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Via Electronic Filing

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

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-referenced proceeding, please find the **Reply of the National Railroad Passenger Corporation (Amtrak) in Opposition to Petition for Declaratory Order.**

Thank you for your attention to this matter.

Respectfully,



Thomas R. Waskom
Counsel for National Railroad Passenger Corporation (Amtrak)

Enclosure

cc: Thomas J. Litwiler, Esq.
Stephen A. MacIsaac, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB 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**

**REPLY OF THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
IN OPPOSITION TO PETITION FOR DECLARATORY ORDER**

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**REPLY OF THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
IN OPPOSITION TO PETITION FOR DECLARATORY ORDER**

The National Railroad Passenger Corporation (“Amtrak”) submits this Reply in Opposition to the Petition for Declaratory Order filed by the Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation (collectively, “Metra”). Amtrak respectfully requests that the Surface Transportation Board (the “Board”) exercise its discretion and decline to open a proceeding or otherwise consider Metra’s Petition. If the Board does consider Metra’s Petition on the merits, the Board should deny the Petition because the statutory sections at issue do not apply to Amtrak.

I. INTRODUCTION

Metra and Amtrak would like to negotiate a new contract to provide Metra access to and services at Chicago Union Station, which is owned by Amtrak and used by Amtrak’s intercity trains and Metra’s commuter trains. As of today, no substantive negotiations have occurred. The contract under which Metra currently uses Chicago Union Station does not expire until May 2019, more than one year from now. Yet Metra now seeks an advisory opinion on the remedies that might be available to it if Metra and Amtrak cannot reach agreement, an outcome even

Metra recognizes is unlikely. (Metra Pet. at 9¹ (noting that “Metra has no current plan to seek Board intervention”).)

Metra believes that the threat of Board involvement will give it some kind of leverage in the negotiations. But desire for an improved negotiating position is not sufficient to invoke the Board’s jurisdiction. The absence of any negotiations to date means that this purported dispute is not ripe for review by the Board. In the same circumstances in the past, the Board has declined to intervene. If negotiations reach an impasse – which, again, both parties believe is unlikely – Metra can then file a Petition asking the Board to take action. At that time, all of the issues implicated by Metra’s Petition can be addressed.

If the Board decides to consider the Petition, the Petition fails because the two statutory provisions that Metra asks the Board to declare apply to Amtrak – 49 U.S.C. §§ 11102 and 28502 – explicitly do *not* apply to Amtrak. In fact, as Metra concedes, Congress expressly exempted Amtrak from both provisions. 49 U.S.C. § 24301(c). Metra asks the Board to re-write the law to provide it potential remedies in the event of an impasse in negotiations.

Metra argues that the statutes at issue apply to Amtrak in these circumstances because Chicago Union Station *used to be* owned by Chicago Union Station Company (“CUSCO”), and *CUSCO* was subject to those statutes. That is clearly wrong. CUSCO merged into Amtrak in May 2017 and no longer exists. The merger did not have the unintentional, and heretofore unrecognized, effect of expanding the Board’s jurisdiction in direct contravention of Section 24301(c). Under Metra’s view, Amtrak’s assets would be governed by a patchwork quilt of statutory sections depending on when, how or from whom Amtrak acquired them. There is

¹ Metra’s Petition includes two numbers on each page. Citations to the page in Metra’s Petition refer to the page numbers in the lower right-hand corner of Metra’s Petition, which also correspond to the page numbers generated by the PDF.

simply no statutory basis for Metra's position, and it must be rejected. Accordingly, should the Board reach the merits, it should dismiss the Petition.

II. BACKGROUND

The relationship between Amtrak and CUSCO dates back over forty years. In 1976, the Penn Central Corporation ("Penn Central") conveyed its interests in CUSCO to Amtrak pursuant to the United States Railway Association's Final System Plan ("FSP"). *See Penn Cent. Corp. v. Chicago Union Station Co.*, 830 F. Supp. 1509, 1514 (Reg'l Rail Reorg. Ct. 1993). Those interests constituted 50% of all outstanding CUSCO shares. *Id.* In 1984, Amtrak acquired the remaining 50% of outstanding CUSCO shares, making Amtrak the sole shareholder of CUSCO and CUSCO a wholly-owned subsidiary of Amtrak. *Id.* at 1515. From 1984 to 2017, Amtrak and CUSCO maintained separate corporate identities. In May 2017, CUSCO merged into Amtrak, and CUSCO ceased to exist as an independent entity.

