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BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36695

PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF – RAIL SERVICE
TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES

**AMTRAK’S REPLY TO PETITIONERS’ REQUESTS FOR INJUNCTIVE RELIEF
AND A DIRECTED SERVICE ORDER**

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INTRODUCTION

Petitioners' request for emergency injunctive relief and a directed service order is premature and unwarranted. Since Amtrak first informed Norfolk Southern Railway ("NS") approximately eight months ago about the need for a temporary service outage on Amtrak's Harrisburg line, and continuing through to the present day, Amtrak has consistently expressed its commitment to addressing the concerns of NS's freight customers impacted by the outage. Amtrak understood that following its September 2022 outreach to NS about the planned track rehabilitation project, NS would promptly advise affected customers. When Amtrak learned in March 2023 that local rail shippers on the Harrisburg line had submitted an inquiry to the Board's Office of Public Assistance, Government Affairs, and Compliance ("OPAGAC"), Amtrak promptly provided information about the track rehabilitation project to OPAGAC and reiterated its intent to work with NS and its customers. After OPAGAC terminated its inquiry, Amtrak continued to work with NS, carefully evaluating alternatives to the work at issue. Amtrak remains committed to seeking to resolve the concerns expressed in the Petition. Indeed, Amtrak's counsel is scheduled to speak with counsel for Petitioners tomorrow in an attempt to reach an expeditious resolution of this matter without further Board intervention.

While Amtrak continues to pursue an amicable resolution of this matter, pursuant to the Board's order of April 26, 2023, Amtrak files this reply to Petitioners' request for emergency injunctive relief and a directed service order. As explained below, Petitioners have not met the standard to obtain the extraordinary relief that they seek. Given the Board's limited jurisdiction over Amtrak, it would be unprecedented for the Board to issue the relief that Petitioners request. This is particularly true because any impact on Petitioners from the planned service outage can be redressed through economic damages and does not constitute irreparable harm.

If the Board were to grant Petitioners' request to enjoin Amtrak "from commencing any aspect of its track project" unless the project is structured to "preserve[] service to Petitioners on the same terms and with the same frequency as such service is provided today," (Pet. at 5), Amtrak could be entirely precluded from performing this important capital project. Amtrak has carefully evaluated other ways to structure the track replacement work, but has not identified an alternative that results in no impact to Petitioners. The main alternative that Amtrak evaluated at the request of NS would cost up to \$30 million more in taxpayer dollars and would also have cascading effects for planned rehabilitation projects that Amtrak has determined through careful study are necessary to ensure the continued safety, reliability, and quality of its infrastructure. For the reasons explained below, the Board should deny the request for emergency injunctive relief and a directed service order. In the alternative, the Board should defer action on these requests pending updates from the parties on their efforts to resolve this matter. Amtrak is willing to provide such updates upon whatever schedule would be helpful to the Board.

I. FACTUAL BACKGROUND

Safety is Amtrak's highest priority. That commitment extends to all of Amtrak's operations, including the timely rehabilitation and repair of its physical plant. In prioritizing safety, Amtrak takes a forward-looking and data-driven approach to identifying and mitigating risk. Verified Statement of Ray Verrelle, Jr. Amtrak Vice President Engineering Services ("Verrelle V.S.") ¶ 2. As part of that process, which requires regularly assessing the need to refresh its

infrastructure, Amtrak's engineering team identified a segment of track along its Harrisburg line that requires renewal (the "Subject Line").¹ *Id.*

The rehabilitation work that Amtrak subsequently programmed for the Subject Line is necessary to the continued safety of the railroad, for both passenger and freight trains that operate along the track, and for the communities that it serves. Verrelle V.S. ¶ 3. The work will also deliver other important benefits, for example, by reducing future outages due to planned and unplanned maintenance requirements, reducing the need for speed restrictions, improving customer satisfaction, and enhancing ride quality for passenger rail customers. Verrelle V.S. ¶ 4. Put simply, the track rehabilitation work that has prompted this proceeding is about safety, quality, and reliability.

