

SERVICE DATE – FEBRUARY 19, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35743

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

Digest:¹ This decision announces a technical conference to discuss requests for additional information.

Decided: February 18, 2025

In a decision served on October 31, 2022, the Board explained that, based on its review of the record, it anticipated that it would require additional information from National Railroad Passenger Corporation (Amtrak) and Illinois Central Railroad Company and Grand Trunk Western Railroad Company (collectively, Canadian National Railway Company (CN)) to resolve the matters presented in this proceeding. Application of the Nat'l Passenger R.R. Under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., FD 35743, slip op. at 16 (STB served Oct. 31, 2022). The Board has identified the additional information that it anticipates requiring and is sharing that information below. However, before ordering the submission of additional information, Board staff will hold a technical conference with Amtrak and CN² to discuss the forthcoming requests to ensure that the parties fully understand the requests and will be able to provide complete and timely responses. At the technical conference, the parties will be expected to make available individuals with the knowledge and expertise to discuss these issues in detail. The parties will be given the opportunity to ask questions to clarify the information requests and to address issues related to feasibility, but the parties will not be permitted to discuss the merits of any terms either party has proposed for the new operating agreement.

The technical conference will be held on March 11, 2025, at 10:00 a.m. at the Board's headquarters located at 395 E Street S.W., Washington, DC. Because the conference will involve discussion of the confidential terms of the parties' operating agreement (OA), participation will be limited to persons who have signed an undertaking provided in the protective order governing this proceeding, which may include employees of the parties, outside counsel, and outside consultants. The conference will be transcribed. The transcription, redacted as necessary to protect confidential information, will be placed in the public record. To

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Amtrak and CN collectively are referred to herein as "the parties."

facilitate a productive technical conference, each party will be ordered to identify its attendees and any specific technical questions it seeks to discuss at the conference by February 28, 2025.

Planned Requests for Additional Information

On-Time Performance and Schedules

1. Tolerances: CN is ordered to explain why its proposed additional tolerances in Section A.1.f of its proposed OA are justified. (See CN Opening Ex. 2 at App. V-3, Nov. 30, 2022.)
2. Schedule status: The parties are ordered to explain whether the Amtrak schedules covered by the OA have been certified. For any schedules that are still disputed, the parties are ordered to explain the current status of the non-binding dispute resolution process required by 49 C.F.R. § 273.5. Certified schedules will be required by the Board as the basis for a new OA.

Incentives and Penalties

1. Payment and penalty data: CN and Amtrak are each ordered to provide the calculations and underlying data for incentive and penalty payments for calendar year 2024 based on their proposed methodologies. The information should be broken down by month and by Amtrak route.
2. Performance rates and multipliers: CN is ordered to explain how the performance rates and timeliness and lateness multipliers were derived and explain why its methodology is appropriate. (See CN Opening Ex. 2 at App. V-9 to V-11, Nov. 30, 2022.)
3. Sunset Limited and Adirondack routes: The parties are each ordered to address whether the new OA should cover Amtrak service on CN-owned portions of the Sunset Limited route and the Adirondack route and to explain the basis of their positions. If a party does not believe the new OA should apply to these route segments, that party is ordered to explain how accountability for delays on these segments will be accomplished.

Host Responsible Delays (HRDs)

1. Relief item covering interlockings not controlled by CN: The parties are ordered to provide an inventory of interlockings not controlled by CN and copies of the joint facility agreements covering each of these interlockings. (See CN Opening 46-47, Nov. 30, 2022.)
2. Relief for freight train interference (FTI) when an Amtrak train arrives late to CN's line: CN proposes that it should get relief for FTI delays in situations where Amtrak arrives late to CN's line without sufficient notice. (See CN Opening 51-54, Nov. 30, 2022.) CN is ordered to clarify what information it believes Amtrak would be required to provide in a notice to CN in such situations.