Also in 1984 (the same year Amtrak acquired full ownership of CUSCO), CUSCO and Metra entered into a lease agreement by which Metra was permitted to use the Chicago Union Station facilities. Metra, a Chicago "commuter rail authority" (Metra Pet. at 5), is a current tenant of Amtrak at Chicago Union Station. Metra's leasehold is set to expire on April 30, 2019. No negotiations regarding the substantive terms of a new contract have taken place; indeed, Metra admits that to date it has only "been preparing for negotiations" regarding a new agreement. (*Id.* at 9.)

Metra seeks a declaration that it has certain statutory rights with respect to Chicago Union Station under 49 U.S.C. §§ 11102 and 28502. (Metra Pet. at 3.) Section 11102 provides in relevant part:

The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, ***owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part***, to be used

by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owing the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings.

49 U.S.C. § 11102(a) (emphasis added). Section 28502 provides:

If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation.

49 U.S.C. § 28502.

The Board should decline to open a declaratory order proceeding and delve into these questions because Metra's Petition is factually and legally premature and the above-cited statutory sections are not applicable to Amtrak and the circumstances at hand.

III. DISCUSSION

A. The Board Should Dismiss Metra's Petition as Premature Because Metra Has Not Yet Engaged in Negotiations.

The Board should decline to provide the advisory opinion Metra seeks. Metra itself admits that the parties have not even *started* negotiating a new agreement. The Board should follow its precedent and hold that where negotiations have not yet begun, and no actual dispute about the terms of an agreement has arisen, the Board will not intervene – even to offer declaratory guidance. It is plainly better to defer, and wait to see if an actual dispute ever arises.

Metra asks the Board to find Section 11102 applicable here. By its own terms, Section 11102 provides for Board intervention only if the parties “cannot agree” on the conditions and compensation for use of terminal facilities; and Section 28502 cannot be invoked without “a reasonable period of negotiation.” Those preconditions have not been met here. Indeed, Metra

admits that negotiations between Metra and Amtrak for access to Chicago Union Station from May 2019 forward have not yet even begun. (Metra Pet. at 9.)

The Board has held in analogous cases that a dispute is not ripe for Board intervention unless the parties have negotiated and reached an impasse. In *National Railroad Passenger Corporation and Central Vermont Railway – Use of Tracks and Facilities and Establishment of Just Compensation*, Finance Docket No. 28624 (ICC served Feb. 21, 1978) (“*Central Vermont*”), Amtrak filed an application with the then-Interstate Commerce Commission (“Commission”) requesting that the Commission order the Central Vermont Railway to continue providing services and facilities to Amtrak, pursuant to Section 402(a) of the Rail Passenger Services Act (“RPSA”).² The Commission found that Amtrak’s petition was premature. The Commission held that “[u]ntil Amtrak has made a diligent and good faith effort to resolve this problem, and until Amtrak can prove that passenger service will be disrupted without Commission action, we will not decide this issue.” *Id.* at 2.

Similarly, in *Minnesota Transfer Railway Company Ordered to Provide Services, Tracks and Facilities for the Operation of Trains of the National Railroad Passenger Corporation and the Establishment of Just and Reasonable Compensation for Such Services, Tracks and Facilities*, Finance Docket No. 28533 (ICC served Oct. 7, 1977) (“*Minnesota Transfer*”), the Board explained that Congress did not “intend[] to have the Commission become the arbitrator of every contract that Amtrak negotiates. An implied condition to our Section 402(a)

² Section 402(a) of the RPSA, now recodified without substantive change at 49 U.S.C. § 24308, empowers the Board to order that facilities and services of a rail carrier or regional transportation authority be made available to Amtrak. Like Section 11102, it gives the Board jurisdiction to resolve disputes only if “the parties cannot agree.” 49 U.S.C. § 24308(a)(2)(A).

