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April 5, 2018

VIA OVERNIGHT DELIVERY

245433

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

ENTERED
Office of Proceedings
April 6, 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:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition for Declaratory Order of Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation**, dated April 6, 2018. A check in the amount of \$1,400, representing the appropriate fee for this filing, also is enclosed.

In addition, enclosed are digital copies of the Petition, in both MS Word and .pdf formats.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards,

FEE RECEIVED

Respectfully submitted,

Thomas J. Litwiler
Attorney for Metra

April 6, 2018
SURFACE
TRANSPORTATION BOARD

TJL:tl

Enclosures

cc: Parties on Certificate of Service

FILED
April 6, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**PETITION FOR DECLARATORY ORDER OF COMMUTER RAIL
DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY AND
NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION**

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**ATTORNEYS FOR
COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY
AND NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORPORATION**

Dated: April 6, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

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COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY
AND NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
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**PETITION FOR DECLARATORY ORDER OF COMMUTER RAIL
DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY AND
NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION**

Pursuant to 5 U.S.C. § 554(e), the Commuter Rail Division of the Regional Transportation Authority, an Illinois unit of local government, and the Northeast Illinois Regional Commuter Railroad Corporation, an Illinois public corporation (collectively, “Metra”) hereby seek issuance of Surface Transportation Board (the “Board”) declarations that – (1) the Board retains jurisdiction over the railroad properties owned by Chicago Union Station Company (“CUSCo”), a rail carrier subsidiary of the National Railroad Passenger Corporation (“Amtrak”) that Amtrak recently merged into itself; and (2) the Board has authority to prescribe terms for Metra’s use of the Chicago Union Station (“CUS”) properties under 49 U.S.C. § 11102 (terminal trackage rights), and to mediate any dispute concerning CUS access under 49 U.S.C. § 28502, should Metra and Amtrak reach an impasse over terms for Metra’s continued use of those facilities.

Metra, a commuter rail agency, is the primary user of, and a non-exclusive tenant in, the railroad terminal facilities that were until recently owned by CUSCo. Historically, CUSCo was one of two corporate entities controlled by Amtrak that have been regarded as rail common carriers subject to the jurisdiction of the Board and its predecessor, the Interstate

Commerce Commission ("ICC") – the other being Washington Terminal Company ("WTCO"), whose railroad facilities are located in the District of Columbia. Recently, Metra discovered public records indicating that CUSCo had been merged into Amtrak. By virtue of that merger, Metra understands that it has nominally become a tenant of Amtrak, rather than of CUSCo, at Chicago Union Station. Amtrak had not informed Metra of any such change, despite Metra's longstanding tenancy. The merger occurred upon the cusp of Metra-CUSCo/Amtrak negotiations to arrive at new terms for Metra's continued use of the CUS facilities.

The declarations that Metra seeks are highly relevant to Metra-Amtrak negotiations, and they will inform whether certain Board-administered remedies extended to Metra and applicable to CUS remain available (if needed) despite Amtrak's elimination of CUSCo. Amtrak's recent communications indicate that – although it evidently has not obtained Board guidance on the issue – it does not agree with Metra that the Board may exercise its statutory authority to assist the parties in reaching terms for Metra's continued access to the station. (Metra plainly would have been entitled to such Board intervention if CUSCo still existed.) Additionally, the requested declarations will provide guidance to Amtrak and other interested parties concerning whether – (a) transactions such as the Amtrak-CUSCo merger should be presented to the Board in advance; and (b) whether Amtrak is subject to the usual Board advance authorization procedures under which railroad lines, such as those formerly held by CUSCo, may be removed from the scope of the Board's jurisdiction and oversight.

Metra requests that the Board institute a proceeding in accordance with the schedule set forth herein to facilitate the development of the record and to provide for input for other potentially interested parties.

BACKGROUND

Metra

Metra is the commuter rail authority serving the Chicago metropolitan area. It serves more than 100 communities with 241 stations on 11 lines running from Chicago's downtown, operating roughly 700 trains on a standard business weekday. In addition to serving communities in the northeastern Illinois counties of Cook, DuPage, Will, Lake, Kane and McHenry, Metra's routes extend into southeastern Wisconsin. In total, Metra transports an average of 290,000 passengers per weekday an average distance of 20 miles. Metra provides, either directly or through purchase-of-service agreements, commuter rail services previously provided by private freight railroads. BNSF Railway Company, for instance, provides to Metra commuter rail service that terminates at one end at CUS.

CUS is the most significant of Metra's multiple terminals in downtown Chicago, hosting roughly 41% of Metra's passengers traveling to and from the downtown area. An average of approximately 109,520 passengers ride 286 weekly Metra trains on six separate routes to and from CUS. CUS is the backbone of Metra's commuter rail service, and access to the station is essential to Metra, its customers, and to efficient transportation in the greater Chicagoland area. Approximately 83% of the trains operating to and from CUS are Metra trains.

Metra's access to that station is currently governed by an agreement originally entered into with CUSCo in 1984. Since then, Metra has expended, or has committed to expend, roughly \$129 million in capital contributions toward CUS, and has paid over \$244 million in rent (both figures in unadjusted dollars).

Although not now a common carrier generally subject to the Board's jurisdiction pursuant to 49 U.S.C. § 10501(c)(2)(A), Metra meets "all of the standards and requirements for

being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996.” 49 U.S.C. § 10501(c)(3)(B).¹ Metra may thus invoke the terminal trackage rights provisions of 49 U.S.C. § 11102 where applicable, and regardless of its pre-1996 carrier status Metra is entitled to invoke the mediation provisions of 49 U.S.C. § 28502.

Chicago Union Station Company

CUSCo was formed on July 3, 1913, as The Union Station Company, and was re-named as Chicago Union Station Company on May 7, 1915. In its early days, 50% of CUSCo’s stock was held by two subsidiaries of The Pennsylvania Railroad Company (a Penn Central Transportation Company (“PCTC”) predecessor), while Chicago, Burlington & Quincy Railroad Company (predecessor of Burlington Northern Railroad Company (“BN”)) and what became Chicago, Milwaukee, St. Paul & Pacific Railroad Company (“Milwaukee Road”) held 25% apiece. CUSCo constructed, owned, and operated Chicago Union Station, including the headhouse, concourse, station platforms and tracks and approach trackage, on behalf of its owners and a fifth non-owner tenant. The station opened in 1925.²

Amtrak and its subsidiaries

Amtrak was created pursuant to the Rail Passenger Service Act of 1970, now codified at 49 U.S.C. §§ 24101, *et seq.*, to assume most of the intercity passenger operations of

¹ Compare Commuter Rail Division of Regional Transportation Authority of Northeast Illinois, d/b/a Metra – Exemption – Tariff Filing Requirements, Docket No. 41506 (ICC served February 24, 1995 and STB served March 29, 1996) and Norfolk And Western Railway Company – Petition for Declaratory Order – Lease of Line in Cook and Will Counties, Ill., Docket No. FD 32279 (STB served Feb. 3, 1999) (“Nor can we now exercise that function with regard to commuter railroads such as [Metra], *which are now beyond* our jurisdiction”) (emphasis added).

² See generally Chicago Union Station Co., 46 Val. Rep. 559 (1934).

the nation's freight railroads. It began operations on May 1, 1971, and soon thereafter consolidated its Chicago passenger operations at Chicago Union Station.

Amtrak is subject to federal safety regulation (49 U.S.C. § 24301(a)(1)) and is treated as rail carrier for purposes of employee relations (49 U.S.C. § 24301(d)). But, with certain exceptions likely not relevant here,³ Amtrak is exempted from the provisions of the Interstate Commerce Act, 49 U.S.C. Subtitle IV. 49 U.S.C. § 24301(c).⁴ Accordingly, Amtrak is generally not subject to the Board's jurisdiction or regulatory oversight as a common carrier railroad.

Until last year's CUSCo/Amtrak merger, Amtrak controlled four corporate subsidiaries – (1) Passenger Railroad Insurance, Limited, a Bermuda captive insurer; (2) Penn Station Leasing, LLC, formed in 2001 to acquire from and sublet back to Amtrak the leasehold interest in New York City's Penn Station; (3) WTCO (a rail carrier with a history and purpose quite comparable to that of CUSCo), which owns and nominally operates Union Station in Washington, DC; and (4) CUSCo.⁵ Metra is unaware of whether Amtrak has undertaken any other recent corporate restructurings eliminating, or altering the status of, any of its other subsidiaries.

Amtrak gained an ownership interest in CUSCo in 1976 when Amtrak acquired PCTC's 50% stock interest in CUSCo pursuant to the so-called "Final System Plan" adopted by

³ The exceptions relate to emergency service; equipment recordation; pooling; state income tax withholding; and cargo loss and damage liability. See 49 U.S.C. § 24301(c) (citing 49 U.S.C. §§ 11123, 11301, 11322(a), 11502 and 11706, respectively).

⁴ The current version of Section 24301(c) was adopted as part of the Amtrak Reform & Accountability Act of 1997 (the "Amtrak Reform Act of 1997"), Pub. L. No. 105-134, § 401(2), 111 Stat. 2570, 2585.

⁵ See *Amtrak Consolidated Financial Statements for Years Ended September 30, 2016 and 2015* at 11-12, attached hereto as Exhibit 1.

the United States Railway Association under the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701, *et seq.* ("3R Act"), which also resulted in the creation of the Consolidated Rail Corporation ("Conrail").⁶ In 1984, Amtrak acquired the remaining 50% of CUSCo's stock from BN and Milwaukee Road,⁷ making CUSCo a wholly-owned Amtrak subsidiary.

While Amtrak and CUSCo operations have been blended over time, Amtrak has demarcated the separate corporate existence of CUSCo, observing at least the formalities of CUSCo's status in litigation, contracting, and similar areas. For example, Metra's current Chicago Union Station lease was executed by and entered into with CUSCo, not Amtrak.

Amtrak has similarly pointed to WTCO's distinct legal status where helpful to Amtrak. For example, when a since-repealed federal statute directed the ICC to establish a costing methodology for commuter authorities' use of Northeast Corridor properties "owned by Amtrak," the ICC adopted an avoidable cost compensation standard. However, Amtrak's charges to one commuter agency for the use of Washington Union Station remained based upon a fully-allocated cost scheme. Amtrak justified the higher charges on the basis that WTCO "is not subject to [the] ICC decisions" on cost allocation, which extended only to Amtrak's property, not WTCO's facilities.⁸

⁶ See USRA Final System Plan, *Modifications, Supplements or Additions to Designation of Rail Properties*, 41 Fed. Reg. 8846, 8851 (March 1, 1976) ("There is designated to [Conrail] an option . . . to acquire the PCTC's stock interest in Chicago Union Station for transfer to the National Railroad Passenger Corporation pursuant to section 206(c)(1)(D) [of the 3R Act].").

⁷ See Penn Central Corp. v. Chicago Union Station Co., 830 F. Supp. 1509, 1515 (Sp. Ct. R.R.R.A. 1993).

⁸ *Amtrak Charges for Maryland Department of Transportation Commuter Train Use of the Washington Union Station*, GAO/RCED-83-35 (October 15, 1982), attached hereto as Exhibit 2.

