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BY E-FILEING

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

**Re: FD 35743, Application of the National Railroad Passenger Corporation
Under 49 U.S.C. § 24308(a) – Canadian National Railway Company**

Dear Ms. Brown:

This reply is being filed on behalf of the National Railroad Passenger Corporation ("Amtrak") in response to the letter filed on March 22, 2019 in this proceeding by the Illinois Central Railroad Company and Grand Trunk Western Railroad Company (collectively, "CN").

Amtrak does not share CN's view that it was "necessary and appropriate" for CN to provide its written update to the Board on the two matters discussed in CN's letter. The evidentiary record in this proceeding closed in late 2017 and the parties completed the filing of their briefs in March 2018. More than a year later, without first seeking the consent of Amtrak, CN has filed a motion to supplement the record with information on two matters that are still under evaluation by the relevant parties and for which no definitive conclusions have been reached. Moreover, the periodic evaluation of Illini/Saluki schedules by the contracting parties and the ongoing FRA-sanctioned technical investigation into the grade crossing activation failures on CN's network are both matters that have no direct bearing on the reasonable terms and compensation issues pending before the Board in this proceeding.

Amtrak is not opposing CN's request for leave to submit the March 22, 2019 letter ("CN Letter") into the record, provided that this clarifying reply from Amtrak about the matters discussed by CN also is accepted into the record. However, the Board should discourage CN from making such supplemental evidentiary filings without compelling reasons for doing so and Amtrak reserves its right to move to strike any such future filing by CN in this proceeding.

1. CN's Proposed Revisions to the Illini/Saluki Schedules

According to CN, Illinois Department of Transportation ("IDOT") and CN engaged in discussions in late 2018 about the Illini/Saluki schedules that are incorporated into the Agreement for Illinois Downstate Rail Passenger Service between Amtrak and IDOT (the "Service Agreement") and the separate Operating Agreement between Amtrak and CN. Amtrak was not a party to those discussions, and was not even aware that any such discussions about the Illini/Saluki schedules were taking place until IDOT provided Amtrak with a copy of the letter dated November 15, 2018 from former IDOT Secretary Randall Blankenhorn to CN's John Orr (the "IDOT-CN Letter," included as Attachment 2 to CN's Letter).¹

By letter dated January 15, 2019, Amtrak provided a detailed response to the IDOT-CN Letter² and explained to IDOT that (i) CN was not making any commitment to improve on-time performance in conjunction with CN's proposed revisions to the Illini/Saluki schedules (which revisions largely mirrored the Illini/Saluki schedule changes that CN had proposed to the Board in this proceeding) and (ii) CN's proposal would result in significantly higher annual operating payments for IDOT.³

CN's Letter states that "CN and IDOT continue to work towards a resolution of this matter." However, Amtrak is not aware of any discussions among the relevant parties (Amtrak, IDOT and CN) about changing the Illini/Saluki schedules since Amtrak's January 15th response to IDOT, and no schedule change has been agreed to by Amtrak and CN. Thus, there has not been any change in the status of the Illini/Saluki schedules since the evidentiary record in this proceeding closed. Moreover, the negotiation of proposed schedule changes is a contractual matter that must be resolved by the relevant parties. As Amtrak explained in its Opening Brief,⁴ the Board's mandate in this proceeding is to set reasonable terms and compensation for establishing the next Amtrak-CN Operating Agreement. The Board should not involve itself in the negotiations between the parties about contractual schedule changes.

Amtrak remains available to discuss any reasonable proposed changes to the Illini/Saluki schedules with IDOT as long as there is some level of assurance that such changes will result in improved on-time performance.⁵ CN's Letter refers to its *expectations* about improved ASOTP from its attempt to lengthen the Illini/Saluki schedules, but CN fails to provide any commitment that it would improve its host performance under these longer schedules (except for the likely financial incentive windfall that CN would earn under the Amtrak-CN Operating Agreement).

1 The author of this letter is no longer employed at IDOT. Former Secretary Blankenhorn resigned from IDOT at the end of 2018, shortly after the IDOT-CN Letter was written, and contemporaneously with the transitional change in the Illinois gubernatorial administration after Governor Pritzker defeated former Governor Rauner in the 2018 elections.

2 A copy of this letter dated January 15, 2019 from Amtrak's Joe McHugh to IDOT's Beth McCluskey was included as Attachment 3 to CN's Letter.

3 Amtrak's letter to IDOT also noted that IDOT had not made a formal request for a schedule change as required under Section 5(a) of the Service Agreement but Amtrak was responding as if IDOT had followed such procedures.

