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By E-Filing

September 21, 2017

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

ENTERED
Office of Proceedings
September 21, 2017
Part of
Public Record

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

Dear Ms. Brown:

On September 14, 2017, Amtrak submitted its rebuttal submission in the above captioned proceeding. We have discovered inadvertent errors in the Volume I Summary of the Rebuttal Verified Statements, the Joint Rebuttal Verified Statement of Paul Vilter and Jason Maga, the Rebuttal Verified Statement of Alan Frankel, and the Joint Rebuttal Verified Statement of John Williams and Judith Roberts.

Attached please find Exhibit A, which contains a redline of the errata and Exhibit B, which contains clean versions of the pages containing the corrections. We have labeled the corrected pages with an "E" to identify those pages as corrected.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Justin J. Marks', is written over a horizontal line.

Justin J. Marks
Attorney for National Railroad
Passenger Corporation

Enclosures: Exhibits A and B

cc: David A. Hirsh

EXHIBIT A

Volume I Summary of the Rebuttal Statements

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35743

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

**REBUTTAL SUBMISSION OF NATIONAL RAILROAD PASSENGER
CORPORATION**

National Railroad Passenger Corporation (“Amtrak”) hereby submits its Rebuttal Submission in this proceeding. The Rebuttal Submission consists of the following Rebuttal Verified Statements (accompanied by, where applicable, supporting Exhibits or Attachments).

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Mr. Vilter is the Assistant Vice President, Amtrak Services and Mr. Maga is a Senior Manager in the Host Railroad’s Group at Amtrak. Their Joint Rebuttal Verified Statement discusses the multitude of deficiencies in CN’s proposal to charge Amtrak for purported “delay costs” that CN claims to have incurred as a result of Amtrak’s presence on its lines. The Vilter/Maga Joint Rebuttal Verified Statement also highlights significant problems with CN’s alternative proposal to require Amtrak to fund approximately \$~~350-377~~ million to \$~~450-534~~ million in capital improvements on CN’s lines. In addition, their Rebuttal Verified Statement explains why CN’s complaints about Amtrak’s schedules on the City of New Orleans and Illini/Saluki routes are unfounded. Finally, it describes the minimum changes that would be necessary if the Board decided to require the parties to retain the current checkpoint/relief-based

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Mr. Williams and Ms. Roberts, President and Vice President respectively of The Woodside Consulting Group, have more than 75 years of collective experience with railroad operations, management, capacity modeling and related matters. Their Joint Rebuttal Verified Statement analyzes the capacity modeling studies conducted by CN to support CN's alternative relief claim that Amtrak should pay for over ~~\$350~~370-~~\$450~~530 million in capital improvements on CN's lines. The Williams/Roberts Verified Statement highlights the design flaw and other deficiencies of the capacity modeling studies conducted by CN to support this claim. It also illustrates the deficiencies in the pure running time simulations conducted by CN's modelers.

Volume III

F. Rebuttal Verified Statement of Edward Fishman.

Mr. Fishman, outside counsel for Amtrak in this proceeding, is submitting a Rebuttal Verified Statement in order to verify the authenticity of certain workpapers that CN provided to Amtrak in support of the Joint Verified Statement of Harald Krueger, Brian Doyle and Nikola Rank and to submit the deposition testimony of CN's Harald Krueger regarding those workpapers and other matters relating to the capacity modeling studies that were conducted by CN.

Joint Rebuttal Verified Statement of
Paul Vilter and Jason Maga

when the Amtrak train is likely to arrive on CN's lines.¹²⁹ CN also claims that Amtrak does not regularly inform CN of when late trains are likely to arrive.¹³⁰ Accordingly, CN seeks relief for:

Delays caused by freight train interference that prevents Amtrak from entering CN's line when an Amtrak train arrives at an entry point to a CN line more than 15 minutes after its scheduled arrival without having provided CN with notification of such arrival at least 30 minutes in advance.¹³¹

The responsibility for communications regarding the status and location of Amtrak trains (including trains running behind schedule by any amount of time or distance) must rest with the host railroads. When an Amtrak train is operating on the line of a host railroad, the train relies on the host for dispatching.¹³² Host railroads routinely hand off freight and Amtrak trains from one railroad to another and work out such movements by communicating with each other and by providing reciprocal access to each other's dispatching screens. There is no reason why CN cannot do the same when handing off or receiving Amtrak trains.

CN can establish or use existing communication channels with other hosts to find out when the Amtrak train is likely to arrive on CN's lines. When an Amtrak train is running behind schedule, CN's dispatchers and other host dispatchers are in the best position to discuss likely hand-off times, the location of other trains in the area and other factors relating to successful and timely hand-off of Amtrak trains.¹³³ Host railroad dispatchers routinely communicate with each other regarding freight traffic interchange, crossing of interlockings, use of trackage rights on

¹²⁹ Ladue/Kuxmann V.S., 59.

¹³⁰ Id.

¹³¹ [Ladue/Kuxmann V.S., Exhibit 15](#), Ladue/Kuxmann V.S., Exhibit 15, CN Proposed Appendix V Section A.1.e.13.

¹³² When Amtrak trains are on Amtrak lines (which are dispatched by Amtrak), Amtrak communicates with connecting railroads regarding the status and location of its trains (including trains running behind schedule).