The determination that Amtrak needed to rehabilitate tracks on the Subject Line, including to maintain a state of good repair, was based upon thorough study. That study included evaluating the life cycles of pertinent equipment, daily inspections, and ground-penetrating radar ("GPR") inspection. Verrelle V.S. ¶ 3. The subsequent rehabilitation project that Amtrak programmed is extensive. It will involve replacing a significant number of degraded wood ties with more durable concrete ties, and renewing roadbed that has reached the end of its useful life. Verrelle V.S. ¶ 5. Among other things, the work will require placing more than 37,000 concrete ties, installing and de-stressing more than 149,600 linear feet of rail, and completing a full-depth replacement of the roadbed. *See* Verrelle V.S. ¶ 5. Accomplishing this necessary work is expected to cost more than **\$167 million**, with funding provided by the Federal Railroad Administration ("FRA"). Verrelle

¹ Amtrak owns the Harrisburg Line, which it acquired from Conrail and predecessor Penn Central. NS operates over the Harrisburg Line pursuant to an operating agreement and a freight easement that was obtained from predecessor Conrail. Verified Statement of Jim Blair, Amtrak Vice President Host Railroads ("Blair V.S.") ¶ 3.

V.S. ¶ 6. In preparation for the project, Amtrak has already spent approximately \$14 million. Verrelle V.S. ¶ 7.

Amtrak is also charged with being a responsible steward of taxpayer dollars. Consistent with this responsibility, Amtrak thoroughly evaluated how to efficiently accomplish rehabilitation of the track and roadbed on the Subject Line. Based on that work, Amtrak determined that the best way to accomplish a project of this magnitude and type was to use its Track Laying System (“TLS”) and an Undercutter, in tandem with one another. Verrelle V.S. ¶ 8. The Track Laying System moves along the rails and replaces ties and installs and aligns track.² It consists of a large Track Laying Machine (“TLM”) and several other maintenance vehicles that extend over a significant length of track. *Id.* In Amtrak’s experience, use of the TLS is (far and away) the most efficient way to perform major track replacements, and the most practical way to perform certain types of track rehabilitation, including the installation of concrete ties. *Id.* Likewise, use of an Undercutter is the most effective way to address fouled ballast.³ Verrelle V.S. ¶ 9. The Undercutter removes, cleans, and, when feasible, returns ballast to the roadbed. *Id.* The Undercutter also ensures that tracks are not elevated during the rehabilitation process, which is critical in electrified track territory (like the Subject Line). *Id.*

Amtrak’s determination about the best way to rehabilitate the Subject Line (with the simultaneous use of both the TLS and Undercutter) was driven by many factors, such as the need

² Although the TLS can clean and push ballast, its ability to do so is limited and insufficient for work indicated by GPR data. Verrelle V.S. ¶ 8, n. 1.

³ Ballast is a permeable layer of crushed rock meant to support the track, hold it in place, spread out the load, and facilitate drainage. Verrelle V.S. ¶ 9, n. 2.

to maintain overhead clearances,⁴ and the state of the track, railroad ties, and roadbed.⁵ Verrelle V.S. ¶ 10. But mobilizing and coordinating use of the TLS and Undercutter is complicated. Amtrak only possesses one TLM. *Id.* And to operate both the TLM and the Undercutter safely, Amtrak must maintain considerable distance between the equipment, resulting in a total safe working distance that will exceed three miles for the entire work crew. Verrelle V.S. ¶ 11.

The magnitude and complexity of this project mean that the project cannot be performed in an efficient and commercially reasonable manner without disrupting access to sidings that service rail shippers on the Subject Line, including Petitioners. Verrelle V.S. ¶ 12. Nevertheless, Amtrak appreciates that in attending to the continued safety of its infrastructure, it is important to plan for any disruptions in access to freight service.⁶ Amtrak routinely works with its industry partners to plan for and mitigate disruptions from track work, and Amtrak certainly did so in this case. To ensure that NS and local rail shippers had sufficient time to make logistical adjustments during temporary outages, Amtrak first contacted NS about the rehabilitation project in September 2022. Verrelle V.S. ¶ 14. Over the following weeks and months, Amtrak conferred with NS about the nature of the rehabilitation work, anticipated disruptions to freight service, and the scheduling details that NS and its shippers would require to make alternative arrangements and to ensure continuity of their operations. *Id.* Amtrak's engineering team also convened bi-weekly meetings

⁴ The need to clear overhead catenary required Amtrak to use undercutting to address fouled ballast on the Subject Line. Verrelle V.S. ¶ 10. Because freight railroads do not have catenary, they are able to take a different approach to rehabilitating roadbed. Verrelle V.S. ¶ 10, n. 4.