The Metra-CUSCo relationship and negotiations with Amtrak

As indicated above, since 1984 Metra has been a tenant of CUS under an Agreement entered into between CUSCo and Metra as of May 1, 1984, and amended May 1, 1988, and July 1, 1990 ("the Agreement"). The Agreement expires on its terms as of April 30, 2019. With an eye to a new arrangement to govern Metra's continued use of CUS, Metra has been preparing for negotiations with CUSCo and, as now necessary, Amtrak. Among other things, Metra is assessing what options, including the invocation of Board procedures and remedies, would be available should negotiations with Amtrak concerning access terms for the CUS facilities not progress as well as is hoped.

To clarify, Metra has no current plan to seek Board intervention concerning access to the CUS facilities, and hopes that resort to such remedial measures would be unnecessary. But the parties' negotiation positions and bargaining leverage will plainly be informed and influenced by whether the Board has jurisdiction, should future circumstances warrant – (1) to implement mediation under 49 U.S.C. § 28502; and (2) to prescribe terminal trackage rights terms for Metra's use of the CUS facilities under 49 U.S.C. § 11102.

Having recently discovered public record evidence of the CUSCo/Amtrak merger,⁹ and concerned that Amtrak might contend that the consolidation has removed those properties from the reach of Sections 11102 and 28502 (thus depriving Metra of alternative paths to preserve access to the CUS facilities, should it ever come to that), Metra wrote to Amtrak on January 4, 2018, seeking confirmation from Amtrak that the protections extended to Metra under

⁹ See corporate merger documents filed with the District of Columbia Department of Consumer and Regulatory Affairs, Corporations Division, attached hereto as Exhibit 3 and reflecting CUSCo's merger into Amtrak as of May 12, 2017. Amtrak did not inform Metra in advance of the corporate transaction, despite the fact that Amtrak would become Metra's landlord in place of CUSCo.

Sections 11102 and 28502 remain applicable to the CUS facilities notwithstanding the CUSCo/Amtrak merger.¹⁰

In a letter dated January 25, 2018,¹¹ Amtrak responded to the Metra Letter, stating that, while Amtrak would “be responsible for the facilities and obligations of [CUSCo] that existed at the time of the merger, Amtrak nevertheless “does not believe” that Sections 11102 and 28502 “are applicable.” Evidently, Amtrak does not believe that the Board has jurisdiction to – (a) facilitate a resolution of a possible Metra-Amtrak impasse over CUS access under the Board’s Section 28502 mediation provisions; or (b) prescribe access terms applicable to the CUS facilities under Section 11102. Metra disagrees with Amtrak, and is concerned that the CUSCo-Amtrak merger may have been motivated in whole or part by Amtrak’s desire to remove the former CUS properties from the reach of Sections 11102 and 28502.

ARGUMENT

Under 5 U.S.C. § 554(e), the Board has discretion to issue a declaratory order to remove uncertainty or terminate a controversy. The Board has recognized in earlier cases that questions concerning the scope of the Board’s jurisdiction, including its jurisdiction over specific rail properties, are suited for resolution under its declaratory order processes.¹² As in those cases, the Board should institute a proceeding here.

¹⁰ Metra’s January 4th letter to Amtrak (the “Metra Letter”) is attached hereto as Exhibit 4. The Metra Letter contains two inadvertent references to a “49 U.S.C. § 38502,” resulting from an earlier typographical error initiated by Metra’s undersigned counsel. Shortly after the Metra Letter was sent, Metra advised Amtrak that the erroneous references to Section 38502 were, in fact, intended to refer to 49 U.S.C. § 28502.

¹¹ Amtrak’s January 25th letter to Metra (the “Amtrak Letter”) is attached hereto as Exhibit 5.

¹² See Padgett v. Surface Transp. Bd., 804 F.3d 103, 105 (1st Cir. 2015) (upholding the Board’s use of a declaratory order proceeding to address a jurisdictional issue); see also, e.g., Los Angeles Metropolitan Transportation Authority – Petition for Declaratory Order, Docket No. (footnote continued)

The Petition presents a genuine controversy, ripe for Board resolution

There plainly is disagreement (and therefore a controversy) between Metra and Amtrak over whether the CUS properties formerly owned by CUSCo are subject to the commuter rail protections of Sections 11102 and 28502. The January letters exchanged between Metra and Amtrak fairly encapsulate the essence of the disagreement. Whether or not the Board has jurisdiction to administer provisions protective of commuter rail service in the event of an impasse will inform how negotiations proceed on both sides going forward.

Addressing the issue of Board jurisdiction now, rather than during the throes of a later Metra/Amtrak negotiations impasse, is appropriate for two reasons. First, the Board and members of the regulated community have an interest in the certainty of the following legal principles: i) whether a non-carrier which owns a rail carrier may escape Board jurisdiction in absorbing the rail carrier into itself by way of merger without the need of any advance Board authorization; ii) whether the Board has jurisdiction to determine the terms and conditions under which a commuter rail authority can continue its access to an essential terminal facility despite the current facility owner's unauthorized elimination of the rail carrier entity that had, until recently, owned that facility; and iii) whether the Board still has jurisdiction to mediate a dispute over Metra's access to CUS under the circumstances.

Second, if it is understood at the outset of negotiations that the Board has jurisdiction over the formerly CUSCo-owned facilities under Sections 11102 and 28502, the parties will conduct themselves accordingly, and are more likely to negotiate toward a commonly-recognized standard. The parties would be less likely to call upon the Board to

(footnote continued)

FD 36112 (STB served Oct. 27, 2017); Jersey Marine Rail, LLC – Petition for Declaratory Order, Docket No. FD 36063 (STB served Jan. 31, 2017).

undertake either the laborious task of prescribing terms and conditions or to mediate a dispute.

On the other hand, if the parties lack a common understanding of the consequences potentially flowing from a failure to agree, they are more likely to become entrenched against one another. With expiration of the current agreement in April of 2019, a petition filed closer to that date would likely of necessity also include a full request to set terms or for mediation due to the time sensitivity. Such a multi-faceted request would consume far more public resources (those of the Board, Metra, and, to the extent federally-subsidized, Amtrak) than would a limited jurisdictional determination now.

Board declarations also will inform Amtrak's relationship and future negotiations with commuter rail agencies using the properties of Amtrak's remaining rail carrier subsidiary – WTCO – at Washington Union Station. Specifically, the outcome of this case will likely establish whether commuter rail authorities using the facilities of WTCO have – or, in the event of a WTCO/Amtrak merger, would lose – access to the Section 11102 and 28502 remedies. (As explained below, the Section 11102 remedy appears to have been a factor in past negotiations involving commuter rail use of WTCO facilities.)

CUS was a rail carrier at the time it was merged into Amtrak

Precedent has long recognized that – (a) CUSCO has been a federally-regulated rail common carrier; and (b) CUSCO's properties are rail facilities within the scope of ICC/Board jurisdiction.¹³ Moreover, in legal and regulatory proceedings, CUSCO consistently has portrayed itself as a being a rail common carrier distinct from its controlling entities.¹⁴ Metra is unaware of

¹³ See, e.g., Chi. Union Station Co. Securities, 239 I.C.C. 325 (1940); Chicago Union Station Co., 46 Val. Rep. 559 (1934).

¹⁴ See, e.g., Chicago Union Station Co. – Spec. Application for Partial Exemption from Competitive Bidding Requirements, Docket No. FD 22547 (ICC served Apr. 2, 1963); City (footnote continued)

any federal regulatory proceeding that served to convert CUSCo into a non-carrier or to remove its facilities from the scope of Board oversight, and does not believe that any such “status conversion event” has ever taken place.

The Amtrak Reform Act of 1997¹⁵ likewise effected no change in CUSCo’s status. There, Congress amended 49 U.S.C. § 24301(c) to change Amtrak’s status under the Interstate Commerce Act, from an entity subject to Board jurisdiction with broad exceptions to an entity not subject to Board jurisdiction except as otherwise specified.¹⁶ Section 24301(c) refers specifically and solely to “Amtrak.” Other parts of Section 24301 not only explicitly recognize the existence of rail carrier subsidiaries of Amtrak, but demonstrate that Congress knew how to include such rail carrier subsidiaries within the definition of “Amtrak” when that was intended. Section 24301(k) grants Amtrak certain tax exemptions, and specifically provides that “[i]n this subsection – ‘Amtrak’ includes a rail carrier subsidiary of Amtrak” 49 U.S.C. § 24301(k)(1)(B) (emphasis added). Another subsection of Section 24301 grants a tax exemption to “Amtrak, a rail carrier subsidiary of Amtrak” 49 U.S.C. § 24301(l)(1). Indeed, this latter provision was adopted in the same legislation that adopted the current version

(footnote continued)

of Chi. v. Chi. Union Station Co. et al., Ill. Comm. Comm’n No. T11-0005, Transcript of Mar. 3, 2011; Agreed Order of Sep. 13, 2011; Final Order of Oct. 5, 2011 (wherein CUS separately identified itself as a rail carrier, and submitted to the Illinois Commerce Commission’s asserted jurisdiction over “rail carriers”).

¹⁵ Pub. L. No. 105-134, 111 Stat. 2570.

¹⁶ Compare 49 U.S.C. § 24301(c)(1) (1996) (“Part A of subtitle IV of this title applies to Amtrak, except for”) with 49 U.S.C. § 24301(c) (1997) (“Subtitle IV of this title shall not apply to Amtrak, except for”).

of Section 24301(c).¹⁷ These provisions make clear that Section 24301(c)'s statutory exception to STB jurisdiction applies solely to Amtrak, and not to Amtrak's carrier subsidiaries. Particularly where other provisions in the same statutory section and Public Law take pains to assure such inclusion, the omission in Section 24301(c) is conclusive that CUSCo remained a rail carrier despite its ownership by Amtrak.

The structure of Section 24301 thus reveals Congress' understanding of the distinction between Amtrak (the entity it was expressly re-designating as a non-carrier generally beyond of the scope of the Board's jurisdiction) and the subsidiaries which Congress did not intend to remove from the scope of Board jurisdiction. Accordingly, in dealing with Amtrak and its rail carrier subsidiaries, the statutory construction principles of *expressio unius est exclusio alterius*¹⁸ apply, and it follows that the reformulation of Section 24301(c) in the Amtrak Reform Act of 1997 did not serve to remove CUSCo's common carrier status.

¹⁷ Compare Amtrak Reform Act of 1997, Pub. L. No. 105-134, § 208 (providing tax exemption for "Amtrak, a rail carrier subsidiary of Amtrak, . . .") with § 401 (identifying Amtrak as not a rail carrier under Subtitle IV).

¹⁸ Hilman v. Maretta, 569 U.S. 483 (2013) ("We have explained that '[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.'") (internal citation omitted); Duncan v. Walker, 533 U.S. 167, 173 (2001) ("It is well settled that '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'" (internal citations omitted); United States v. Fuller, 531 F.3d 1020, 1027 (9th Cir. 2008) ("The doctrine of *expressio unius est exclusio alterius* as applied to statutory interpretation creates a presumption that when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions") (internal quotation marks omitted); Longview Fibre Co. v. Rasmussen, 980 F.2d 1307, 1313 (9th Cir. 1992) ("the maxim [of *expressio unius*] usefully describes a common syntactical implication").