3. Relief for slow orders imposed to address safety issues related to Amtrak's equipment: Each party is ordered to address whether it believes the short shunt issue has been resolved. (See CN Opening 56, Nov. 30, 2022.) In addition, each party is ordered to explain whether there are any other situations where CN imposes slow orders due to Amtrak's choice of equipment. (See id.)
4. Commuter train interference when Amtrak train arrives late: CN is ordered to explain whether there are any terms in any agreement it has with the Northeast Illinois Regional Commuter Railroad Corporation (Metra) that relate to whether Metra should be given preference over Amtrak by CN and, if so, what those terms state. (See CN Opening 54, Nov. 30, 2022.)
5. Do Not Counts (DNCs):
 - a. CN is ordered to clarify Section A.5.b of CN's proposed OA. CN should explain how Section A.5.b would work with CN's proposed incentive/penalty system, which accounts for the degree of lateness, and how Section A.5.b relates to Section A.5.c., including whether both sections could potentially apply to the same Amtrak trip. (See CN Opening Ex. 2 at App. V-5 to App. V-7, Nov. 30, 2022.)
 - b. Certain DNC provisions proposed by CN involve events that would not necessarily result in a significant delay. (See CN Opening 59, Nov. 30, 2022.) Each party is ordered to propose a minimum delay threshold for all DNC categories or some other mechanism to ensure short delays do not result in DNCs.

Incremental Costs

1. Cost estimates for incremental freight delay costs: CN is ordered to provide estimates of the incremental freight train delay costs that it claims are incurred by CN and chargeable to Amtrak according to CN's proposal. (CN Opening 82-94, Nov. 30, 2022.) The estimates should be broken down by incremental freight delay cost category and subcategory, by quarter or partial quarter, and by Amtrak route. CN should provide estimates for each of the following periods:
 - a. Retrospectively, estimates for each quarter of actual operations for calendar year 2024;
 - b. Prospectively, projections for each quarter or partial quarter beginning on the day following this order and ending with September 30 of the fifth complete Amtrak fiscal year following this order.

CN is also ordered to supply all methodologies, assumptions, and calculations underlying the above estimates, including freight and passenger rail traffic projections on which future delays are based.

2. Per-mile charge for incremental costs: CN and Amtrak are each ordered to propose a reasonable per-Amtrak-train-mile charge to account for incremental freight delay costs that could be applied in lieu of requiring the calculation of actual incremental freight delay costs if the Board includes incremental freight delay costs in the OA. Each party should explain its proposed methodology for calculating the per-mile charge.

Miscellaneous Items

1. Lookback: CN is ordered to address how, if at all, a lookback provision increases or decreases incentives for CN non-management or management staff to meet performance goals. As part of its response, CN should address whether management compensation or non-management compensation is tied to CN earning incentives under the OA. CN should also explain in what situations, if any, a lookback provision eliminates or reduces incentives for non-management or management employees to achieve on-time performance.
2. Reopener: Because the Board generally agrees with each party that the other's reopener is unreasonable, each party is ordered to propose an alternative reopener consistent the Board's previous guidance on the issue, see Application of the Nat'l Passenger R.R. Under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., FD 35743, slip op. at 16 (STB served Aug. 9, 2019) (a reopener should "result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance"). Each party should also consider and comment on a reopener provision that, in response to a given period of poor on-time performance, would either (1) remove the lookback provision entirely, or (2) replace it with one having terms less favorable to CN (e.g., a longer lookback term and/or the ability to offset incentives earned on one route with penalties incurred on other routes).

The Board intends to expeditiously finalize the information requests and establish a schedule for initial submissions and replies in a future decision following the technical conference.

It is ordered:

1. Board staff will hold a technical conference with Amtrak and CN on March 11, 2025, at 10:00 a.m. at the Board's headquarters located at 395 E Street S.W., Washington, DC.
2. Amtrak and CN each will submit a list of its attendees and any specific technical questions it seeks to discuss at the conference by February 28, 2025.
3. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.