⁵ Amtrak's engineering team determined that ballast on the Subject Line was so fouled that it could not be cleaned in place and needed to be removed. Verrelle V.S. ¶ 10, n. 3.

⁶ Petitioners are incorrect to claim that Amtrak structured the work so as to affect only freight service. In fact, passenger service also will be affected to accommodate the planned work. Blair V.S. ¶ 7, n. 2.

with appropriate NS personnel beginning in November 2022, and Amtrak's Host Railroad Group continued to conduct regular bi-weekly meetings with NS.

Amtrak continued to engage in good faith with NS into the new year as Amtrak refined its workplan for rehabilitation of the Subject Line. On January 20, 2023, Amtrak personnel contacted NS to provide modestly revised time periods for the service disruptions to each NS siding affected by the project. Verelle V.S. ¶ 15. Amtrak made these revisions—which slightly increased the duration of potential service disruptions—to enhance the likelihood of Amtrak completing work within the time period provided. *Id.* These revisions were also aimed at reducing the risk that NS and local rail shippers would need to make additional and last-minute arrangements to maintain fluid operations in the event of weather delays or machine malfunction. *Id.* Amtrak is making, and will continue to make, every effort to reduce the length of the service cessation, if possible. *Id.*

In early March 2023, Amtrak learned that a local rail shipper had submitted an inquiry to OPAGAC about potential service disruptions caused by the project. Blair V.S. ¶ 5. Amtrak promptly provided OPAGAC with requested information and ensured that lines of communication with NS and the local rail shippers remained open. *Id.* As part of that engagement, Amtrak set up a weekly call with OPAGAC to discuss the matter. *Id.* Amtrak also designated a member of its Host Railroads Group to receive direct outreach from shippers. Blair V.S. ¶ 6. However, Amtrak's Host Railroads Group never received direct outreach from any shipper on the Subject Line.⁷ *Id.* OPAGAC recommended that Amtrak work directly with NS rather than working with the shippers,

⁷ Petitioners also state that they attempted to contact Amtrak in-house counsel about this matter. Upon receiving the Petition, Amtrak reviewed its files and identified a single email sent to a member of its law department on April 13, 2023 requesting a phone call. The sender did not follow-up with Amtrak in-house counsel beyond sending this single email, which was inadvertently missed. Prior to their filing, Petitioners never informed Amtrak of any intent to seek emergency relief from the Board.

and Amtrak continued to do so. *Id.* Amtrak’s Host Railroads Group communicated directly with NS over the next several weeks regarding the shippers’ commodities, service patterns, transload options, on-site storage capacities, and non-rail logistics alternatives. *Id.*

Amtrak also offered potential options to NS. For example, Amtrak asked whether NS could service rail shippers like Petitioners from Track 2, but that suggestion was rejected by NS. Verrelle V.S. ¶ 14; Blair V.S. ¶ 8. Amtrak invited and obtained input from NS and OPAGAC to evaluate other potential operational alternatives, but at no point during its consultation with NS or OPAGAC did any party suggest a viable alternative approach to Amtrak’s workplan. Blair V.S. ¶ 7. In March 2023, NS requested that Amtrak assess whether it could structure the service disruptions into multiple outages of not more than ten days each, the approximate length of time that local rail shippers indicated to NS that they could operate without arranging for trucking to assist with needed deliveries. Blair V.S. ¶ 9. NS had hoped to have access to each of the shipper sidings every ten days over the life of the project, rather than experience a single outage of approximately forty-five days. *Id.*

Amtrak evaluated that request carefully but was unable to achieve NS’s desired result. Following consultation and detailed study involving multiple personnel from Amtrak’s Infrastructure Maintenance and Construction Services (“IMCS”), Capital Delivery (“CAPD”), and Host Railroads Groups, Amtrak determined that the most practical operational alternative to its existing workplan would increase project costs up to \$30 million dollars, and still would not allow Amtrak to safely reduce the length of a service disruption to the requested ten-day increments. Blair V.S. ¶ 10; Verrelle V.S. ¶¶ 16-17.

