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August 12, 2019

248308

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
August 12, 2019
Part of
Public Record

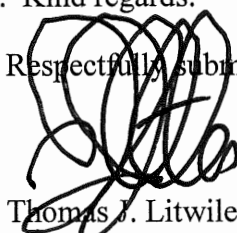
Re: **Docket No. FD 36332**
National Railroad Passenger Corporation -- Petition
For Proceedings Under 49 U.S.C. § 24903(c)(2)

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Reply of Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation to Petition of National Railroad Passenger Corporation**, dated August 12, 2019.

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

Respectfully submitted,



Thomas J. Litwiler
Attorney for Commuter Rail Division of the
Regional Transportation Authority and Northeast
Illinois Regional Commuter Railroad Corporation

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36332

NATIONAL RAILROAD PASSENGER CORPORATION –
PETITION FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)

**REPLY OF COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY AND NORTHEAST ILLINOIS
REGIONAL COMMUTER RAILROAD CORPORATION TO
PETITION OF NATIONAL RAILROAD PASSENGER CORPORATION**

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

Dated: August 12, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36332

NATIONAL RAILROAD PASSENGER CORPORATION –
PETITION FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)

**REPLY OF COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY AND NORTHEAST ILLINOIS
REGIONAL COMMUTER RAILROAD CORPORATION TO
PETITION OF NATIONAL RAILROAD PASSENGER CORPORATION**

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 reply to the petition (the “Petition”) of the National Railroad Passenger Corporation (“Amtrak”) seeking to initiate proceedings under 49 U.S.C. § 24903(c)(2) to determine the compensation and terms for Metra’s continued use of Chicago Union Station (“CUS”) in Chicago, Illinois. Metra does not object to Amtrak’s request for a Board proceeding under Section 24903(c)(2), and proposes a revised procedural schedule, attached hereto, which it has developed with Amtrak.¹

The Board is familiar with the background of this matter as a result of the proceedings and decision last year in Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation – Petition for

¹ By decision served July 26, 2019, the Board granted Amtrak’s request for interim relief and ordered Amtrak to continue providing Metra access to CUS on current terms until further order of the Board. Metra’s access to and use of CUS has been governed by a May 1, 1984 agreement (the “1984 Agreement”) entered into by Metra and Chicago Union Station Company, and subsequently amended and extended several times, that expired on July 29, 2019.

Declaratory Order – Status of Chicago Union Station, Docket No. FD 36171 (STB served Aug. 20, 2018) (“CUS Status”). Metra asked the Board in that proceeding to determine that Amtrak’s merger of Chicago Union Station Company (“CUSCo”) into Amtrak had not affected: the Board’s jurisdiction over CUSCo’s railroad properties (including CUS); the Board’s authority to prescribe terms for Metra’s use of the CUS properties under 49 U.S.C. § 11102 (terminal trackage rights); or the Board’s ability to mediate any dispute concerning CUS access under 49 U.S.C. § 28502. In CUS Status, the Board denied Metra’s petition for a declaratory order as premature, but provided guidance to the parties on the relevant issues to be addressed should the matter return to the agency.

In its Petition, Amtrak proposes that the Board address compensation and terms for Metra’s continued use of CUS under 49 U.S.C. § 24903(c)(2), which provides the Board with authority to determine the compensation and terms for a commuter agency’s use of Amtrak facilities that were acquired pursuant to (as relevant here) the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701, *et seq.* (“3R Act”). Petition at 3. Amtrak suggests that authority can be invoked here because Amtrak acquired an initial 50% stock ownership stake in CUSCo in 1976 pursuant to the so-called “Final System Plan” adopted by the United States Railway Association under the 3R Act.² *Id.*

Metra is willing to participate in a proceeding initiated under Section 24903(c)(2) to determine the compensation and terms that will govern Metra’s future use of CUS. Metra

² Amtrak acquired the remaining 50% of CUSCo’s stock in 1984 from Burlington Northern Railroad Company and the bankruptcy trustee of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, making CUSCo a wholly-owned Amtrak subsidiary. See Penn Central Corp. v. Chicago Union Station Co., 830 F. Supp. 1509, 1515 (Sp. Ct. R.R.R.A. 1993).

agrees the parties' negotiations have reached a sufficient impasse that Board involvement is appropriate at this time.