**Only an appropriate Board order can remove the
CUS properties from the scope of the Board's jurisdiction**

A rail carrier's common carrier obligations can only be extinguished pursuant to the use of appropriate Board processes. Southern Pacific Transportation Company – Trackage Rights Exemption – The Houston Belt and Terminal Railway Co., Docket No. FD 33461 (STB served Dec. 1, 1998) (“The common carrier obligation to serve continues indefinitely; it may be suspended only if formal discontinuance authority or an exemption is granted, Presault v. ICC, 494 U.S. 1, 5 n.3 (1990), and it may be extinguished only if formal abandonment authority or an exemption is granted. Busboom Grain Co., Inc. v. ICC, 830 F.2d 74, 75 (7th Cir. 1987”)). This is true even if an entity never undertakes transportation for hire. See, e.g., Canadian Pac. Ltd. – Purchase – Delaware & H. Ry. Co., 7 I.C.C.2d 95, 97 n.2 (1990) (long-inactive paper railroads nevertheless remain jurisdictional carriers, such that transactions involving their acquisition or merger are subject to regulatory authorization). In keeping with the basic regulatory premise that the lines of a rail carrier (such as CUSCo) remain under the Board's jurisdiction unless or until the Board authorizes otherwise, the CUS properties remain subject to the Board's jurisdiction regardless of the CUSCo/Amtrak merger.

Merging CUSCo, an STB-regulated carrier, into Amtrak, a non-STB-regulated entity, as Amtrak has done may constitute a transaction requiring advance Board authorization. Regardless, the surviving entity – Amtrak, in this case – would be a rail carrier.¹⁹ Whether

¹⁹ See, e.g., Watco Holdings, Inc., et al. – Acquisition of Control Exemption – Ann Arbor Railroad, Inc., Docket No. FD 35699 (STB served Jan. 11, 2013) (the merger of a rail carrier and non-carrier within the same corporate family entails, in essence, the non-carrier's acquisition of the carrier affiliate's railroad lines, and thus converts the non-carrier into an STB-regulated carrier); Burlington Northern et al. – Control – Washington Central, 1 S.T.B. 792 (1996) (railroad holding company authorized to continue in control of a non-carrier
(footnote continued)

Amtrak should now be viewed as a fully-fledged rail carrier by virtue of absorbing CUSCo, Metra is not concerned so much with Amtrak's overall jurisdictional status as it is with ensuring Metra's continued access to Board-administered remedies that protected the commuting public's access to CUS while CUSCo existed.

No statute or precedent entitles Amtrak (or any other non-carrier) to "immunize" rail carrier facilities (such as CUSCo's) from Board jurisdiction by way of merger of the carrier entity. The very proposition that Amtrak could evade Board jurisdiction in absorbing CUS into itself is counterintuitive from the view of Board practice and precedent. See footnote 19, supra. No one would argue that Berkshire Hathaway, the non-carrier which controls BNSF Railway Company ("BNSF"), could merge BNSF into itself and then declare that, as result, there remained no rail carrier entity or BNSF rail lines subject to the Board's jurisdiction. Of course, railroad lines (such as those of CUS) may be removed from the scope of the Board's jurisdiction through abandonment – but that is the only way that Metra is aware of that Board-jurisdictional railroad lines can become non-jurisdictional.²⁰ There appears to be no Board proceeding authorizing abandonment of CUS's rail lines and facilities.

(footnote continued)

subsidiary that will acquire and then merge an independent carrier, thus emerging as a rail carrier itself).

²⁰ See, e.g., Sunflower Rails-Trails Conservancy, Inc. – Petition for Declaratory Order, Docket No. FD 36034 (STB served Feb. 23, 2017) (railroad right-of-way, even if currently subject to interim trails use, cannot be sold and converted to non-rail purposes unless and until the board removes the property from the scope of its jurisdiction by way of formal abandonment; unauthorized conversion of a rail line runs afoul of the Board's continuing jurisdiction over the property); Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, Ohio and Darlington, Penn., Docket No. AB-556 (Sub-No. 2X) (STB served Oct. 4, 2000) (Board's authority over the subject rail property did not end until all regulatory conditions are met and abandonment authority is exercised).

Congress has taken purposeful steps to give commuter rail authorities such as Metra specific, and meaningful, remedies before the Board

Congress has entrusted the Board to make certain rail service-protecting provisions available to commuter rail authorities, and, in so doing, has emphasized that uninterrupted commuter rail service is decidedly in the public interest. The Board has recognized and embraced its responsibilities to commuter rail service within the scope of its developing Congressional mandate. The remedies Congress has seen fit to extend to commuter rail authorities, and has entrusted to the Board, are meaningful and valuable to Metra. They ensure that commuter rail authorities are not forced from their existing services based strictly on the financial incentives of railroad landlords that host the services that the commuter rail authorities such as Metra long have offered to the benefit of their constituent regions. In ways large and small, the Board's Congressional mandate is protective of the sizeable commitments of public resources that go into establishing and, in turn, maintaining critical transportation services. Allowing Amtrak, through a corporate maneuver, to evade the Board's commuter rail service-protective mechanisms would be counter to Congressional intent and public policy – and an abdication of the Board's responsibilities.

Metra, a commuter rail authority, is not a jurisdictional rail common carrier.²¹ Nevertheless, Congress has seen fit to extend to commuter rail authorities such as Metra the right to invoke certain Board-administered remedies, all of which are clearly tied to the unmistakable Congressional objective of entrusting the Board to act to protect or advance commuter rail services. For example, Congress has vested the Board with the following commuter rail service-protective functions:

²¹ 49 U.S.C. § 10501(c)(2).

- To administer non-binding mediation (based upon the Board's existing procedures at 49 C.F.R. § 1109.4) at the request of a commuter rail agency seeking Board intervention to facilitate commuter rail agency efforts to use the tracks of, and have related services provided by, a "rail carrier."²²
- To – (a) "require terminal facilities, including mainline tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board" to be used by qualifying commuter rail authorities (such as Metra) "if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities . . . to handle its own business;" and (b) establish conditions and compensation for such use of terminal facilities if the parties cannot agree.²³
- To order reciprocal switching access and the construction of switching connections by rail carriers on reasonable terms for qualifying commuter rail authorities.²⁴
- To issue emergency service orders and direct service to protect against disruption to existing commuter rail operations caused by an Amtrak service cessation.²⁵

Taken together, the above-described remedial provisions reflect Congressional intent to involve the Board in commuter rail/common carrier interactions, particularly in cases of facility access. Concerning commuter rail authority resort to Section 11102 terminal access, Congress was quite clear on the ordering of priorities. For years, this agency has taken a restrictive view of terminal access in the freight carrier context, having closely construed the "public interest" standard of Section 11102(a),²⁶ a point that Congress appears to have well

²² 49 U.S.C. § 28502; Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, div. B, title IV, § 401(a), 122 Stat. 4907, 4955.

²³ 49 U.S.C. §§ 10501(c)(3)(B) and 11102(a).

²⁴ 49 U.S.C. §§ 10501(c)(3)(B), 11102(c) and 11103; H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167, 1995 U.S.C.C.A.N. 850, 852.

²⁵ 49 U.S.C. § 11123(a)(5); Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, div. F, title I, § 150(1), 118 Stat. 3, 302.

²⁶ See Midtec Paper Corp. v. Chicago & N.W. Transp. Co., 3 I.C.C.2d 171 (1986) ("Midtec"), aff'd sub nom. Midtec Paper Corp v. U.S., 857 F.2d 1487 (D.C. Cir. 1988).

understood at the time it framed ICCTA and transferred the ICC's terminal access authority to the newly-formed Board. In light of Midtec, Congress made clear its "intent that . . . a local transportation authority's [Section 11102 terminal access] request [] would virtually always satisfy the public interest standard."²⁷

Consistent with apparent, public-interest-driven Congressional motivation to provide protections for commuter rail authorities under the Board's procedures, the ICC and the Board regularly have acknowledged that protecting commuter rail services is indeed consistent with the public interest. As a consequence, while promoting the advancement of freight rail service in keeping with the rail transportation policy of 49 U.S.C. § 10101, the agency has nevertheless has been careful to ensure that freight rail benefits are not achieved at the expense of commuter rail service. See, e.g., 49 C.F.R. § 1180.1(c)(ii) ("The Board must ensure that [in the case of the merger of two Class I carriers] essential . . . commuter rail services are preserved wherever feasible"); Major Rail Consolidation Procedures, Docket No. EP 582 (Sub-No. 1) (STB served Jun. 11, 2001) (commuter rail operations may constitute an essential service, and Board action to protect against service cessations as part of approving a major railroad consolidation is in the furtherance of the public interest); cf. Regional Transp. Authority – Directed Service – Chicago, 360 I.C.C. 777 (1980) (ICC grants rail authority a request for issuance of a directed service order to assume operations of commuter rail service previously provided by the bankrupt Chicago, Rock Island & Pacific Railroad Company).

Here, in keeping with Congressional intent and past agency pronouncements and decisions, public policy weighs in favor of assuring Metra continued access to the remedial options under Sections 11102 and 28502 with respect to the CUS facilities, notwithstanding

²⁷ H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 184, 1995 U.S.C.C.A.N. 850, 869.

Amtrak's recent elimination of CUSCo. A declaratory order in keeping with Metra's petition does not deprive Amtrak of its use of CUS. Rather, through assuring Metra continued access to the relevant Board processes, the parties will have a mutual understanding of the roles that the Board could play in the event that negotiations do not advance as hoped, and will clarify relative bargaining positions.

Finally, the statutory remedies ensuring Metra continued access to the CUS facilities are meaningful. The Section 28502 mediation provision, for example, offers a critical path for the resolution of issues that, for the negotiating parties, may at some juncture appear to be intractable, and it ensures that, for the CUS facilities at least, Amtrak cannot refuse mediation. The terminal access under Section 11102 offers a remedial backstop that assures that, if negotiations and mediation ultimately fail, the Board can act to preserve commuter rail access to CUS under Board-prescribed terms. Removing uncertainty over Metra's remedial options in the event of impasse with Amtrak should provide greater common ground for a new access agreement, with both parties aware of available backstops.

The ramifications of this Petition extend beyond Chicago Union Station

As indicated above, CUSCo was one of two Amtrak rail carrier subsidiaries. The other, WTCO, appears still to exist. The facilities of WTCO host commuter rail trains of two separate commuter rail agencies operating into Union Station – Virginia Railway Express (“VRE”) and MARC Commuter Train Service. The outcome of this case may well bear upon whether those commuter rail authorities also have – and, in the event of a WTCO/Amtrak merger, would lose – access to the Section 11102 and 28502 remedies at issue in this proceeding. The importance of WTCO's status separate from Amtrak has been noted in media reporting on

proposed legislative changes apparently intended to negate that status.²⁸ Indeed, the current State Rail Plan for the District of Columbia states that WTCO's status as a rail carrier "has been significant to rail service in the District in that the [WTCO's] common carrier status was invoked by the VRE when Amtrak at one point suggested that it would withhold transportation services from VRE."²⁹

REQUEST FOR INSTITUTION OF PROCEEDING AND ADOPTION OF PROCEDURAL SCHEDULE

The instant proceeding is regionally significant, potentially affecting transportation throughout northeastern Illinois. And Metra notes again that the outcome of this matter has potential ramifications beyond the Chicago metropolitan area. Accordingly, Metra urges the Board formally to institute a proceeding by appropriate order, and, in so doing, to adopt the following procedural schedule to develop the record and to enable all interested stakeholders to express their views on the issues before the Board:

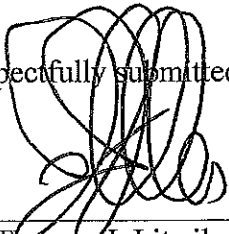
- Day 0: Board initiates proceeding and adopts procedural schedule;
- Day 45: Replies and comments on the Petition are due;
- Day 65: Metra rebuttal filing due.