Although Amtrak developed and then evaluated multiple additional operational alternatives, each was deemed unsafe or would have been more disruptive to NS and local rail

shippers, for example by requiring two separate significant outages rather than one. *Verrelle V.S.* ¶ 17. Amtrak further determined that the alternatives would delay the project, resulting in cascading effects for other vital planned rehabilitation projects, and impacting the five-year plan for Amtrak's rail network. *Id.*; *Blair V.S.* ¶ 11. Because the alternatives could not achieve the requested reduction in service disruption to Petitioners, would dramatically increase the cost of work funded by the FRA and the taxpaying public, and would also delay necessary rehabilitation work on other lines, Amtrak informed NS that it could not safely implement any of the operational alternatives. *Blair V.S.* ¶ 12. Without any further communication to Amtrak from any party, this Petition followed.

Amtrak made good faith efforts to work with both NS and OPAGAC to solicit and address concerns from rail shippers, and Amtrak remains committed to trying to resolve this matter without the need for Board action. To that end, Amtrak has already initiated conversations with Petitioners and NS to address the concerns presented by the Petition. Through counsel, Amtrak will speak with Petitioners tomorrow, May 2, 2023. Amtrak anticipates that those discussions will be productive and that the parties will find an amicable resolution that moots the Petition. Nonetheless, in response to the Board's Order, Amtrak respectfully submits its opposition to Petitioners' request for injunctive relief and a directed service order.⁸ For the reasons explained

⁸ Amtrak also respectfully reserves all rights with respect to the Board's entry of a protective order prior to allowing Amtrak the opportunity to review or suggest revisions to the protective order. Additionally, per the Board's April 26, 2023 Order, Amtrak will file a reply to the petition for declaratory relief by May 15, 2023, if the parties have not reached a resolution of this matter prior to that date.

below, Petitioners' arguments are without merit, and their requests for relief are premature and unwarranted.

II. THE REQUEST FOR INJUNCTIVE RELIEF SHOULD BE DENIED

Petitioners request that the Board enjoin Amtrak from carrying out its long-planned and important renewal of the Subject Line until the Board "approves a freight rail service plan filed by Amtrak and NSR that preserves service to the Petitioners on the same terms with the same frequency as such service is provided today." Pet. at 12. An order under 49 U.S.C. § 1321(b)(4), which Petitioners invoke as the source of the Board's authority, is permitted only when "necessary to prevent irreparable harm." But there is no irreparable harm at issue here. Petitioners cite only potential economic damages from the planned service outage, which blackletter law holds are not irreparable. For the reasons set forth below, the injunctive relief sought by Petitioners is neither available nor warranted in this forum.

A. The Board lacks jurisdiction to enter an injunction against Amtrak in this case

As a threshold matter, the Board lacks jurisdiction to enjoin Amtrak under Section 11101(a), which forms the basis for Petitioners' requested injunctive relief. The Board has repeatedly recognized that it "lack[s] general authority over Amtrak's routes and services." *Fun Trains, Inc.—Operation Exemption—Lines of CSX Transp., Inc. & Fla. Dep't of Transp.*, FD 33472, slip op. at 3 (S.T.B. served Mar. 5, 1998). Indeed, it is well established that "except for certain provisions ... Amtrak is not subject to the Board's jurisdiction." *Reguls. on Safety Integration Plans Governing R.R. Consolidations, Mergers, & Acquisitions of Control*, EP 574, slip op. at 58 n.14 (S.T.B. served Mar. 8, 2002); see also *Nat'l R.R. Passenger Corp. & CSX Transp., Inc. – Pet. for Declaratory Ord.*, FD 35675, slip op. at 2 (S.T.B. served Oct. 16, 2012) (finding that 49 U.S.C. § 24301 did not provide the Board with regulatory authority over Amtrak). This request for injunctive relief does not represent one of those limited circumstances.

Petitioners seek injunctive relief under the theory that Amtrak is violating Section 11101(a).⁹ But Section 24301(c) provides that most of Subtitle IV, including Section 11101(a), does not apply to Amtrak, and the Board therefore lacks jurisdiction to grant injunctive relief against Amtrak.¹⁰ Petitioners attempt to elide the effect of Section 24301(c) by arguing that Amtrak is still subject to Section 11101(a) “as the owner of a line of railroad subject to Board jurisdiction.” Pet. at 12 n.11. To support their novel theory, Petitioners cite *Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation – Petition for Declaratory Order –Status of Chicago Union Station*, FD 36171, slip op. at 5 (S.T.B. served Aug. 22, 2018) (“*Chicago Union Station*”). But *Chicago Union Station* has no application here.