compensation jurisdiction is that the parties have diligently, and in good faith, attempted to settle their differences.” *Minnesota Transfer* at 4. This principle is controlling and dispositive here.³

Metra cites to no authority for its conclusion that its Petition is “ripe for Board resolution,” and the cases Metra cites for the proposition that purely jurisdictional questions are suited for resolution by declaratory order are inapposite. (See Metra Pet. at 10 n.12.) First, in *Padgett v. Surface Transportation Board*, 804 F.3d 103 (1st Cir. 2015), the Town of Grafton had sued G & U Railroad Company in state court, alleging that G & U’s construction of a facility and delivery of propane tanks would violate state and local laws. Prompted by the *state court’s direction*, G & U filed a petition with the Board to determine whether the Board’s exclusive jurisdiction over transportation by rail carrier would preempt the state and local regulation of the propane tanks. See 804 F.3d at 106. The affirmative actions of the Town in that case, including sending G & U a cease-and-desist letter and filing a lawsuit, presented a live controversy that simply does not exist in the present circumstances. Second, in *Los Angeles Metropolitan Transportation Authority - Petition for Declaratory Order*, Docket No. FD 36112 (STB served Oct. 27, 2017), the California State Board of Equalization had deemed the Los Angeles County

³ See also, e.g., *Am. Bus Ass’n – Petition for Declaratory Order – Connecting Servs.*, MC-C-30224, 1995 WL 75558, at *1 (ICC served Feb. 27, 1995) (“While the petition at issue demonstrates the potential existence of a controversy or uncertainty that may be of importance to the regulation of the motor passenger industry, petitioner has not demonstrated that the issues are ripe for issuance of a declaratory order.”); *Georgia-Pac. Corp. – Petition for Declaratory Order – Texas Reload Traffic*, MC-C-30202, 1992 WL 233688, at *1 (ICC served Sept. 22, 1992) (“Here, the need for the determination petitioner requests at this time is premature, as it is based on a reload facility which does not exist yet and no actual traffic is moving at this time.”); *Arvada Transfer Co., Inc. – Petition for Declaratory Order*, MC-C 30074, 1988 WL 226030, at *1 (ICC served Mar. 8, 1988) (“Here, the need for the determination petitioner requests at this time is premature, as it is based on petitioner’s speculation concerning a possible adverse action by the CPUC.”); *Union Oil Co. of California, Chemicals Div., & Laughlin Trucking, Inc. – Petition for Declaratory Order*, MC-C-30118, 1988 WL 225289, at *1 (ICC served Sept. 12, 1988) (“Here, the need for the determination petitioners seek is premature, as it is based on a transportation service that Laughlin does not yet perform.”).

Metropolitan Transportation Authority subject to a sales tax because it was not a rail carrier providing transportation. A contested tax bill presents a real and immediate dispute, unlike a contract negotiation that has not even started and likely will never require Board intervention.

Metra and Amtrak have not yet started to negotiate the terms of the prospective agreement. Metra is essentially insisting that the Board intervene to determine what could happen *if* there is a dispute. This hypothetical dispute is not even about the subject of the anticipated negotiation itself – the terms of an access agreement – but rather what rights the parties would have *if those anticipated negotiations fail*. This is a purely derivative issue, and it is derivative of something that has not yet come to pass. It is not a proper use of the Board’s limited resources. For persuasive reasons stated in *Central Vermont* and *Minnesota Transfer*, among others, the Board has declined in the past to engage such requests. The Board should likewise dismiss this Petition as premature.

B. Metra Is Not Entitled to the Declaration It Seeks Because Sections 11102 and 28502 Do Not Apply to Amtrak.

The primary relief Metra seeks is a declaration that the Board would have the authority (i) to prescribe conditions and compensation for Metra’s use of Chicago Union Station properties under 49 U.S.C. § 11102 and (ii) to mediate disputes concerning Chicago Union Station under 49 U.S.C. § 28502 *if* Metra were to bring a Petition seeking to invoke those provisions. But the Board does not have such authority because these statutes plainly do not cover Amtrak.