²⁸ See Frank N. Wilner, *No Fingerprints on NEC Track Grab*, (Sep. 3, 2015), <https://www.railwayage.com/news/no-fingerprints-on-nec-track-grab/>, reproduced and re-formatted for reasons other than content, attached hereto as Exhibit 6.

²⁹ *District of Columbia State Rail Plan – Final Report* (2017) at 3-23 (excerpt attached hereto as Exhibit 7).

WHEREFORE, Metra respectfully requests that the Board grant this Petition and enter a declaratory order as provided herein.

Respectfully submitted,

By: 

Thomas J. Litwiler
Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR
COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY
AND NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORPORATION**

Dated: April 6, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXHIBIT 1

**AMTRAK CONSOLIDATED FINANCIAL STATEMENTS FOR
YEARS ENDED SEPTEMBER 30, 2016 AND 2015**

CONSOLIDATED FINANCIAL STATEMENTS

National Railroad Passenger Corporation and Subsidiaries (Amtrak)

Years Ended September 30, 2016 and 2015

With Report of Independent Auditors



National Railroad Passenger Corporation and Subsidiaries (Amtrak)

Consolidated Financial Statements

Years Ended September 30, 2016 and 2015

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Building a better
working world

Ernst & Young LLP
Westpark Corporate Center
8484 Westpark Drive
McLean, VA 22102

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Fax: +1 703 747 0100
ey.com

Report of Independent Auditors

The Board of Directors and Stockholders
National Railroad Passenger Corporation

We have audited the accompanying consolidated financial statements of National Railroad Passenger Corporation and subsidiaries (Amtrak or the Company), which comprise the consolidated balance sheets as of September 30, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, changes in capitalization, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in conformity with U.S. generally accepted accounting principles; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

National Railroad Passenger Corporation and Subsidiaries (Amtrak)

Notes to Consolidated Financial Statements (continued)

2. Annual Funding (continued)

	FY2017	FY2016	FY2015
Enactment dates for CRs	September 29, 2016 December 12, 2016	September 30, 2015	September 19, 2014
Public Law numbers for CRs	114-223 114-254	114-53	113-164
Enactment date for Full Year Funding	N/A ¹	December 18, 2015	December 16, 2014
Public Law number for Full Year Funding	N/A ¹	114-113	113-235
Appropriated capital and debt service funds		\$ 1,101.5	\$ 1,140.0
Appropriated operating service funds		288.5	250.0
Appropriated for National Network	\$ 664.6		
Appropriated for NEC	135.2		
Total funds appropriated	799.8	1,390.0	1,390.0
FRA authorized withholdings	(8.0)	(10.5)	(10.7)
Total appropriated funds designated for Amtrak	\$ 791.8 ²	\$ 1,379.5	\$ 1,379.3
Funds received by Amtrak:			
In FY2015			\$ 1,084.4
In FY2016		\$ 1,069.6	294.9
In FY2017, as of January 27, 2017	\$ 263.9	123.3	—
Total funds received to date	\$ 263.9	\$ 1,192.9	\$ 1,379.3

¹ FY2017 Full Year Funding is not yet in place.

² Funding appropriated through April 28, 2017.

3. Basis of Presentation and Summary of Significant Accounting Policies

Method of Accounting

The accompanying consolidated financial statements are presented using the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

Principles of Consolidation

The Consolidated Financial Statements reflect the consolidated operations of Amtrak and its four subsidiaries, Chicago Union Station Company (CUS), Passenger Railroad Insurance, Limited (PRIL), Penn Station Leasing, LLC (PSL) and Washington Terminal Company (WTC). All significant intercompany balances and transactions have been eliminated.

CUS was incorporated on July 3, 1913 as the Union Station Company, for the purpose of constructing, operating and maintaining a new railroad terminal in the City of Chicago. The name was officially changed to Chicago Union Station Company on May 7, 1915. Amtrak acquired 50% stock ownership interest in CUS in 1976 as part of the conveyance of the NEC and off-Corridor properties. Amtrak purchased the remaining 50% stock ownership in 1984. CUS's business is comprised of the following segments: provision of right-

National Railroad Passenger Corporation and Subsidiaries (Amtrak)

Notes to Consolidated Financial Statements (continued)

3. Basis of Presentation and Summary of Significant Accounting Policies (continued)

of-way and station access and use of intercity and commuter services; and lease and licensing of station space for retail services, display advertising, special events and other commercial uses.

PRIL was incorporated on December 18, 1996 under the laws of Bermuda to provide excess liability and property insurance coverage to Amtrak. In addition, PRIL also provides insurance and reinsurance coverage to third parties performing work on Amtrak property.

PSL was formed on April 17, 2001 to acquire and lease back to Amtrak the real property and improvements located in New York, commonly known as Penn Station.

WTC was formed on December 6, 1901 and is comprised of buildings and rail yard adjacent to Washington Union Station. WTC provides switching services for passenger trains using the station or passing through the area.

Cash and Cash Equivalents

All short-term investments with original maturities of 90 days or less are considered cash and cash equivalents. These consist of bank deposits and money market fund investments. Cash and cash equivalents are maintained at various financial institutions and, at times, balances may exceed federally insured limits.

Restricted cash and cash equivalents consist primarily of funds received that are restricted for specific purposes or cash set aside and restricted for specific payments. Restricted cash and cash equivalents consists of a money market fund held in trust restricted from withdrawals based upon certain collateral requirements and funds restricted for certain operations of the Amtrak Police Department.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable in the Consolidated Balance Sheets include billed and unbilled accounts receivable. Billed accounts receivable represent amounts for which invoices have been sent to customers. These accounts receivable are recorded at the invoiced amount and do not bear interest. Unbilled accounts receivable represent amounts recognized as revenue for which invoices have not yet been sent to customers but for which services and work have been performed. The Company recorded \$101.4 million and \$121.1 million of unbilled accounts receivable as of September 30, 2016 and 2015, respectively.

The allowance for doubtful accounts is the Company's best estimate of the amount of probable credit losses in the Company's billed accounts receivable. To determine its allowance for doubtful accounts, the Company evaluates historical loss experience and the characteristics of current accounts, as well as general economic conditions and trends. Uncollectible billed accounts receivables are applied against the allowance.

Materials and Supplies

Materials and supplies, which are stated at weighted-average cost, net of allowance for shrinkage and obsolescence, consist primarily of items for repairs and maintenance of property and equipment. The allowance for shrinkage and obsolescence is recorded based on specific identification and expected usage rates.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXHIBIT 2

AMTRAK CHARGES FOR MARYLAND DEPARTMENT OF
TRANSPORTATION COMMUTER TRAIN USE OF THE
WASHINGTON UNION STATION

OCTOBER 15, 1982 GAO REPORT



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

October 15, 1982

RESOURCES,
COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-209428

RESTRICTED — Not to be released outside the General
Accounting Office except on the basis of specific approval
by the Office of Congressional Relations

The Honorable Paul S. Sarbanes
United States Senate



119979

Dear Senator Sarbanes:

Subject: Amtrak Charges for Maryland Department of
Transportation Commuter Train Use of the
Washington Union Station (GAO/RCED-83-35)

In your July 16, 1982, letter, you asked us to analyze the charges the National Railroad Passenger Corporation (Amtrak) is assessing for the use of the Washington Union Station terminal by Maryland Department of Transportation (MDOT) commuter trains. You asked for this analysis in view of a recent Interstate Commerce Commission (ICC) Decision Ex Parte No. 417 (Sub. 1), January 22, 1982, on Costing Methodologies for Northeast Corridor Commuter Services. You expressed concern that Amtrak may be charging costs to MDOT under the fully allocated 1/ cost principle instead of avoidable costs 2/ as ICC has required of Amtrak for other commuter facilities on the Northeast Corridor. You also asked us to analyze the costs Amtrak assesses MDOT for using the terminal to determine whether the costs are too high in light of ICC's ruling.

We briefed your staff on September 10, 1982. We reported that ICC Decision Ex Parte No. 417 (Sub. 1) provides that costs for Northeast Corridor use by commuter trains are to be allocated on an avoidable cost basis, instead of on a fully allocated cost basis. The Director of ICC's Rail Service Planning Office told us that ICC's decision applies to the allocation of Union Station costs between Amtrak and MDOT commuter trains and that Union Station is considered part of the Northeast Corridor.

1/A principle of cost allocation that assumes that all costs incurred in operating the terminal are to be considered, and that reimbursement to Amtrak for commuter train use of the terminal should be based on a percentage of actual use of the terminal by Amtrak and the commuter trains.

2/A principle of cost allocation that requires that only the additional costs incurred by Amtrak to accommodate the commuter trains are to be reimbursed to Amtrak.

(343770)

523688

We also reported that Amtrak, through its wholly owned subsidiary, the Washington Terminal Company (WTC), which operates Washington Union Station terminal, has been assessing MDOT commuter trains using a fully allocated cost basis--Amtrak contends that WTC is not subject to ICC decisions--and that such costs would logically be higher than those calculated on an avoidable cost basis. The actual differences in these charges cannot be readily determined without (1) extensive analysis of station operations and costs, which your staff agreed would not be necessary for us to complete, and (2) negotiations between the parties to the dispute. Finally, we found also that other State commuter operations using the Northeast Corridor facilities are being assessed on the basis of avoidable costs.

ICC Rail Service Planning officials told us that we should not consider ICC's views final since our Office is not a party to the dispute. They stated that either MDOT, the operators of the commuter trains, or Amtrak-WTC would have to officially petition ICC to obtain a declaratory ruling on these issues.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our overall objective in this review was to analyze the charges Amtrak assessed MDOT commuter trains for using the Washington Union Station terminal. We wanted to determine

- if ICC Opinion Ex Parte No. 417 (Sub. 1), which prescribes the manner in which Amtrak is to allocate Northeast Corridor costs to commuter trains, is equally binding on WTC in its operation of the station and
- whether station costs were allocated to MDOT on a fully allocated or an avoidable cost basis, Amtrak being considered the dominant user of the station.

We met with Amtrak, WTC, and ICC officials to discuss Union Station operations and Northeast Corridor cost allocations. We obtained and reviewed MDOT documentation on costs and data on commuter train operations. We questioned ICC on the scope and application of ICC Decision Ex Parte 417 (Sub. 1) and the decision's effect on Amtrak-WTC operations.

We reviewed applicable legislation and related ICC opinions to determine the validity of Amtrak's and WTC's position regarding how Union Station costs are to be allocated between regular Amtrak trains and MDOT commuter trains.

Our review was performed in accordance with generally accepted government audit standards.

EX PARTE DECISION NO. 417 (SUB. 1) AND HOW IT
AFFECTS NORTHEAST CORRIDOR COSTS REIMBURSEMENT

ICC's decision was issued in accordance with section 1163 of the Northeast Rail Service Act of 1981 (Rail Act) which required that ICC

" * * *determine an appropriate costing methodology for compensation to Amtrak for the right-of-way related costs for the operation of commuter rail passenger service over the Northeast Corridor and other properties owned by Amtrak* * *."

The decision--an interim decision that will be finalized at a later date--prescribed the avoidable cost methodology.

In a September 3, 1982, letter, ICC's Director, Rail Service Planning Office, informed us that Amtrak was to be compensated by the various commuter rail passenger services for using the Northeast Corridor properties--ICC intended that Union Station was to be considered part of the corridor--on an avoidable cost basis rather than on a fully allocated cost basis. Furthermore, for the purpose of allocating Northeast Corridor costs, ICC also stated that Amtrak was to be considered the dominant user of such properties while other users of the corridor were to be considered minority users in calculating the avoidable costs that other users would pay.