The Board’s *Chicago Union Station* decision followed a petition for a declaratory order by Metra. In its petition, Metra argued that the Board continued to have jurisdiction over Chicago Union Station, even though Amtrak had recently acquired ownership of the facility. *Chicago Union Station* at 2. The Board held that any declaratory order would be “premature,” but went on to comment in dicta on the jurisdictional issue. *Id.* at 4-5.¹¹ The comments cited by Petitioners

⁹ Although Petitioners request an injunction under 49 U.S.C. § 1321(b)(4), that provision simply allows the Board to issue appropriate orders to prevent irreparable harm when carrying out provisions of Subtitle IV and Subtitle II, Chapter 13 of Title 49. See 49 U.S.C. § 1321(a). For the reasons set out in this Section, and below, Petitioners cannot demonstrate that the pertinent provisions of Subtitle IV apply to Amtrak. And Petitioners do not identify any basis for relief in Subtitle II, Chapter 13. Accordingly, Section 1321(b)(4) provides no basis for relief here.

¹⁰ Additionally, neither Petitioner has offered sufficient facts to permit evaluation of whether they pay contractual rates removed from the Board’s jurisdiction. “It is well settled that the Board’s authority does not extend to those movements conducted pursuant to transportation contracts.” *N. Am. Freight Car Ass’n v. Union Pac. R.R.*, NOR 42144, slip op. at 4 (STB served Dec. 21, 2015); see 49 U.S.C. § 10709(c)(1); see also *Ameropan Oil Corp. v. Canadian Nat. Railway Co.*, NOR 42161, slip op. at 4 (S.T.B. served April 17, 2019) (“[W]here transportation is provided pursuant to a contract, the Board lacks regulatory authority over the terms and conditions related to that transportation, whether or not explicitly addressed in the contract.”). The Board should decline to enter any orders regarding rail service provided to Petitioners before verifying that the transportation at issue moves pursuant to common carrier, rather than contractual, obligations. The burden to establish these requisite jurisdictional facts also rests with Petitioners.

¹¹ The Board noted that, should another related petition for a declaratory order be filed later, Amtrak should be prepared to address whether its general exemption from Subtitle IV covers taking an action that could cause a facility “to be removed from the Board’s jurisdiction without any agency review or approval.” *Id.* at 5 (emphasis omitted).

have no precedential effect, but in any event, the concern expressed by the Board in those comments about removing property from the Board’s jurisdiction is irrelevant where, as here, Amtrak has owned the Subject Line since 1976, and there is no transfer of ownership taking place. *See* Pet. at 6 & n.7. As a result, any concerns about private business deals shrinking the Board’s jurisdiction, or altering the rights of contracting parties like Petitioners, simply do not exist in this case.

Ultimately, the jurisdictional issue presented by Petitioners’ request for injunctive relief is simple. The Board has repeatedly recognized that Congress delineated the Board’s jurisdiction over Amtrak narrowly, and within specific boundaries. The plain language of Section 24301(c) provides that Section 11101 does not apply to Amtrak. The Board should not attempt to override a federal statute to expand its jurisdiction. Moreover, for the Board to take jurisdiction of a matter that arises out of a contractual arrangement between Amtrak and NS would contravene the contractual remedies mandated under the parties’ applicable operating agreements.

B. The Board should not enjoin work needed to maintain rail safety

Even if the Board had jurisdiction to enjoin Amtrak under Section 11101(a), Petitioners have not provided a basis to enjoin the important renewal work on the Subject Line. A preliminary injunction is an “extraordinary remedy.” *City of Fishers, City of Noblesville, & Hamilton County, Ind. – Petition for Partial Revocation of Exemption*, FD 36137, slip op. at 7 (S.T.B. served July 31, 2019). “A party seeking a preliminary injunction must establish that (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be preliminarily enjoined, (2) it will suffer irreparable harm in the absence of a preliminary injunction, (3) other interested

Petitioners’ efforts to place weight on this comment related to a hypothetical future petition is misplaced, particularly because, on the other side of the ledger, the Board also commented that Metra would “need to address the effect of Amtrak’s exemption” under that statute. *Id.* at 4.

parties will not be substantially harmed by a preliminary injunction, and (4) the public interest supports granting the preliminary injunction.” *Id.* at 6-7. For reasons set out below, Petitioners cannot meet their burden on any of these elements, and their request for injunctive relief should be denied. At the very least, the request for injunctive relief is premature and unwarranted while the parties engage in forthcoming discussions about a resolution of the underlying dispute.

