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May 4, 2018

VIA ELECTRONIC FILING

245672

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
May 4, 2018
Part of
Public Record

Re: **Docket No. FD 36171**
Commuter Rail Division of the Regional Transportation Authority
and Northeast Illinois Regional Commuter Railroad Corporation –
Petition for Declaratory Order – Status of Chicago Union Station

Dear Ms. Brown:

On April 26, 2018, the National Railroad Passenger Corporation (“Amtrak”) filed a reply (the “Reply”) to Metra’s¹ April 6, 2018 Petition for Declaratory Order (the “Petition”), opposing the institution of a declaratory order proceeding in this matter and, in the alternative, urging a swift closing of the record and denial of the Petition on the merits. Amtrak’s Reply manifestly confirms that there is a significant dispute between Metra and Amtrak. E.g., Reply at 2 (Metra position that 49 U.S.C. §§ 11102 and 28502 apply to Chicago Union Station (“CUS”) terminal properties “is clearly wrong”); Reply at 10 (Metra claim concerning removal of CUS properties from scope of Board’s jurisdiction “is wrong”). Amtrak would similarly dispute, inter alia, whether Chicago Union Station Company (“CUSCo”) was a rail carrier, Reply at 8, n.5, and whether CUSCo’s property was subject to the Board’s jurisdiction. Reply at 9 (“disputed but assumed for present purposes”).

Beyond this, Amtrak takes an amazingly pervasive view of its purported license under 49 U.S.C. § 24301 to unilaterally remove *any* railroad facility from the Board’s jurisdiction by way of acquisition or merger. This is demonstrated most dramatically in Amtrak’s blithe dismissal of the Berkshire Hathaway-BNSF merger hypothetical posited by Metra: according to Amtrak, Berkshire Hathaway couldn’t dispense with Board jurisdiction over BNSF through such an artifice, but *Amtrak could*. Reply at 10, n.7.

¹ Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation (collectively, “Metra”).

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Two Washington-area commuter rail authorities have already intervened to support the institution of a declaratory order proceeding in this matter, noting the vital interests and important issues at stake. Virginia Railway Express April 20, 2018 letter filing; Maryland Transit Administration April 26, 2018 letter filing. A Metra host railroad in Chicago has also expressed its interest. BNSF Railway Company May 1, 2018 letter filing. The larger jurisdictional ramifications of the expansive Section 24301 *carte blanche* that Amtrak would now arrogate to itself implicate an even wider range of interests and reinforce the need for a declaratory order proceeding that allows a full and fair opportunity for all to participate.

Nonetheless, Amtrak figuratively insists that “there is nothing to see here,” and claims that the significant issues raised by Metra’s Petition are premature because the negotiation “preconditions” for substantive relief under Sections 11102 and 28502 have not been met. Reply at 4-5. Initially, Amtrak is wrong that it has not been negotiating with Metra about the CUS lease renewal; negotiation sessions were held on March 15, 2018 and April 20, 2018, and further negotiations are scheduled for May 23, 2018.

More essentially, Metra’s current Petition does not seek substantive remedial relief or action under the provisions of Section 11102 or Board mediation under the provisions of Section 28502.² A Metra terminal trackage rights application obviously would need to meet the substantive criteria of Section 11102 and the relevant burden of proof, and Amtrak could be expected to contest those matters on the merits.³

Instead, Metra’s Petition squarely addresses the *availability* of those statutory provisions in light of Amtrak’s merger of CUSCo and the resulting ambiguity regarding the Board’s continuing jurisdiction over CUSCo’s rail terminal properties. *That* question plainly has been the subject of dialogue and disagreement between the parties. Metra Petition, Exhibits 4 and 5. And its resolution will plainly affect and inform the posture and positions of the parties in the negotiations for renewal of the CUS lease. Amtrak apparently fears that the Board’s answer

² This is in contrast to the two cases on which Amtrak chiefly relies for its “premature” argument, both of which involved Amtrak applications under what is now 49 U.S.C. § 24308 seeking actual access to facilities or prescription of terms and conditions before the parties had sought to resolve the problem. Reply at 5-6.

³ Amtrak previews one of its arguments in that regard when it questions whether Section 10501(c)(3)(B) applies to Metra. Reply at 12, n.8. Such questions would appropriately be joined when and if a terminal trackage rights application was filed. But whether the relevant statutory remedies were jurisdictionally *eliminated* by an Amtrak-CUSCO merger that has already occurred is a clear and present disputed issue that the Board can and should consider and address now.

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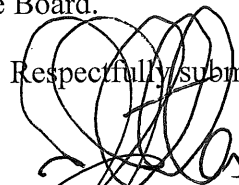
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to the question Metra has posed will result in an “improved negotiating position” for Metra. Reply at 2. Whatever Amtrak’s apprehensions, Metra seeks simply to understand the lay of the land in the aftermath of Amtrak’s furtive, unexplained absorption of CUSCo last year.

Ultimately, Amtrak would have Metra prepare and file an entire terminal trackage rights application in the future simply to obtain a jurisdictional determination on a predicate dispute that is both fully framed and fully consequential today. There is no logical administrative or procedural reason for such an approach.

Metra urges the Board to promptly issue an order initiating a declaratory order proceeding, adopting a procedural schedule, and, as necessary, providing for the additional development of legal issues of interest to the Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJL', is written over the words 'Respectfully submitted,'.

Thomas J. Litwiler
Attorney for Metra

TJL:tl

cc: Thomas R. Waskom, Esq.
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