Metra does note that although Amtrak's initial stock interest in CUS was acquired via the 3R Act, CUS is outside the Northeast Corridor and is thus not subject to 49 U.S.C. § 24905 or the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy promulgated by the Northeast Corridor Commission thereunder.³ *Compare* 49 U.S.C. § 24903(c)(2) (citing 45 U.S.C. § 701 *et seq.*) and 49 U.S.C. § 701(b)(1) (identifying applicability of 3R Act to "midwest and northeast")) *with* 49 U.S.C. § 24905(c) (policy to govern Northeast Corridor) and 49 U.S.C. § 24102(8) (defining Northeast Corridor). Metra also does not necessarily agree with each characterization of the substantive issues contained in the Petition. Metra particularly questions Amtrak's reference to an "infrastructure recapitalization arrangement," Petition at 4, and the apparent implication that the Board should determine future capital expenditures at CUS. For more than thirty years, Metra and CUSCo (now Amtrak) have voluntarily agreed on the undertaking and funding of capital projects at CUS. Those arrangements are reflected in an "Agreement for Construction of Fixed Facilities at Chicago Union Station" dated October 1, 1985 and subsequently amended by the parties thirty-eight (38) time – most recently in April of this year.⁴ Metra disputes that the parties have reached an impasse on future capital expenditures at CUS, or that there is any basis or reason for Board intrusion into that process that remains ongoing between the parties even today.

³ While Section 24905, which establishes the Northeast Corridor Commission, references Section 24903 for certain procedural timelines that would apply in a Board proceeding under Section 24905, Section 24903 has no corresponding incorporation of Section 24905 and operates on a stand-alone basis.

⁴ This is generally referred to as the "Fixed Facility Agreement," or "FFA." It is a separate agreement from the recently-expired 1984 Agreement governing Metra's use of CUS.

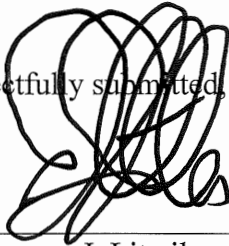
Such matters will necessarily be developed further during the course of this proceeding. The procedural schedule discussed below includes an opportunity for the parties to identify the scope of issues to be addressed by the Board.

Prior to Amtrak's filing of its Petition, the parties had discussed a procedural schedule that contemplated simultaneous opening and reply filings by Amtrak and Metra. In response to the somewhat different procedural schedule proposed in the Amtrak Petition, Metra and Amtrak have consulted further and jointly developed the revised procedural schedule attached hereto. The parties request that the Board adopt this proposed schedule in any decision instituting a proceeding in this matter.

WHEREFORE, Metra states that it does not object to the institution of a proceeding pursuant to 49 U.S.C. § 24903(c)(2), and respectfully requests that the Board adopt the procedural schedule attached hereto.

Respectfully submitted,

By: _____


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

Dated: August 12, 2019

DOCKET NO. FD 36332

PROPOSED AMTRAK/METRA PROCEDURAL SCHEDULE

- D = Later of September 3, 2019 or date of Board order initiating proceeding.
- D + 2 days – Parties exchange preliminary, non-prejudicial list of issues for further negotiation to narrow issues for Board decision
- D + 4 days – Parties submit any disputes over time and manner of discovery to Board.
- D + 7 days – Discovery commences.
- D + 45 days – Close of discovery; Joint submission to Board of issues for determination.
- D + 70 days – Parties file simultaneous Opening Statements with evidentiary submissions.
- D + 100 days – Parties file simultaneous Replies with evidentiary submissions.
- D + 120 days – Final Board decision.

CERTIFICATE OF SERVICE

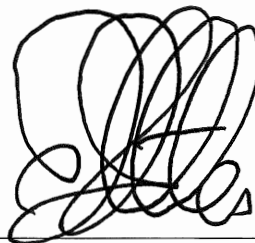
I hereby certify that on this 12th day of August, 2019, a copy of the foregoing
**Reply of Commuter Rail Division of the Regional Transportation Authority and Northeast
Illinois Regional Commuter Railroad Corporation to Petition of National Railroad
Passenger Corporation** was served by electronic mail and first-class mail, postage prepaid,
upon:

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and by first-class mail, postage prepaid, upon:

William H. Herrmann
Christine E. Lanzon
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, DC 20002

A handwritten signature in black ink, appearing to read 'Thomas J. Litwiler', is written over a horizontal line.

Thomas J. Litwiler