

SERVICE DATE – SEPTEMBER 27, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36332

PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
FOR PROCEEDING UNDER 49 U.S.C. § 24903(c)(2)

Digest:¹ This decision institutes a proceeding and establishes a procedural schedule.

Decided: September 26, 2019

On July 22, 2019, the National Railroad Passenger Corporation (Amtrak) filed a petition under 49 U.S.C. § 24903(c)(2), requesting that the Board institute a proceeding, establish a procedural schedule, and enter an order determining the compensation and terms for the use of Chicago Union Station by the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively, Metra). (Pet. 1.)²

Metra replied on August 12, 2019, and stated that it did not object to Amtrak’s request for a proceeding under 49 U.S.C. § 24903(c)(2). (Reply 1.) Metra also proposed a revised procedural schedule that it stated it had developed with Amtrak. (Id., Proposed Amtrak/Metra Procedural Schedule.)

Under 49 U.S.C. § 24903(a)(6), Amtrak may make agreements “with other carriers and commuter authorities to grant, acquire, or make arrangements for . . . commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) [3R Act] and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) [4R Act].” Such an agreement “shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Amtrak also requested that the Board enter an interim service order allowing Metra to continue to access Chicago Union Station under the terms of a May 1, 1984 agreement between Metra and Chicago Union Station Company, which had been extended until July 29, 2019. (Pet. 2, 7.) Amtrak stated that Metra agreed that such an order would be appropriate. (Pet. 7 n.3.) On July 26, 2019, the Board issued the requested service order.

commuter rail passenger, and rail freight transportation.” 49 U.S.C. § 24903(c)(1). If Amtrak and the commuter authority do not agree on terms, the Board “shall order that the transportation continue over facilities acquired under the [3R Act and 4R Act] and shall determine compensation (without allowing cross-subsidization . . .) for the transportation not later than 120 days after the dispute is submitted.” 49 U.S.C. § 24903(c)(2).

The Board will institute a proceeding to determine the compensation that Metra must pay Amtrak for the use of Chicago Union Station.³ The Board will also adopt the procedural schedule proposed by Amtrak and Metra, with one exception.

Amtrak and Metra’s proposed schedule, as outlined in Metra’s reply, proposes that the Board will issue a decision 120 days from the date on which the decision instituting a proceeding is issued. Section 24903(c)(2) requires that the Board “determine compensation . . . not later than 120 days after the dispute is submitted.” For the purposes of § 24903, submission of a dispute does not occur when the Board institutes a proceeding; rather, the dispute is submitted when the record is closed.⁴ Accordingly, the Board will issue a decision within 120 days of that date.

The Board will establish the following procedural schedule:

- Day 0** Service date of this decision.
- Day 2** Parties exchange preliminary, non-prejudicial list of issues for further negotiation to narrow issues for Board decision.
- Day 4** Parties submit any disputes over time and manner of discovery to Board.
- Day 7** Discovery commences.

³ Last year, the Board denied as premature a related petition in which Metra sought a declaratory order stating that the Board retains jurisdiction over Chicago Union Station and has the authority to prescribe terms for its use and to mediate related disputes. See Commuter Rail Div. of the Reg’l Transp. Auth. & Ne. Ill. Reg’l Commuter R.R. Corp.—Pet. for Declaratory Order—Status of Chi. Union Station, FD 36171, slip op. at 1, 4 (STB served Aug. 22, 2018). The Board raised several questions that Amtrak and Metra would need to answer should a related petition for declaratory order be filed in the future. See id. at 4-5. Those questions do not need to be answered at this time because Amtrak now concedes that Chicago Union Station remains within the interstate rail system. (Pet. 6 n.2 (stating that “Metra’s primary concern—that Amtrak ‘removed Chicago Union Station from the rail system’—is simply not true” (citation omitted) and that “[t]he Board is authorized to order that Metra be permitted to continue to use Chicago Union [Station] and set the compensation for such use”).)

⁴ Cf. Submit, Black’s Law Dictionary (11th ed. 2019) (“To end the presentation of further evidence in (a case) and tender a legal position for decision”); Alaska Survival v. STB, 705 F.3d 1073, 1073 (9th Cir. 2013) (noting the case was “[a]rgued and [s]ubmitted” on the date of oral argument before the appellate panel).

Day 45 Close of discovery; joint submission to the Board of issues for determination.

Day 70 Parties file simultaneous opening statements with evidentiary submissions.

Day 100 Parties file simultaneous replies with evidentiary submissions.

It is ordered:

1. A proceeding is instituted.
2. The parties shall comply with the procedural schedule set forth in this decision.
3. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman. Board Member Oberman did not participate.