First, Amtrak is not subject to Section 11102 pursuant to 49 U.S.C. § 24301(c), which provides that “Subtitle IV of this title shall not apply to Amtrak.”⁴ Section 11102 is within Subtitle IV of Title 49, so the section does not apply to Amtrak. Second, Section 28502

⁴ Section 24301(c) carves out five sections of Subtitle IV that are applicable to Amtrak, but none are relevant here.

authorizes the Board to order mediation between a public transportation authority and a “rail carrier.” For purposes of Section 28502, a “rail carrier” is “a person, other than a governmental authority, providing common carrier railroad transportation for compensation subject to the jurisdiction of the Board under chapter 105” – that is, a rail carrier covered by Subtitle IV, which Amtrak is not. 49 U.S.C. § 28501(5). Thus, Congress expressly exempted Amtrak from both of these provisions.

Metra acknowledges that these provisions do not apply to Amtrak (*see* Metra Pet. at 7 (“Amtrak is generally not subject to the Board’s jurisdiction or regulatory oversight as a common carrier railroad”)), but states without further explanation or citation that “Metra plainly would have been entitled to such Board intervention if CUSCO still existed.” (*Id.* at 4.) Amtrak disagrees, but this is entirely irrelevant.⁵ CUSCO does not exist, it does not own Chicago Union station, and it is not the party with which Metra must negotiate. This purported dispute is about a future agreement, between Metra and Amtrak alone. Because this is a prospective issue, what matters are the parties and the facts as they currently stand. *Amtrak* owns Chicago Union Station, and it is clear from the plain text that Amtrak is not subject to the Board’s jurisdiction under Sections 11102 or 28502.

⁵ Apparently, in Metra’s view CUSCO was a rail carrier within the meaning of the statute. It cites to reports from 1940 and 1934, as well as an order from the Illinois Commerce Commission, as authority for that assertion. (*See* Metra Pet. at 12 n.13-14.) None of these authorities support the proposition that CUSCO was a rail carrier within the meaning of 49 U.S.C. Subtitles IV or V. In fact, the Board has stated that CUSCO was *not* a rail carrier. *See Chicago, Milwaukee, St. Paul & Pacific R.R. Co. – Reorganization – Acquisition by Grant Trunk Corp.*, 2 I.C.C.2d 161, 173 (1984) (identifying CUSCO as a “noncarrier subsidiar[y]” of a parent railroad). Ultimately, though, this question is irrelevant because CUSCO no longer exists and the only question is whether *Amtrak* is subject to the relevant statutes.

The fact that Metra and CUSCO executed an agreement in 1984, and that CUSCO has since been merged into Amtrak, does not change any of the foregoing analysis.⁶ Under the clear language of Section 11102, the Board’s jurisdiction extends not to “terminal facilities” such as Chicago Union Station regardless of ownership, but only to “terminal facilities ... owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part.” Under Section 24301(c) Amtrak is not such a rail carrier. The same is true of the Board’s jurisdiction under Section 28502. The fact (disputed but assumed for present purposes) that Metra could have invoked the Board’s jurisdiction with respect to property owned at one time by CUSCO does not mean that jurisdiction extends to property owned today by Amtrak. To the contrary, Congress very carefully prescribed the statutes that apply to Amtrak, and the Board’s role with respect to Amtrak. The Board cannot override a federal statute to expand its jurisdiction, nor can it give Metra rights under federal law greater than what Congress allowed – yet that is exactly what Metra is asking the Board to do.

Congress expressly exempted Amtrak from all but certain provisions of Subtitle IV of Title 49. It did this deliberately and expressly. There is not an error, a loophole, or a gap the Board must find a way to fill. Metra’s disagreement here is with Congress.