The Rail Service Planning Director also informed us that the basic question of applying the decision to WTC operations appears to be clearly answered by the statutory language of section 1163. The act states that a costing methodology is to be developed for services provided over properties owned by Amtrak in the Northeast Corridor. It was also pointed out that nothing in the statute suggests that the way in which Amtrak owns WTC controls whether or not ICC decisions should apply to WTC. It was noted that Amtrak owns all of WTC's voting stock, controls WTC's Board of Directors, and uses its employees in all top WTC management positions, thus it would be difficult to argue that Amtrak does not own any property which is, in fact, owned by WTC. Accordingly, ICC stated that the Ex Parte Decision No. 417 (Sub. 1) applies to the compensation paid for using WTC's properties. Nonetheless, the Rail Service Planning Director has noted that the prescribed procedures are interim and may in fact be modified by any final decision it may issue.

ICC noted that our Office was not a party to the dispute between MDOT and Amtrak-WTC. Therefore, ICC has suggested that any of the parties involved desiring a determinative resolution of these issues may obtain one by petitioning ICC for a declaratory order on the subject. In such a proceeding, the views of all parties would be presented and considered by ICC. Finally, ICC Rail Service Planning Office officials noted that the Rail Act provides that ICC decisions do not preclude Amtrak and other Northeast Corridor users from settling such disputes among themselves, independent of its rulings.

MDOT COMMUTER TRAIN COST ALLOCATIONS

MDOT has no direct operating relationship with Amtrak or WTC. Its commuter trains are currently operated under agreements with the Baltimore and Ohio Railroad (B. & O.) and the Consolidated Rail Corporation (Conrail). WTC, the Amtrak subsidiary which operates Union Station, bills both railroads which in turn are reimbursed by MDOT.

On June 1, 1981, WTC and B. & O. entered into an agreement whereby B. & O. would continue to use the terminal on a fully allocated cost basis. Charges under this agreement amounted to \$61 per train unit. Conrail has a separate agreement with Amtrak for using the terminal also on a fully allocated cost basis. Charges for Conrail commuter train movements average about \$68 per train unit. The differences in the amounts per train unit result from different methods of calculating costs and units of train movement that had been separately negotiated with WTC. These charges are over and above actual time and material charges for services WTC performed on individual cars, such as repair work, car cleaning, and inspection.

WTC billed B. & O. and Conrail for terminal services provided in June 1982, for which MDOT reimbursement was required, as follows.

<u>Operator</u>	<u>Train units</u>	<u>Unit cost</u>	<u>Total</u>	<u>Repair, cleaning, and inspection costs</u>
B. & O.	1,410	@\$61.00	\$86,010.00	\$57,172.09
Conrail	347	@68.16	23,651.98	9,782.73

WTC has informed us that the June charges are fairly representative of average monthly billings for B. & O. and Conrail (MDOT) commuter train services provided at Union Station by WTC.

WTC's Controller told us that to compare the allocation of costs for terminal operations on a fully allocated as compared to an avoidable cost basis would involve extensive analyses of station operations and the costs incurred. Your staff agreed it would not be necessary for us to compute such costs.

Conrail has been legislatively mandated to discontinue operating commuter trains as of January 1, 1983. MDOT is currently negotiating an agreement whereby Amtrak would operate MDOT commuter trains. WTC stated that these negotiations involve the same detailed analyses of station operations and costs about which you have expressed concern.

CONCLUSIONS

Amtrak officials have informed us that various commuter train users of the Northeast Corridor are being assessed costs on an avoidable cost basis, as provided by ICC Decision Ex Parte 417 (Sub. 1). ICC Rail Service Planning Office officials told us that it was ICC's intent that the decision would equally apply to the allocation of Amtrak-WTC costs of operating the Washington Union Station terminal. Costs for the use of the terminal by MDOT commuter trains, however, are being assessed by Amtrak-WTC on a fully allocable cost basis and would be higher than if assessed on an avoidable cost basis. The actual difference in amount cannot be readily determined without extensive cost analysis and negotiation between the parties involved.

Resolution of the matters in dispute in this case can be obtained by any one of the parties to the dispute seeking a declaratory ruling from ICC. With or without such a ruling, however, the parties involved could independently resolve these matters by negotiating an agreement which would allocate costs for operating the station on any mutually agreeable basis.

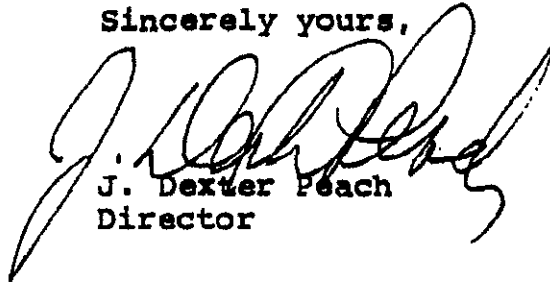
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At your request, we did not take the additional time to obtain agency comments, but the matters covered in this report were discussed with Amtrak-WTC, MDOT, and ICC officials. Their comments are included in the report where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 15 days from the date of this report. At that time we will send copies to cognizant congressional

committees; the President of Amtrak; the Secretary of Transportation; the Chairman of ICC; and the Director, Office of Management and Budget. Copies will also be made available to others on request.

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read 'J. Dexter Peach', is written over the typed name and title.

J. Dexter Peach
Director

BEFORE THE
SURFACE TRANSPORTATION BOARD

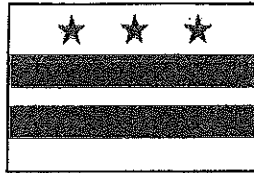
DOCKET NO. FD 36171

COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY
AND NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
– PETITION FOR DECLARATORY ORDER –
STATUS OF CHICAGO UNION STATION

EXHIBIT 3

**DISTRICT OF COLUMBIA CERTIFICATE OF MERGER WITH
PLAN OF MERGER AND ARTICLES OF MERGER**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CORPORATIONS DIVISION



C E R T I F I C A T E

THIS IS TO CERTIFY that the attached is a true and correct copy of the documents for this entity as shown by the records of this office.

NATIONAL RAILROAD PASSENGER Corporation

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed as of 10/26/2017 7:33 AM



Business and Professional Licensing Administration

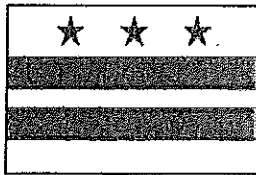
A handwritten signature in cursive script that reads "Patricia E. Grays".

PATRICIA E. GRAYS
Superintendent of Corporations
Corporations Division

Muriel Bowser
Mayor

Tracking #: WhThXYgT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CORPORATIONS DIVISION



CERTIFICATE

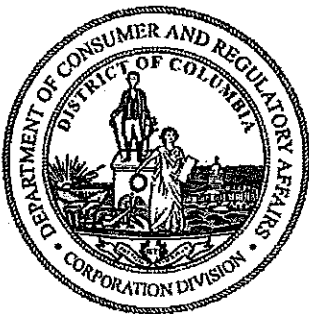
THIS IS TO CERTIFY that all applicable provisions of the District of Columbia Business Organizations Code have been complied with and accordingly, this **CERTIFICATE OF MERGER** is hereby issued to:

NATIONAL RAILROAD PASSENGER Corporation

Effective Date: 5/11/2017

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed as of 5/11/2017 10:59 AM

Business and Professional Licensing Administration



A handwritten signature in cursive script, reading 'Patricia E. Grays', positioned above a horizontal line.

PATRICIA E. GRAYS
Superintendent of Corporations
Corporations Division

Muriel Bowser
Mayor

Tracking #: m7tX3ejT



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
District of Columbia Government

Corporations Division

CRA Corp. Div

MAY 11 2017

File Copy

Reset Form

Statement / Plan of Merger of Domestic Filing Entity.
Form GN-7, Version 2, April 2013.

Use this form to merge one or more domestic entities with one or more domestic or foreign entities into a domestic or foreign surviving entity. Merging or surviving entity must be the District of Columbia entity.

ENTITY TYPE

Domestic Filing Entity

FILING FEE

Refer to Corporate Fee Schedule posted online;

Under the provisions of the Title 29 of D.C. Code (Business Organizations Act), the domestic filing entity listed below hereby applies for a Certificate of Merger and for that purpose submits the statement below.

1. The name, jurisdiction of organization, and type of each merging entity that is not the surviving entity.

Chicago Union Station Company; Illinois; corporation

2. The name, jurisdiction of organization, and type of the surviving entity.

National Railroad Passenger Corporation (Amtrak); District of Columbia; corporation

3. Effective date.

May 12, 2017

4. The merger was approved by each domestic merging entity in accordance with D.C. Law and by each foreign merging entity in accordance with the law of its jurisdiction of organization; foreign entity shall submit a copy of the statement of merger or similar document duly approved by the authorized officer of the jurisdiction of formation.

5. If the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the plan of merger as an attachment. (amendment document)

6. If the surviving entity is created by the merger and is a domestic filing entity, its public organic document as an attachment. (formation document)

7. If the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which process may be served.

If you sign this form you agree that anyone who makes a false statement can be punished by criminal penalties of a fine up to \$1000, imprisonment up to 180 days, or both, under DCOC § 22-2405;

8. Name of the Governor or Authorized Person.

Cheryl Stultz, Chicago Union Station Company General Counsel

8A. Signature of the Governor or Authorized Person.

Cheryl Stultz

9. Name of the Governor or Authorized Person.

9A. Signature of the Governor or Authorized Person.

10. Name of the Governor or Authorized Person.

10A. Signature of the Governor or Authorized Person.

Mail all forms and required payment to:
Department of Consumer and Regulatory Affairs
Corporations Division
PO Box 92300
Washington, DC 20090
Phone: (202) 442-4400

Corporate Online Services Information:

Many corporate filings are available by using CorpOnline Service. Go to CorpOnline site at <https://corp.dcr.dc.gov>, create the profile, access the online services main page and proceed. Online filers must pay by using the credit card.

Please check dcr.dc.gov to view organizations required to register, to search business names, to get step-by-step guidelines to register an organization, to search registered organizations, and to download forms and documents. Just click on "Corporate Registrations."



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

MAY 10, 2017

1251-013-6

BRIAN J MULHERN
15 SALT CREEK LN #200
HINSDALE, IL 60521

RE NATIONAL RAILROAD PASSENGER CORPORATION

DCRA Corp. Div

MAY 11 2017

File Copy

DEAR SIR OR MADAM:

ENCLOSED YOU WILL FIND ARTICLES OF MERGER REGARDING THE ABOVE CORPORATION.

THE FILING FEE HAS BEEN RECEIVED AND CREDITED.

SINCERELY,

JESSE WHITE
SECRETARY OF STATE
DEPARTMENT OF BUSINESS SERVICES
CORPORATION DIVISION
TELEPHONE (217) 782-6961

FORM BCA 11.25 (rev. Dec. 2003)
ARTICLES OF MERGER,
CONSOLIDATION OR EXCHANGE
Business Corporation Act

Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756
217-782-6961
www.cyberdriveillinois.com

FILED

MAY 10 2017

JESSE WHITE
SECRETARY OF STATE

DCRA Corp. Div

MAY 11 2017

File Copy _____

Remit payment in the form of a
check or money order payable
to Secretary of State.

