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Position Statement on CTA Case # 23-28548

Applicant: Via Rail Canada Inc.

Respondent: Canadian National Railway Company

Legislative Reference: CTA Section 152.1

Submitted to: secretariat@otc-cta.gc.ca

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Background – Transport Action Canada

As a national passenger transportation and sustainable mobility advocacy organization, Transport Action Canada (TAC) possesses a substantial interest in the dispute proceeding between VIA Rail and Canadian National. TAC advocates for passengers across Canada, and is a national organization comprised of 5 regional chapters from coast to coast: BC, Prairies, Ontario, Quebec, and Atlantic. TAC is volunteer-run and a registered non-profit corporation with charitable status.

TAC has been advocating for improved passenger transportation for over four decades, informed by the first-hand experience of our members, community engagement, industry consultation and through research. We seek to bring the perspective of passengers to this proceeding, including passengers for whom rail is part of a multimodal journey.

Train Service Agreements

No details of the application made by VIA Rail nor CN's response are public at this time, but based on statements in previous VIA annual reports and corporate plans about track access and on-time (under) performance on host railways, TAC presumes this case is probably seeking an adjudication of the renewal of the entire Train Service Agreement governing VIA's access to the CN network and its ability to operate the vast majority of its passenger network.

Rail is the backbone of a wider travel network, and our experience is that VIA has not always been able to adequately represent this perspective in its relationship with host railways, with poor performance leading to a loss in multimodal connectivity. VIA's 2018-2022 Corporate Plan stated the issue well:

“The current Train Service Agreement with CN is substantially the same as the one put in place by the Government prior to the 1995 privatization of CN.....future access agreements should leverage best practices from the European rail industry model regarding punctuality and capacity management”

We believe that passenger rights for rail passengers should be not less than those of air passengers, including a right to on-time performance. Passenger rail contributes to Canada's prosperity, as passengers

are also people who make, mine, design, market, ship, deliver and buy all the commodities and goods that travel by rail. Passenger rail also contributes to Canada's environmental performance.

Recommendations

In arriving at a determination of reasonable track access fees and arrangements in this case, pursuant to subsection 152.2 of the Canada Transportation Act, we urge the Agency to consider the following:

1. That the magnitude of this case is such that the agency's determination is likely to set **precedents that will inform both future cases** before the Agency and future negotiations between passenger service providers and host railways, including the Calgary-Banff proposal, GO Milton (Ontario), Alberta commuter rail, the West Coast Express, VIA-HFR's High Frequency Rail access to existing infrastructure, existing Indigenous rail services and proposals like the reinstatement of the Mask-wa Ootaban (Algoma Bear Train).
2. The similarities and differences between Canada's regulatory environment and that of the United States. The **US regulatory environment functions reasonably well** and with transparency, including the adjudication of disputes about congestion and delays by the Surface Transportation Board. The requirements to accommodate Amtrak passenger service are not unduly onerous to CN and CPKC operations in the United States.
3. We believe that the Agency should consider "avoid congestion and undue delay" to apply reciprocally to **host railway dispatching of passenger trains**, and that any dispute about on-time performance that should arise during the period of implementation of the Agency's determination should if necessary be adjudicated by the Agency pursuant to subsection 152.1(2).
4. That there have recently been notable failures to respond in a timely manner to **stranded passenger trains**, so the Agency may wish to consider including conditions related to cooperation in contingency planning and incident response in its determination.
5. That the **degradation of track** to class 2 and below causes extended schedules for passenger services, poor ride quality, added operational costs for the passenger service provider, and recently the cancellation of trains or long delays to run at night where track had become unduly vulnerable to sun kinks. Therefore, the flaws in previous arrangements that have allowed such deferral of maintenance should be eliminated in the Agency's determination in this case.
6. Similarly, that significant public investment to acquire passenger equipment capable of 100 mph and higher should not be squandered by allowing track on the Kingston Subdivision to fall below Class 5, rather that the Agency's determination in this case should seek to **extend high-performance operation more widely** than was explicitly required in previous arrangements, and that any request by VIA Rail for Class 6 track in key intercity corridors be given reasonable consideration.
7. That VIA Rail fulfils passenger service responsibilities transferred to it from host railways at its inception, therefore a host railway should **not charge VIA Rail more than the share** of infrastructure costs that it would reasonably attribute internally were it still providing the passenger service under its own brand.
8. That US experience has shown that **public investment** through a passenger service provider, or through tax incentives like accelerated capital cost allowance, **can be mutually beneficial** for passengers and for private sector host railways. Addressing key rail pinch points by installing debottleneck items like double track segments, longer sidings, or extra switches, in return for a commitment to provide passenger train priority, can effectively increase corridor capacity for both passengers and freight.

9. That all capital and operating expenditures by the host railway are under close shareholder scrutiny by a combination of institutional, foreign-based and activist shareholders. The accommodation of additional VIA Rail frequencies and reinstatement of currently suspended frequencies requires the host railway to demonstrate to its shareholders that this will **not impede their financial returns**. The Agency must ascertain from the host railway the fair and reasonable extent of capital investments needed to fully accommodate expanding VIA Rail services, and determine whether they must be fully borne by VIA Rail and the Government of Canada through track access fees or shared on an equitable basis with the host railway where such investments create mutual benefits for capacity and fluidity.

10. Equally, a public passenger service provider and its passengers should **not be expected to bear the brunt of recent reductions** in network capacity and resilience, or changes in operational practices such as running over-length trains, undertaken to appease the short-term interests of activist hedge funds whose demands for ever-greater operating margins have all too often pressured freight railway managers to take actions that aren't even in the medium-term interests of the business. For example, drastic cuts made after the 2008 recession have hampered CN's ability to respond to an upswing in demand, leading to congestion, delays, and inflationary pressure in the wider economy. We urge the Agency to make a determination that absolves the public passenger service provider of the capital cost of reversing recent misguided capacity cuts and requires the **host railway to plan for growth in both passenger and freight volumes**. Setting a precedent that encourages host railway management to justify such short-termism, it would also be protecting the Canadian supply chain and defending the interests of shareholders who are long-term investors in the railway rather than speculators.

We thank the Agency for receiving this position statement.