In addition, the results Metra seeks would undermine Congress’s intent. Amtrak is authorized to acquire assets, such as facilities, that are necessary for intercity and commuter rail passenger transportation. *See* 49 U.S.C. § 24305(a)(1). If the Board adopted Metra’s arguments, assets purchased by Amtrak after its formation would be subject to a statutory scheme from

⁶ Metra also seems to suggest that there is something untoward about the absence of Board approval for the Amtrak-CUSCO merger. On the contrary, no approval was required. Under 49 U.S.C. § 11323, certain acquisitions of control of rail carriers may be carried out only with Board approval. But again, Section 11323 does not apply to Amtrak pursuant to Section 24301(c), because Section 11323 is within Subtitle IV, from which Congress exempted Amtrak.

which Congress expressly exempted Amtrak. Different Amtrak assets would be subject to different statutes, regulations and exemptions therefrom – not based on the types of assets or their function, or their ownership and use by Amtrak, but on when they were bought and from whom. There is no indication that Congress enacted such an absurdity when it exempted Amtrak from the bulk of Subtitle IV.

For these reasons, Metra’s two primary arguments to the contrary must be rejected. First, Metra claims that only the Board can remove the CUS properties from the scope of the Board’s jurisdiction. (Metra Pet. at 15-16.) But that is wrong. Congress decides the scope of the Board’s authority. Here, Congress decided that Amtrak is specifically exempt from Subtitle IV (with exceptions not applicable here). Thus, when a terminal facility is owned by Amtrak, it is not owned by a “rail carrier” and Sections 11102 and 28502 do not apply.⁷

That is consistent with the Board’s precedent. In *National Railroad Passenger Corporation & CSX Transportation, Inc. – Pet. for Declaratory Order*, Docket No. FD 35675 (STB served Oct. 16, 2012) (“*Hudson Line*”), Amtrak and CSX asked the Board for a declaratory order that the Board did not have regulatory authority over Amtrak’s lease from CSX of 94 miles of rail line and certain facilities. *Id.* at 1. The Board agreed with Amtrak and CSX that under Section 24301 it did not have regulatory authority over the transaction, and that the transaction therefore did not require Board approval. *Id.* at 2.

⁷ Metra proposes an analogy: that Berkshire Hathaway could not merge BNSF into itself to avoid the Board’s jurisdiction. (Metra Pet. at 16.) While that is probably true, it is not for the reasons given by Metra. Rather, by merging BNSF into itself, Berkshire Hathaway as an entity would fit within the definition of “rail carrier,” making Board jurisdiction appropriate. But Congress has not enacted a statute expressly exempting Berkshire Hathaway from such jurisdiction. Congress enacted a statute expressly exempting Amtrak from such jurisdiction, so the analogy is too badly flawed to be any help.

The Board's holding in *Hudson Line* illustrates the noncontroversial proposition that the Board's jurisdiction over Amtrak is limited to the specific provision enumerated in Section 24301(c). In other words, it does not matter whether the Board would have jurisdiction with respect to agreements regarding the use of Chicago Union Station if any entity other than Amtrak had acquired it. What matters is whether the Board has authority in light of the fact that *Amtrak* owns it. Section 24301(c) is explicit that the Board's jurisdiction does not extend to these circumstances.

Metra's second argument – that Congress has taken purposeful steps to give commuter rail authorities specific and meaningful remedies before the Board – fares no better. (Metra Pet. at 17-20.) Metra takes into account only one side of the equation. It fails to consider the statutes governing *Amtrak*, and the reasons Congress expressly exempted Amtrak from the very remedies Metra cites. Thus, when Metra says that “the above described remedial provisions reflect Congressional intent to involve the Board in commuter rail/common carrier interactions” (*id.* at 18), it fails to acknowledge the Congressional intent to exempt Amtrak.

Sections 11102 and 28502 plainly do not apply even if Amtrak and Metra fail to reach agreement. The Board cannot prescribe terms of conditions and compensation for Metra's use of CUS, or force Amtrak to mediate a dispute with Metra. To the extent the Board decides to reach the merits of these questions, it should deny Metra's Petition in its entirety.⁸