¹³³ In addition, Amtrak's dispatchers are unlikely to have the most current or accurate information about the time that the Amtrak train is likely to arrive on CN's line (because other host railroad dispatchers have direct control over that train's authority to move over their territory). Thus, any information that Amtrak could provide to CN's dispatchers about the location and anticipated arrival of that train would be based on speculation.

Rebuttal Verified Statement
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interference costs and capacity expansions, or curtailing or modifying its service, he opines, also will serve the “public interest ... in the optimum amount and quality of intercity passenger rail service.”²⁷

In other words, Professor Willig contends that Amtrak’s operations increase CN’s operating costs and reduce CN’s profits from providing freight services. He proposes that Amtrak compensate CN for all such alleged increased costs and alleged lost profits by having Amtrak pay for more capacity, reduce its service, or pay CN enough so that CN would in effect be indifferent concerning the level or timing of Amtrak passenger service.

In this section, I provide an economic analysis of Professor Willig’s proposed definition of incremental costs and his call for additional remedies by Amtrak, including schedule changes, service reductions and capacity expansion at Amtrak’s expense. I show that his definition of incremental costs is too broad, both in time-horizon and scope, and that the delay and interference costs he describes (and his call for Amtrak to adjust its schedules and level of service to accommodate CN and to invest in expansion of CN’s capacity) ignore Amtrak’s Congressionally mandated preference and the Congressional call for continuation and improvement in intercity passenger rail service.

While invoking the language of incremental costs, Professor Willig effectively proposes an entirely different policy framework in which [CN could give](#) freight traffic ~~would have a~~ preference over passenger traffic and Amtrak would have to contribute towards CN’s common costs and profits.

Moreover, Professor Willig does not limit the amount that Amtrak might need to reduce its use of CN’s lines, meaning that his proposal could imply that Amtrak eliminate its use of CN’s lines altogether (which obviously would contravene the Congressional intent to maintain and improve intercity passenger rail service).

Finally, considering the significance of the Amtrak statutory preference, it is not economically reasonable to attribute to Amtrak a host’s delay and interference costs, let alone include such costs in

²⁷ Willig Statement, p. 2.

transportation *expenses* which could be saved if a particular service were eliminated.”⁴² Professor Willig’s description of foregone business, reduced demand for freight and price suppression, and the resulting lost or foregone profit refer to opportunity costs,⁴³ which are not “expenses.” Indeed, Professor Willig acknowledges that it is not possible even to measure some of the costs he contends Amtrak should pay.⁴⁴ This ~~is another reason why~~reflects the fact that these three delay costs categories are not expenses and therefore not incremental costs.

It is unreasonable to include opportunity costs in the definition of incremental costs for purposes of determining Amtrak’s payments to CN. Including opportunity costs is economically equivalent to requiring Amtrak to pay full arms-length market prices to induce CN to voluntarily provide Amtrak access to CN’s facilities. But Congress specifically rejected even the ICC’s determination that compensation should be based on fully allocated costs or long-run avoidable costs, let alone market rates including a profit to the host.

3.4. The Capacity Expansion Element of Professor Willig’s “Delay and Interference Costs” Goes Well Beyond Incremental Costs

The fifth element of Professor Willig’s list of claimed delay and interference costs is “the costs of additional capacity required to replace capacity utilized to accommodate hosting requirements.”⁴⁵ This “delay and interference cost” is different than the other four because rather than an out-of-pocket payment to CN, Professor Willig identifies capacity additions funded by Amtrak as a method for Amtrak to avoid imposing delay and interference costs on CN not otherwise paid for (or eliminated by changes in Amtrak service), rather than a separate category of delay and interference costs.⁴⁶ Logically, it is only

⁴² Penn Central, at 832 (emphasis added).

⁴³ In the context of capacity cost replacement, Professor Willig refers to delay and interference costs as “direct and opportunity costs of delay and interference.” Willig Statement, p. 6.

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B. Our Evaluation of CN's PRT Calculations.

As a preliminary step in conducting the capacity modeling studies, and in related analyses, the CN modelers utilized a proprietary TPC calculator unique to CN to simulate the pure run time ("PRT") for each Amtrak service that traverses the IC Corridor and GTW Corridor. The TPC calculator used by the CN modelers incorporates an internally-developed modification to the underlying physics equations and consequently produces PRT results that may differ from those of other train performance calculators.¹¹

The PRT calculations developed by the CN modelers are dependent on the train consist sizes and other inputs to CN's TPC.¹² However, the PRT results summarized in the Krueger V.S. reflect the inclusion of faulty inputs to the TPC simulations. These inputs include incorrect Amtrak train consists, an unrealistic route through Memphis, and inaccurate train speeds, all of which serve to distort the PRT results. In addition, the CN modelers' claim about the length of time required by Amtrak trains when using CN crossovers is unsupported by specific evidence.

Finally, CN workpapers demonstrate that CN calculated PRTs for Amtrak services on the GTW Corridor that are equal to or shorter than the PRTs in the Amtrak schedules for those services. The CN modelers did not mention these findings in the Krueger V.S.¹³

For the reasons summarized here and discussed further in Section VIII below, it is our opinion that the TPC simulations used by the CN modelers to generate the PRT results reflected in the Krueger V.S. are not reliable.

¹¹ Krueger V.S. at 7, 35. The Krueger V.S. refers to pure run time calculations derived from the TPC simulations as "minimum run time" or "MRT," rather than pure run time or PRT (which is the term for the equivalent concept used by Amtrak). *See id.* at 36.

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¹³ *See generally*, Krueger V.S.

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