1. Petitioners have not met their burden to show likelihood of success on the merits of a Section 11101(a) claim

Petitioners are unlikely to succeed on the merits of their Section 11101(a) claim because, for reasons set forth above, the Board lacks jurisdiction to hear it. But even if the Board were to entertain the merits of Petitioners’ claim under Section 11101(a)—and even assuming that Amtrak is a common carrier subject to the statute—Petitioners’ claim would still fail. The temporary disruption of freight rail service that will occur when Amtrak renews track on the Subject Line is reasonable under the circumstances and, therefore, on the merits, does not violate Section 11101(a).

Although Petitioners ask the Board to find a “*per se* violation” of Section 11101(a) (Pet. at 9), the “common carrier obligation [] is not absolute.” *Decatur Cnty. Comm’rs v. Surface Transp. Bd.*, 308 F.3d 710, 715 (7th Cir. 2002). Temporary suspensions of service, “which may be of varying duration, are quite common in the railroad industry and typically do not result in government intervention.” *Decatur Cnty. Comm’rs v. Cent. R.R. Co. of Ind.*, FD No. 33386, slip op. at 6 (S.T.B. served Sept. 29, 2000). The carrier simply must restore “adequate service within a reasonable period of time.” *Id.* And the Board generally defers to a carrier’s determination that a temporary suspension of service is warranted. *See Bar Ale, Inc., v. Cal. N. R.R. Co. & S. Pac. Transp. Co.*, FD 32821, slip op. at 7 (S.T.B. served July 20, 2001).

Petitioners' theory that one can establish a "*per se*" violation of Section 11101(a) is not tenable, particularly on the facts of this case. The Board has repeatedly held that determining whether a temporary suspension of rail service is reasonable "is a fact-specific inquiry to be determined on a case-by-case basis," and is determined by "balancing a number of factors, including the length of the service cessation, the intent of the railroad, the cost of repairs, the amount of traffic on the line, and the financial condition of the carrier." *Id.* at 6-7. The reasonableness factors "are not applied in a formulaic way" because "the objective is to determine whether the carrier's decision to cease service on the line was reasonable considering the circumstances." *Cent. Or. & Pac. R.R., Inc. -- Coos Bay Rail Line*, FD 35130, slip op. at 3 (S.T.B. served Apr. 11, 2008). "The cost of repairs, relative to the volume of traffic on the line and the financial condition of the carrier, often is particularly important." *Decatur Cnty. Comm'rs v. Cent. R.R. Co. of Ind.*, FD 33386, slip op. at 7.

Here, the totality of the circumstances demonstrates that temporarily disrupting service to perform a total track replacement on the Subject Line is reasonable. Indeed, Amtrak's workplan reflects a careful attempt to ensure continued safety while minimizing disruptions and making responsible use of taxpayer dollars. As noted above, Amtrak determined that it was necessary to proceed with this work based on the life cycles of pertinent track, daily inspections, and ground penetrating radar inspections. *See supra* at 4.

Amtrak has no intention of extending the temporary suspension of rail service beyond what is necessary to rehabilitate tracks on the Subject Line. *See Decatur Cnty. Comm'rs v. Cent. R.R. Co. of Ind.*, FD 33386, slip op. at 10 ("We find no credible evidence that [the carrier] was deliberately downgrading, or actively discouraging traffic on, a viable line simply to facilitate its abandonment."). Amtrak seeks only to perform necessary infrastructure renewal and repair, which

will ensure the continuing safety of operations, reduce the risk of future outage due to planned and unplanned maintenance requirements, and deliver other important benefits for the rail network. Verrelle V.S. ¶ 4. Amtrak also took reasonable steps to ensure that NS and local rail shippers had enough time to develop alternative service options, first providing notice of this project to NS in September 2022. Verrelle V.S. ¶¶ 14-15. And Amtrak engaged with OPAGAC and NS to attempt to address the concerns of NS and local shippers. Blair V.S. ¶¶ 5-6. Amtrak remains committed to working with Petitioners to find solutions that will moderate the impact of this necessary suspension of service on their operations.