4 Amtrak Opening Brief, 40-41.

5 Schedule changes alone do not improve on-time performance (as CN suggests). Although manipulating the Illini/Saluki schedules in the manner sought by CN to lengthen the run time to nearly 6 hours is likely to make it easier for CN to earn its contractual incentive payments, improved on-time performance for customers is dependent on CN abiding by its legal obligation to provide Amtrak trains with preference and taking other required steps to eliminate freight train interference and slow orders on the Illini/Saluki route.

2. Developments in the Ongoing Investigation of the CN Grade Crossing Activation Failures

CN's Letter acknowledges that testing involving the FRA, CN and Amtrak relating to the grade crossing activation failures on CN's network was ongoing when the parties filed their final briefs in this proceeding and such testing remains ongoing. Nonetheless, CN felt compelled to provide the Board with an "update" about the ongoing testing and notes at the end of its Letter that it intends to provide the Board with further updates about additional testing results.

Amtrak does not share CN's belief that it is productive to provide interim updates to the Board about this ongoing technical evaluation, particularly when CN's description of the testing focuses only on the testing and test results that may support CN's position without providing a complete picture of events.⁶ As Amtrak has explained to the Board, there are multiple potential causal factors for the CN grade crossing activation failures that are currently under active – but to date inconclusive – evaluation by the parties with the participation of the FRA.

CN only reported to the Board those interim testing results that appear to support CN's position on this issue, and failed to mention other analysis indicating that [REDACTED] is a causal factor in the failure of CN's grade crossings to activate properly.⁷ CN also omits any reference to the fact that every Amtrak locomotive and passenger car consist that was tested over the Illini/Saluki route between August and October 2018 properly activated the CN grade crossings.⁸

CN's Letter also fails to highlight that Amtrak train speed has not been shown to play a significant factor in grade crossing activation performance on CN's tracks.⁹ Despite this CN finding from the ongoing testing, CN has not taken any steps to lift the speed restrictions that it has imposed on Amtrak's Illini/Saluki trains since September 2014. CN attempts to justify its proposal to significantly lengthen the Illini/Saluki schedules (as discussed above) by claiming that it will lead to improved on-time performance against those longer schedules for passengers, yet CN has failed to initiate any effort to lift unnecessary speed restrictions which would allow Amtrak to operate at the maximum authorized speed over the Illini/Saluki route.

CN notes that the parties have agreed to conduct additional tests focused on the wheel profile of Amtrak's equipment. However, CN fails to explain that such testing is merely the next phase of the

6 Although CN's inclusion of the Amtrak logo on the initial page of Attachment 4 to CN's Letter suggests otherwise, Attachment 4 was not jointly issued by the parties and instead represents only CN's interpretation of the interim test results.

7 CN's own technical consultant concluded that the "[REDACTED]" CN's Motion to Strike or Supplement the Record filed November 20, 2017 at Appendix 1, p. 56.

8 The only exception has been certain tests of a single Amtrak P42 locomotive running over the route without any passenger cars. The standard Amtrak 16-axle consist used historically in the Illini/Saluki service (before CN's imposition of the minimum axle requirement which forces Amtrak to add three extra passenger cars to its trains) has not experienced any grade crossing activation failures during the testing.

9 This is reflected on slide 60 of Confidential Attachment 4 to CN's Letter.

evaluation process which will also include further testing of freight locomotive wheel profiles as well. The parties are likely to test additional potential causal factors as the technical investigation proceeds with the active participation of the FRA, the federal agency with jurisdiction over such safety matters. Since the technical evaluation of this matter is ongoing and no definitive conclusion has been reached about causation, Amtrak respectfully respects that the Board not accept into the record any further filings by CN on this issue until definitive conclusions are reached by the parties.

Conclusion

CN's attempt to file "supplementary" information with the Board – more than a year after the evidentiary record closed and all briefs were filed - about matters which are still under evaluation by the relevant parties, for which no definitive conclusions have been reached, and which are not dispositive of the core issues in this proceeding only serves to divert the limited resources of the Board and its staff from evaluating the reasonable terms and compensation issues that are pending before the Board. Although Amtrak is not opposing CN's request for leave to submit the CN Letter into the record as long as this clarifying reply from Amtrak is accepted into the record as well, the Board should discourage CN from making such supplemental evidentiary filings without compelling reasons for doing so and Amtrak reserves its right to move to strike any such future filing by CN in this proceeding.

Sincerely,



Edward Fishman

cc: David A. Hirsh