon all parties of record.

/s/ James M. Guinivan
James M. Guinivan