⁸ Metra has not even engaged with other key jurisdictional issues raised by its Petition. See *Ashley Creek Phosphate Co. v. Chevron Pipe Line Co.*, No. 40131, 1990 WL 287857, at *6 (I.C.C. served Sept. 14, 1990) (“The party invoking jurisdiction has the burden of proving its actual existence.”). First, there is the question whether this matter is within the exclusive jurisdiction of the Special Court created by the Regional Rail Reorganization Act of 1973 (the “3R Act”) because it relates to Amtrak's initial purchase of half of CUSCO's stock pursuant to the Final System Plan under the 3R Act. See 45 U.S.C. § 719; *City of New York v. Nat'l R.R. Passenger Corp.*, 776 F.3d 11, 13 (D.C. Cir. 2015); *New Jersey Ass'n of Railroad Passengers and National Ass'n of Railroad Passengers – Petition for Declaratory Order – Princeton*

C. Metra's Request for Institution of Proceeding and Adoption of Procedural Schedule Is Moot.

On a final note, Metra asks the Board to adopt a procedural schedule whereby replies to the Petition are due 45 days after the Board initiates proceedings, and replies to the replies are due 20 days after that. Now that Amtrak has replied, there is no need for the Board to adopt a procedural schedule providing Amtrak a date by which to reply.

Metra states that other “interested stakeholders” may want to respond to the Petition. (Metra Pet. at 21.) However, Metra offers no reason why those entities could not have responded within the 20 days required under 49 C.F.R. § 1104.13(a).

On April 20, 2018, Virginia Railway Express (“VRE”) sent a letter to the Board asking it to adopt Metra’s proposed schedule.⁹ The letter states that “VRE intends to share its views at the appropriate juncture.” But the “appropriate juncture” is now, 20 days from the filing of the Petition as required by the Board’s rules. Indeed, VRE does not ask for an extension as required

Branch, FD No. 35745 (STB served July 24, 2014) (noting that the principle that “a rail freight line can[] lose its common carrier status ... only upon abandonment authorized by this agency” does not apply to rail interest conveyed under the “unique statutory regime” of the 3R Act). Second, Metra concedes the Board does not generally have jurisdiction over it pursuant to Section 10501(c)(2)(B), but cites Section 10501(c)(3)(B) to baldly assert that it meets the exception for Section 11102 matters. (Metra Pet. at 5-6.) Metra cites *Norfolk & Western Railway Company – Petition for Declaratory Order – Lease of Line in Cook and Will Counties, Ill.*, FD No. 32279 (STB served Feb. 3, 1999). But Metra ignores the Board’s pronouncement that whether it can meet this requirement is “a close question” — and one the Board did not reach in that case. Third, under 49 U.S.C. § 24301(j), laws that apply to joint use or operation facilities and equipment do not apply at all to a “person making an agreement with Amtrak to the extent necessary to allow the person to make and carry out obligations under the agreement.”

⁹ It is unclear what interest VRE has in this proceeding. VRE has an agreement with Washington Terminal Company (“WTC”), an Amtrak subsidiary, under which VRE has access to Washington Union Station. But that contract is not currently under negotiation, and there is not even a hint of a ripe dispute between VRE and WTC.

by 49 C.F.R. § 1104.7(b), but rather seeks to delegate to itself the ability to file at some undetermined time in the future after it sees Amtrak's reply to Metra's Petition.¹⁰

Metra, which encouraged participation by "other interested parties," seeks to create a lengthy and extended proceeding involving rail facilities "well beyond the Chicago metropolitan area" (Metra Pet. at 20-21) governed by different contractual arrangements, statutory schemes and factual circumstances – none of which are the subject of any current dispute within the jurisdiction of the Board. This underscores the fact that, as demonstrated above, Metra's Petition is premature, unnecessary, and a waste of the Parties' resources. The Board now has all the information necessary to address and dismiss the Petition, and Amtrak asks that the Board do so expeditiously.

IV. CONCLUSION

For all the foregoing reasons, Amtrak respectfully requests that the Board exercise its discretion and decline to open a proceeding or issue a declaratory order at this time.

¹⁰ Metra's proposal also includes a date for a "Metra rebuttal filing." Under the Board's rules, "a reply to a reply is not permitted." 49 C.F.R. § 1104.13(c). Nonetheless, Amtrak will not oppose Metra's reply if it is filed within 10 days of this filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, April 26, 2018, caused copies of the foregoing Reply of the National Railroad Passenger Corporation (Amtrak) to Petition for Declaratory Order to be served by electronic mail and overnight delivery on:

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