Filing fee is \$100, but if merger or
consolidation involves more than two
corporations, submit \$50 for each
additional corporation.

File #

1251-013-6

Filing Fee: \$

100.00

Approved: 

----- Submit in duplicate ----- Type or Print clearly in black ink ----- Do not write above this line -----

NOTE: Strike inapplicable words in Items 1, 3, 4 and 5.

1. Names of Corporations proposing to ~~consolidate~~ ^{merge} and State or Country of Incorporation.
~~exchange shares~~

Name of Corporation	State or Country of Incorporation	Corporation File Number
<u>Chicago Union Station Company</u>	<u>Illinois</u>	<u>12510136</u>
<u>National Railroad Passenger Corporation (Amtrak)</u>	<u>District of Columbia</u>	

2. The laws of the state or country under which each Corporation is incorporated permits such merger, consolidation or exchange.

3. a. Name of the ~~new~~ ^{surviving} corporation: National Railroad Passenger Corporation (Amtrak)
~~acquiring-~~
- b. Corporation shall be governed by the laws of: District of Columbia

For more space, attach additional sheets of this size.

4. Plan of ~~consolidation~~ ^{merger} is as follows:
~~exchange~~

See attached Agreement and Plan of Merger.

5. The ~~merger~~ ~~consolidation~~ ~~exchange~~ was approved, as to each Corporation not organized in Illinois, in compliance with the laws of the state under which it is organized and (b) as to each Illinois Corporation, as follows:

- a. On January 26, 2017, the attached Agreement and Plan of Merger was approved by the Board of Directors of the National Railroad Passenger Corporation, a District of Columbia corporation ("Surviving Entity"), pursuant to Section 29-309.04 of the District of Columbia Business Corporation Act of 2010 ("D.C. Act");
- b. On May 5, 2017, the attached Agreement and Plan of Merger was adopted by the Board of Directors of Chicago Union Station Company, an Illinois corporation ("Merging Entity"), pursuant to Section 29-309.05 of the D.C. Act and Section 805 ILCS 5/11.30 of the Illinois Business Corporation Act ("Illinois Act");
- c. Pursuant to Section 29-309.04 of the D.C. Act, the Merger does not require approval by the shareholders of the Surviving Entity. The Merging Entity is a wholly-owned subsidiary of the Surviving Entity. The participation of the Merging Entity in the Merger was duly authorized as required by the laws of the State of Illinois.
- d. The Articles of Incorporation of the Surviving Entity, as in effect immediately prior to the Effective Time (defined below), shall continue to be the Articles of Incorporation of the Surviving Entity.

6. Not applicable if surviving, new or acquiring Corporation is an Illinois Corporation.

It is agreed that, upon and after the filing of the Articles of Merger, Consolidation or Exchange by the Secretary of State of the State of Illinois:

- ~~a. The surviving, new or acquiring Corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any Corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such Corporation organized under the laws of the State of Illinois against the surviving, new or acquiring Corporation.~~
- ~~b. The Secretary of State of the State of Illinois shall be and hereby is irrevocably appointed as the agent of the surviving, new or acquiring Corporation to accept service of process in any such proceedings, and~~
- ~~c. The surviving, new or acquiring Corporation will promptly pay to the dissenting shareholders of any Corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange the amount, if any, to which they shall be entitled under the provisions of The Business Corporation Act of 1983 of the State of Illinois with respect to the rights of dissenting shareholders.~~

The surviving corporation in the merger which is the subject of these Articles of Merger (i.e. National Railroad Passenger Corporation [Amtrak]) was created under the Rail Passenger Service Act of 1970 ("RPSA," codified at 49 U.S.C. Section 24101 *et seq.*). While Amtrak is a District of Columbia corporation, Section 24301(b) of the RPSA provides that: (a) "Amtrak is qualified to do business in each State in which Amtrak carries out an activity;" and (b) "Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business." In this regard, National Railroad Passenger Corporation (Amtrak) is hereby named to accept service of process in any proceeding for the enforcement of any obligation of Chicago Union Station Company at the following address: National Railroad Passenger Corporation, 60 Massachusetts Avenue, NE, Washington, DC 2002; Attention: Ms. Eleanor Acheson, Secretary and General Counsel.

7. Complete if reporting a merger under §11.30 — 90 percent-owned subsidiary provisions.

- a. The number of outstanding shares of each class of each merging subsidiary Corporation and the number of such shares of each class owned immediately prior to the adoption of the plan of merger by the parent Corporation:

Name of Corporation	Total Number of Shares Outstanding of Each Class	Number of Shares of Each Class Owned Immediately Prior to Merger by the Parent Corporation
Chicago Union Station Company	28,000	28,000

b. Not applicable to 100 percent-owned subsidiaries.

~~The date of mailing a copy of the plan of merger and notice of the right to dissent to the shareholders of each merging subsidiary Corporation was _____~~
Month Day Year

~~Was written consent for the merger or written waiver of the 30-day period by the holders of all the outstanding shares of all subsidiary Corporations received? ☐ Yes ☐ No~~

~~(If "No," duplicate copies of the Articles of Merger may not be delivered to the Secretary of State until after 30 days following the mailing of a copy of the plan of merger and the notice of the right to dissent to the shareholders of each merging subsidiary Corporation.)~~

8. The undersigned Corporation has caused this statement to be signed by a duly authorized officer who affirms, under penalties of perjury, that the facts stated herein are true and correct. All signatures must be in BLACK INK.

Dated May 9, 2017
Month Day Year

Cheryl Stultz
Any Authorized Officer's Signature

Cheryl Stultz General Counsel
Name and Title (type or print)

Chicago Union Station Company
Exact Name of Corporation

Stephen Gardner

Dated May 9, 2017
Month Day Year

Any Authorized Officer's Signature

Name and Title (type or print)

National Railroad Passenger Corporation (Amtrak)
Exact Name of Corporation

Stephen Gardner
VP Planning, Technology + Public Affairs

Dated _____, _____
Month Day Year

Any Authorized Officer's Signature

Name and Title (type or print)

Exact Name of Corporation

AGREEMENT AND PLAN OF MERGER
BY AND BETWEEN
CHICAGO UNION STATION COMPANY
AND
NATIONAL RAILROAD PASSENGER CORPORATION (D/B/A AMTRAK)

This Agreement and Plan of Merger (this "Agreement") is entered into as of the 9th day of May, 2017, by and between CHICAGO UNION STATION COMPANY, an Illinois corporation ("CUSCo"), and NATIONAL RAILROAD PASSENGER CORPORATION, a District of Columbia corporation organized pursuant to 49 U.S.C. §24101 *et seq.* ("Amtrak" and, together with CUSCo, the "Parties" and each a "Party").

RECITALS:

WHEREAS, CUSCo is a wholly-owned subsidiary of Amtrak; and

WHEREAS, CUSCo owns certain real estate located in the City of Chicago;

WHEREAS, each of the board of directors of CUSCo and Amtrak has determined that the merger of CUSCo with and into Amtrak upon the terms and conditions set forth in this Agreement is advisable and has approved and adopted this Agreement; and

WHEREAS, the merger of CUSCo with and into Amtrak does not require approval by the shareholders of Amtrak.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated into this Agreement) and in consideration of the Parties' mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of all of which consideration are hereby acknowledged, the Parties hereby agree as follows:

1. The Merger.

A. Agreement. In accordance with applicable federal laws and, to the extent not preempted thereby, in accordance with the laws of the District of Columbia and the State of Illinois, the Parties hereby agree that CUSCo shall merge with and into Amtrak (the "Merger"), with Amtrak as the surviving corporation (the "Surviving Corporation").

B. Articles of Incorporation. The Articles of Incorporation of Amtrak, as now in force and effect, shall continue to be the Articles of Incorporation of the Surviving Corporation.

C. Filings. Subject to the provisions of this Agreement, Amtrak shall file Articles of Merger ("D.C. Articles of Merger") with the Mayor of the District of Columbia pursuant to D.C. Code §29-309.06 and CUSCo shall file Articles of Merger ("Illinois Articles of Merger") with the Illinois Secretary of State pursuant to 805 ILCS 5/11.30.

D. Effective Time. The Merger shall become effective at the time stated in the D.C. Articles of Merger ("Effective Time").

E. Surviving Corporation. At the Effective Time, the separate corporate existence of CUSCo shall cease and Amtrak shall be the Surviving Corporation, which shall directly own all of the assets formerly owned by CUSCo.

F. Intended Tax Treatment. The Merger is intended to qualify for federal income tax purposes as both a "reorganization" under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and as a complete liquidation of CUSCo into Amtrak within the meaning of Section 332 of the Code. This Agreement is intended to be a plan of reorganization for purposes of Section 368(a) of the Code and a plan of liquidation for purposes of Section 332 of the Code.

2. Conditions to the Merger. The obligations of each Party to this Agreement to implement the Merger are subject to the following conditions:

- (i) the approval of this Agreement by the board of directors of Amtrak;
- (ii) the approval of this Agreement by the board of directors of CUSCo; and
- (iii) the Parties' complying with the laws of the District of Columbia and the State of Illinois, to the extent such laws are not preempted by federal law.

3. Transfer and Conveyance. At the Effective Time, Amtrak shall continue in existence as the Surviving Corporation and, without further acts or documents of transfer, shall succeed to and possess all rights, privileges, powers and franchises of CUSCo, and all of the assets and property of whatever kind and character of CUSCo shall vest in Amtrak as the Surviving Corporation without further deed or other document(s) of conveyance. At the Effective Time, Amtrak, as the Surviving Corporation, shall be liable for all of the liabilities and obligations of CUSCo, and any and all claims against CUSCo may be enforced against Amtrak.

4. Stock.

A. Cancellation. At the Effective Time, by virtue of the Merger and, without further acts or documents of transfer, all of the shares of stock of CUSCo issued and outstanding immediately prior to the Effective Time shall be cancelled for no consideration.

B. Rights and Powers. The Merger shall not have any impact on the rights and powers of the shareholders of Amtrak and all such rights and powers of the shareholders of Amtrak that exist immediately prior to the Merger will remain unchanged immediately following the Merger.

5. Miscellaneous.

A. Amendment, Supplement. At any time prior to the Effective Time, this Agreement may be amended, modified or supplemented by the board of directors of CUSCo and the board of directors of Amtrak, notwithstanding their prior adoption of this Agreement.

B. Termination. At any time prior to the Effective Time, this Agreement may be terminated and the Merger abandoned for any reason whatsoever by the board of directors of CUSCo or the board of directors of Amtrak, notwithstanding their prior adoption of this Agreement.

6. Further Assurances or Documentation. If, at any time after the Effective Time, Amtrak shall consider or be advised that any further assignment, conveyance of assurance or any other acts or documents are necessary or desirable in order to vest, perfect or confirm in Amtrak its rights, title or interest in and to any of the rights, properties or assets of CUSCo acquired or to be acquired by Amtrak as a result of or in conjunction with the Merger or otherwise carry out the purposes of this Agreement, the appropriate directors or officers of CUSCo shall be deemed to have granted to Amtrak an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances and to take all other acts necessary or appropriate to vest, perfect or confirm title to and possession of such rights, properties or assets in Amtrak and otherwise carry out the purposes of this Agreement and the officers and directors of Amtrak are hereby fully authorized in the name of CUSCo to take any and all such actions and to sign any and all such documents.

7. Governing Law. This Agreement shall be interpreted by and construed and enforced in accordance with and pursuant to the laws of the United States and the District of Columbia.

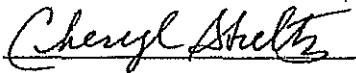
8. Entire Agreement. This Agreement is intended by the Parties as a final expression of their mutual covenants with respect to the Merger and is intended as a complete and exclusive statement of the terms and conditions of the Merger, and there are no other agreements or understandings (written or oral) between the Parties relating to the Merger or the subject matter of this Agreement. This Agreement supersedes any and all

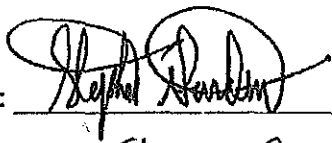
prior agreements or understandings (written or oral) between the Parties with respect to the Merger.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on behalf of the respective Parties on and as of the date first set forth above.

Chicago Union Station Company

National Railroad Passenger Corporation

By: 
Name: Cheryl Stultz
Title: General Counsel

By: 
Name: Stephen Gardner
Title: EVP Planning, Technology + Public Affairs

ARTICLES OF MERGER
of
CHICAGO UNION STATION COMPANY,
an Illinois corporation

with and into

NATIONAL RAILROAD PASSENGER CORPORATION,
a District of Columbia corporation

DCRA Corp. Div
MAY 11 2017
File Copy

Pursuant to Section 29-309 of the District of Columbia Business Corporation Act of 2010 (the "D.C. Act"), each of Chicago Union Station Company, an Illinois corporation (the "Merging Entity"), and National Railroad Passenger Corporation, a District of Columbia corporation (the "Surviving Entity"), hereby adopt the following Articles of Merger:

1. The Agreement and Plan of Merger (the "Plan"), pursuant to which the Merging Entity will merge with and into the Surviving Entity (the "Merger"), is attached as Exhibit A and incorporated by reference. The Plan constitutes the "plan of merger" for purposes of the D.C. Act.
2. On May 5, 2017, the Plan was adopted by the board of directors of the Merging Entity pursuant to Section 29-309.05 of the D.C. Act and Section 805 ILCS 5/11.30 of the Illinois Business Corporation Act (the "Illinois Act").
3. On January 26, 2017, the Plan was approved by the board of directors of the Surviving Entity pursuant to Section 29-309.04 of the D.C. Act.
4. The Articles of Incorporation of the Surviving Entity, as in effect immediately prior to the Effective Time (defined below), shall continue to be the Articles of Incorporation of the Surviving Entity.
5. Pursuant to Section 29-309.04 of the D.C. Act, the Merger does not require approval by the shareholders of the Surviving Entity.
6. The participation of the Merging Entity was duly authorized as required by the laws of the State of Illinois.
7. Pursuant to Section 29-102.03 of the D.C. Act, the Merger shall be effective at 12:01 AM EDT on May 12, 2017 (the "Effective Time").
8. These Articles of Merger may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Merging Entity and the Surviving Entity have caused these Articles of Merger to be duly executed as of May 9, 2017.

MERGING ENTITY

CHICAGO UNION STATION COMPANY

By: Cheryl Stultz

Name: Cheryl Stultz

Title: General Counsel

SURVIVING ENTITY

NATIONAL RAILROAD PASSENGER
CORPORATION

By: Stephen Gardner

Name: Stephen Gardner

Title: VP Planning, Technology & Public Affairs

EXHIBIT A

AGREEMENT AND PLAN OF MERGER

See attached.

AGREEMENT AND PLAN OF MERGER
BY AND BETWEEN
CHICAGO UNION STATION COMPANY
AND
NATIONAL RAILROAD PASSENGER CORPORATION (D/B/A AMTRAK)

This Agreement and Plan of Merger (this "Agreement") is entered into as of the 9th day of May, 2017, by and between CHICAGO UNION STATION COMPANY, an Illinois corporation ("CUSCo"), and NATIONAL RAILROAD PASSENGER CORPORATION, a District of Columbia corporation organized pursuant to 49 U.S.C. §24101 *et seq.* ("Amtrak" and, together with CUSCo, the "Parties" and each a "Party").

RECITALS:

WHEREAS, CUSCo is a wholly-owned subsidiary of Amtrak; and

WHEREAS, CUSCo owns certain real estate located in the City of Chicago;

WHEREAS, each of the board of directors of CUSCo and Amtrak has determined that the merger of CUSCo with and into Amtrak upon the terms and conditions set forth in this Agreement is advisable and has approved and adopted this Agreement; and

WHEREAS, the merger of CUSCo with and into Amtrak does not require approval by the shareholders of Amtrak.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated into this Agreement) and in consideration of the Parties' mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of all of which consideration are hereby acknowledged, the Parties hereby agree as follows:

1. The Merger.

A. Agreement. In accordance with applicable federal laws and, to the extent not preempted thereby, in accordance with the laws of the District of Columbia and the State of Illinois, the Parties hereby agree that CUSCo shall merge with and into Amtrak (the "Merger"), with Amtrak as the surviving corporation (the "Surviving Corporation").

B. Articles of Incorporation. The Articles of Incorporation of Amtrak, as now in force and effect, shall continue to be the Articles of Incorporation of the Surviving Corporation.

C. Filings. Subject to the provisions of this Agreement, Amtrak shall file Articles of Merger ("D.C. Articles of Merger") with the Mayor of the District of Columbia pursuant to D.C. Code §29-309.06 and CUSCo shall file Articles of Merger ("Illinois Articles of Merger") with the Illinois Secretary of State pursuant to 805 ILCS 5/11.30.

D. Effective Time. The Merger shall become effective at the time stated in the D.C. Articles of Merger ("Effective Time").

E. Surviving Corporation. At the Effective Time, the separate corporate existence of CUSCo shall cease and Amtrak shall be the Surviving Corporation, which shall directly own all of the assets formerly owned by CUSCo.

F. Intended Tax Treatment. The Merger is intended to qualify for federal income tax purposes as both a "reorganization" under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and as a complete liquidation of CUSCo into Amtrak within the meaning of Section 332 of the Code. This Agreement is intended to be a plan of reorganization for purposes of Section 368(a) of the Code and a plan of liquidation for purposes of Section 332 of the Code.

2. Conditions to the Merger. The obligations of each Party to this Agreement to implement the Merger are subject to the following conditions:

- (i) the approval of this Agreement by the board of directors of Amtrak;
- (ii) the approval of this Agreement by the board of directors of CUSCo; and
- (iii) the Parties' complying with the laws of the District of Columbia and the State of Illinois, to the extent such laws are not preempted by federal law.

3. Transfer and Conveyance. At the Effective Time, Amtrak shall continue in existence as the Surviving Corporation and, without further acts or documents of transfer, shall succeed to and possess all rights, privileges, powers and franchises of CUSCo, and all of the assets and property of whatever kind and character of CUSCo shall vest in Amtrak as the Surviving Corporation without further deed or other document(s) of conveyance. At the Effective Time, Amtrak, as the Surviving Corporation, shall be liable for all of the liabilities and obligations of CUSCo, and any and all claims against CUSCo may be enforced against Amtrak.

4. Stock.

A. Cancellation. At the Effective Time, by virtue of the Merger and, without further acts or documents of transfer, all of the shares of stock of CUSCo issued and outstanding immediately prior to the Effective Time shall be cancelled for no consideration.

B. Rights and Powers. The Merger shall not have any impact on the rights and powers of the shareholders of Amtrak and all such rights and powers of the shareholders of Amtrak that exist immediately prior to the Merger will remain unchanged immediately following the Merger.

5. Miscellaneous.

A. Amendment, Supplement. At any time prior to the Effective Time, this Agreement may be amended, modified or supplemented by the board of directors of CUSCo and the board of directors of Amtrak, notwithstanding their prior adoption of this Agreement.

B. Termination. At any time prior to the Effective Time, this Agreement may be terminated and the Merger abandoned for any reason whatsoever by the board of directors of CUSCo or the board of directors of Amtrak, notwithstanding their prior adoption of this Agreement.

6. Further Assurances or Documentation. If, at any time after the Effective Time, Amtrak shall consider or be advised that any further assignment, conveyance of assurance or any other acts or documents are necessary or desirable in order to vest, perfect or confirm in Amtrak its rights, title or interest in and to any of the rights, properties or assets of CUSCo acquired or to be acquired by Amtrak as a result of or in conjunction with the Merger or otherwise carry out the purposes of this Agreement, the appropriate directors or officers of CUSCo shall be deemed to have granted to Amtrak an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances and to take all other acts necessary or appropriate to vest, perfect or confirm title to and possession of such rights, properties or assets in Amtrak and otherwise carry out the purposes of this Agreement and the officers and directors of Amtrak are hereby fully authorized in the name of CUSCo to take any and all such actions and to sign any and all such documents.

7. Governing Law. This Agreement shall be interpreted by and construed and enforced in accordance with and pursuant to the laws of the United States and the District of Columbia.

8. Entire Agreement. This Agreement is intended by the Parties as a final expression of their mutual covenants with respect to the Merger and is intended as a complete and exclusive statement of the terms and conditions of the Merger, and there are no other agreements or understandings (written or oral) between the Parties relating to the Merger or the subject matter of this Agreement. This Agreement supersedes any and all

prior agreements or understandings (written or oral) between the Parties with respect to the Merger.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on behalf of the respective Parties on and as of the date first set forth above.

Chicago Union Station Company

National Railroad Passenger Corporation

By: Cheryl Stultz

Name: Cheryl Stultz

Title: General Counsel

By: Stephen Gardner

Name: Stephen Gardner

Title: EVP Planning, Technology + Public Affairs

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXHIBIT 4

METRA CORRESPONDENCE OF JANUARY 4, 2018



547 W. Jackson Boulevard, Chicago, IL 60661

312.322.6900

metrarail.com

January 4, 2018

VIA ELECTRONIC & U.S. MAIL

Mr. Thomas Moritz
Sr. Director, NEC
National Railroad Passenger Corp
30th Street Station, 4th Fl North
Philadelphia, PA 19104

Re: **Chicago Union Station Company Lease negotiations with Metra**

Dear Tom:

It was nice meeting you over the telephone recently. I'm looking forward to working with and meeting you in person.

As we discussed, now that we've recently resolved the outstanding risk-related charges of our current lease agreement with the assistance of Susan Laing and Ray Lang of Amtrak in Chicago, I believe we can now turn to discussing renegotiation of the current Station Use Agreement. We recognize that with the redevelopment of the Chicago Union Station ("CUS") properties, these are exciting times for all of us and they raise a number of different opportunities to address long term challenges with the properties. There are a number of items and options that we will need to explore and perhaps include in the negotiations with other parties such as the City of Chicago, Amtrak's master developer, or others. Metra looks forward to productive discussions with all parties for the extension of the CUS usage arrangements upon expiration of the current agreement on April 30, 2019. As we proceed, however, we are asking Amtrak to clarify news Amtrak recently shared.

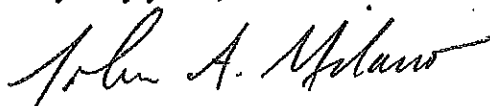
Although Chicago Union Station Company ("CUSCo") has been wholly-owned by Amtrak since 1984, the same year that the current CUSCo-Metra agreement was executed, Amtrak recently shared its Agreement and Plan for Merger between CUSCo and Amtrak dated May 9, 2017. Our understanding is that of Amtrak's two operating rail subsidiaries, CUSCo and Washington Terminal Company, only CUSCo has been merged into Amtrak.

While Amtrak may have had other corporate objectives in merging with CUSCo, Metra would like to confirm that the merger will not have the effect of changing the parties' relative status with respect to joint-use arrangements at CUS. Specifically, CUSCo was a rail carrier subject to the jurisdiction of the Surface Transportation Board ("STB"), including the terminal trackage rights provisions of 49 U.S.C. § 11102 and the commuter rail mediation provisions of 49 U.S.C. § 38502. Amtrak, on the other hand, is not generally subject to the jurisdiction of the STB as a rail carrier, apart from any rail carrier status that Amtrak may have inherited as a result of the CUSCo merger. To assure a common understanding that will facilitate and advance our ongoing voluntary negotiations, Metra seeks to clarify the continued applicability of Sections 11102 and 38502 to the CUS facilities.

To that end, Metra requests Amtrak's written confirmation that Amtrak will continue to observe its former subsidiary's rail carrier status for the purposes of STB jurisdiction over Union Station terminal facility usage and operations, and as such be responsible for all of the liabilities and obligations of CUSCo.

Metra values its ongoing relationship with Amtrak, and I look to further solidify that partnership as our discussions about the future of Chicago Union Station proceed.

Very truly yours,

A handwritten signature in cursive script, reading "John A. Milano".

John A. Milano

Deputy Executive Director, Administration

cc: Metra Chairman Norm Carlson
Metra CEO Jim Derwinski
Ray Lang, Amtrak

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXHIBIT 5

AMTRAK LETTER OF JANUARY 25, 2018

**BY EMAIL AND U.S. MAIL**

January 25, 2018

Mr. John A. Milano
Deputy Executive Director, Administration
Metra
547 W. Jackson Boulevard
Chicago, IL 60661

Re: Negotiations for New Agreement for Use of Chicago Union Station

Dear John:

I am writing in response to your letter dated January 5, 2018.

Amtrak appreciates the progress that Metra and Amtrak have made in recent months to resolve the long-standing dispute over the risk charge calculation in the existing agreement. We look forward to continued coordination in the redevelopment of Chicago Union Station (CUS) properties, and in our upcoming negotiation of a new CUS shared usage agreement.

While the merger of Chicago Union Station Company (CUSCo) into Amtrak does not change the basic nature of the 1984 CUSCO-Metra agreement, Amtrak does not believe that the two provisions cited in your letter, 49 U.S.C. § 11102 and 49 U.S.C. § 28502, are applicable. However, as the surviving corporation of the merger effective May 11, 2017, with its previously wholly-owned subsidiary, Amtrak will continue to be responsible for the liabilities and obligations of CUSCo that existed at the time of the merger. Furthermore, Amtrak will continue to comply with statutes that are applicable to Amtrak.

We are looking forward to our upcoming negotiations of a new agreement relating to Metra's use of the Chicago Union Station after the April 30, 2019 expiration of the current agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Moritz", written over a horizontal line.

Thomas Moritz
Assistant Vice President, Infrastructure Access and Investment

cc: Metra Chairman Norman Carlson
Metra CEO James Derwinski
Amtrak Senior Director, Government Affairs Ray Lang

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXHIBIT 6

**“NO FINGERPRINTS ON NEC TRACK GRAB”
FRANK N. WILNER, RAILWAY AGE
SEPTEMBER 3, 2015**

- September 03, 2015
- Commuter/Regional, High Performance, Intercity, News

No fingerprints on NEC track grab

Written by Frank N. Wilner, Contributing Editor

Here's a mystery for you, but don't anticipate—as in the board game, “Clue”—that it's “Col. Mustard, in the library, with a candlestick.” The perp here is the U.S. Senate—the deed done under the Capitol Dome and with a pen (okay, a word processor).

As for the “what,” it's a provision in a Senate-passed bill to extend, for a short distance south, the Northeast Corridor by adding to it track of the Amtrak-owned Washington Terminal Co. that runs from just north of, and south through, Union Station, thence within a tunnel between the Capitol Building and Supreme Court, and ending shortly thereafter at a CSX interlocking.

The Northeast Corridor (NEC), of course, is the 450-mile long, primarily Amtrak-owned, unbroken longitudinal right-of-way linking Boston with Washington, D.C., attracting more covetous eyes than Kim Kardashian or even the Caitlyn Jenner cover of Vanity Fair.

With that knowledge, your challenge is to determine the author and motive of this stealth Senate provision, which we warn you has even highly proficient congressional savants in a quandary—some suggesting sneakiness benefiting a so-far invisible special interest.

If you naively disbelieve anything sinister is afoot in a Congress fueled by political contributions—Capitol Hill's lawful equivalent of crystal meth—recall that not long ago, the PAC-rich United Transportation Union deftly guided into the nether shadows of a foreign affairs bill an unrelated and malevolent provision forcing the transfer to the UTU of a rival union's members. When serendipitously discovered prior to a final vote, the provision was removed.

As for this instant provision redefining the NEC—a so-called legislative orphan, as no senator is claiming parenthood—it is slyly buried in a 1,030-page highway bill. While the NEC's redefinition ignores precise geography elsewhere on the otherwise loosely defined NEC, this provision is meticulous in defining the southern extension, quashing a Senate staffer's low-wattage illumination of it being “simple legislative housekeeping.”

Let's begin the gumshoe reconnaissance with Washington Terminal Co., created more than a century ago by the then multiple railroads whose passenger trains stopped at Union Station. Amtrak took title to Washington Terminal Co. in 1981, but unlike Amtrak, which is exempted by law from most Surface Transportation Board (STB) economic regulation, Washington Terminal Co. is subject to STB track-access and rate regulation. Are you getting warm?

Now consider commuter train operator Virginia Railway Express (VRE), whose singular access to Union Station is over tracks of Washington Terminal Co. Were VRE to become embroiled in a squabble with Amtrak over the price of access and midday storage fees for its commuter trains, VRE today would have the option to petition the STB for an order granting compulsory access over Washington Terminal Co. track, and at an STB approved sum.

An implausible event? In fact, a decade ago, after VRE considered firing Amtrak as the operator of VRE commuter trains serving Northern Virginia, VRE was given an ultimatum by Amtrak to renew the contract or cease operating into Union Station (where VRE trains also are stored, maintained and repaired awaiting the reverse afternoon commute). Sources then involved recall that when Amtrak realized VRE was headed to the STB for redress so as to avoid being effectively shut down, Amtrak removed the embargo threat.

Then, in 2010, in yet another fit of pique—this time after VRE actually fired Amtrak as its subcontractor operator of commuter trains in favor of French-owned Keolis Rail Services—Amtrak renewed its threat to deny VRE access to Union Station. Again, cooler heads prevailed and the STB was spared the task of refereeing the kerfuffle.

Should this Senate-passed stealth provision redefining the NEC be approved by the House of Representatives and signed into law by President Obama, Washington Terminal Co. track likely would become exempt from STB oversight, as is all other track comprising the NEC.

Whoa Nelly, that's pungent bargaining leverage for Amtrak, as it forces VRE into a Quisling-like contract-negotiating stance.

Another curious outcome of extending the NEC south of Union Station would allow a real estate developer access to a low-interest loan from the Railroad Rehabilitation and Improvement Financing (RRIF) program. A separate provision—this one transparently authored by Sen. Cory Booker (D-N.J.)—opens for loan the RRIF's \$35 billion balance to encourage commercial and residential development along the NEC if a train station is involved. Could this stealth provision be to allow a subsidized Trump hotel and casino to be built in proximity to Union Station, the Capitol Building and Supreme Court?

Pardon our skepticism of a slyly buried legislative provision for which there is no press release, no admitted paternity and at least two plausible special-interest end results. Such is the celebrity of a dysfunctional Congress comprised largely of members often pursuing such outcomes. If sunlight be the best disinfectant, it too rarely shines inside House and Senate chambers.

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EXHIBIT 7

**DISTRICT OF COLUMBIA STATE RAIL PLAN – FINAL
REPORT (2017)**

In VRE's 2040 System Plan (January 2014), short-term (2015-2020) and long-term (2021-2040) service and capital improvement projects are proposed. In the short-term, service improvements include an additional round trip peak period, peak direction train. Short-term capital improvements include the addition of a trainset, 21 additional coaches and cab cars in service, and station improvements (outside of the District, ranging from two new stations to the expansion of station parking by 5,500 spaces). These improvements are expected to boost ridership by more than 30 percent and further improve the cost recovery ratio of the system.

In the long-term, VRE plans on increasing the frequency of trains so that each line has 15-minute peak headways as well as several other improvements such as raising off-peak service to hourly headways and lengthening trains to meet demand. Capital improvements are even more ambitious, with an additional 11 trainsets, 10 more locomotives, and 48 new coaches and cab cars; investment in improved storage and maintenance facilities; three new stations and station expansion and improvements, including the addition of roughly 5,000 additional parking spaces; as well as the Gainesville-Haymarket Extension and the Long Bridge Corridor Program. The Gainesville-Haymarket Extension, on the Manassas Line, is expected to boost ridership by between 10 and 20 percent and improve cost recovery. The Long Bridge Study, in which VRE is participating, is an effort to expand severely constrained capacity on the Long Bridge, which only has two tracks for freight and passenger crossing from Washington DC to Virginia, creating a major traffic chokepoint.

The highest profile projects include an extension on the Manassas Line to Gainesville-Haymarket and the addition of the Potomac Shores Station on the Fredericksburg Line between Quantico and Rippon. Forthcoming capital projects include engineering and design services for a midday storage facility near New York Avenue NE and 16th Street NE in the District, and to provide platform extensions and other upgrades at five VRE stations in Virginia (the "Penta-Platform" Corridor Improvement Project). Altogether, the System Plan estimates a total investment of \$2.7 billion in the upcoming 25 years.

Washington Terminal Company

The Washington Terminal Company (WTC) was chartered in 1901 to construct and operate Union Station. WTC's operations were purchased by Amtrak in 1981, but it remains a separate legal entity. It is a common carrier railroad according to definition by the Surface Transportation Board (STB). Today, Amtrak carries out the responsibilities of the WTC, providing switching services for passenger trains using or passing through Union Station. The WTC's status has been significant to rail service in the District in that the WTC's common carrier status was invoked by the VRE when Amtrak at one point suggested that it would withhold transportation services from VRE. Common carrier status requires railroads to provide rail service upon reasonable request.

Union Station Redevelopment Corporation

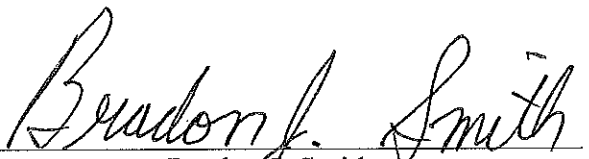
Union Station Redevelopment Corporation (USRC) was established in 1983 as a non-profit organization to enter into a public/private partnership to manage Union Station. Owned by the U.S. Department of Transportation, USRC is ultimately responsible for the historic preservation of the station, along with the management of its restoration and future development. USRC is charged with three main objectives:

- Preserve and restore Union Station's historic and architectural significance,
- Preserve the station's long-term function as a multi-use transportation center, and

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2018, a copy of the foregoing
**Petition for Declaratory Order of Commuter Rail Division of the Regional Transportation
Authority and Northeast Illinois Regional Commuter Railroad Corporation** was served by
overnight delivery upon:

Eleanor D. Acheson
Chief Legal Officer, General Counsel & Corporate Secretary
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001



Bradon J. Smith