The length of the service cessation also demonstrates that Amtrak's actions are reasonable. *See Decatur Cnty. Comm'rs v. Cent. R.R. Co. of Ind.*, FD 33386, slip op. at 19-20 (finding a 20-month suspension of service to be reasonable); *Bar Ale, Inc., v. Cal. N. R.R. Co. & S. Pac. Transp. Co.*, FD 32821, slip op. at 5-7 (finding a nearly three-year suspension of service to be reasonable). Amtrak estimates that the track renewal work will temporarily disrupt rail service to Petitioners for approximately 45 days. Blair V.S. ¶ 9. Amtrak is making, and will continue to make, every effort to reduce the length of the service cessation, if possible. Verrelle V.S. ¶ 15. However, the nature of the necessary track rehabilitation work makes it extremely challenging for Amtrak to reduce service disruptions, and virtually impossible to avoid at least some service disruptions while the work is being performed. Verrelle V.S. ¶¶ 12-13. Adding further delays could expand project costs by up to \$30 million, and even with additional delays and alternative work plans, Amtrak still could not reduce service disruptions to the ten-day increments that Petitioners requested. Verrelle V.S. ¶ 17; Blair V.S. ¶ 10. In addition to imposing tremendous costs, further efforts to reduce service disruptions would also impede Amtrak's ability to perform other work required to

maintain the safety of rail operations on tracks across its network. Verrelle V.S. ¶ 17; Blair V.S. ¶ 11.

The cost of repairs and the amount of traffic on the line also demonstrate that Amtrak's temporary suspension of service is reasonable. Amtrak estimates that the total cost of the necessary track rehabilitation project, if completed under the existing workplan, will exceed \$167 million. Verrelle V.S. ¶ 6. Amtrak has committed that large amount to this track renewal because it is necessary to ensure the continued safety and reliability of both Amtrak and freight operations on the Subject Line. Verrelle V.S. ¶¶ 3-4. While Petitioners aver that they receive rail shipments up to five days per week, Pet. at 7, the cost and importance of performing this work weighs in favor of a determination that Amtrak's temporary suspension of rail service is reasonable. This is particularly so here, because Amtrak remains committed to working with Petitioners to address concerns regarding alternative service options.

2. The important rehabilitation work at issue will not impose irreparable harm

Amtrak recognizes that rehabilitation of the Subject Line will have an impact on Petitioners and intends to work with NS and Petitioners to moderate that impact. Amtrak anticipates that its upcoming discussions with Petitioners will be productive, including because there may be alternative logistical arrangements that will address Petitioners' concerns. Precisely because those alternative logistical arrangements exist, and because Petitioners' concerns can be redressed through monetary damages, Petitioners cannot establish that rehabilitation of the Subject Line and the accompanying disruption to freight service will cause them any irreparable harm.

"The Board has consistently held that monetary or economic loss by itself does not constitute irreparable harm." *Union Pac. R.R.—Petition for Declaratory Ord. & Preliminary Injunction*, FD 36197, slip op. at 4 (S.T.B. served June 29, 2018) (denying preliminary injunction

where complainant conceded that any alleged injuries could “be measurable in dollars, and thus susceptible to redress in the form of legal damages” (record citation omitted)). Petitioners themselves acknowledge that economic losses alone are insufficient. See Pet. at 13 (acknowledging that economic losses must be substantial *and unredressable* under irreparable harm analysis).

It is blackletter law that “a preliminary injunction usually will be denied if it appears that the applicant has an adequate alternate remedy in the form of money damages.” 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2013) (citing cases). Moreover, the cases that Petitioners cite in support of their claim are readily distinguishable. For example, in *Colorado Wheat Administrative Committee et al. v. V & S Railway, LLC*, NOR 42140 (S.T.B. served May 7, 2015), the Board acknowledged that “economic injury, by itself, may be insufficient to qualify as irreparable harm,” and emphasized that the substantial and unredressable nature of economic losses are necessary (not sufficient) conditions to demonstrate irreparable harm. *Id.* at 5.¹² Likewise, in *Long Island R.R. Co. v. Int’l Ass’n of Machinists*, 874 F.2d 901, 911 (2d Cir. 1989), the Second Circuit merely affirmed that the district court had not abused its discretion in finding irreparable harm. In the underlying district court opinion, the Southern District of New York concluded that the asserted harm was “not compensable in monetary damages,” and that “the public, over 400,000 persons, will suffer immediate and irreparable injury.” *Long Island R.R. Co. v. Int’l Ass’n of Machinists & Aerospace Workers*, 709 F. Supp. 376, 388 (S.D.N.Y. 1989), *aff’d*, 874 F.2d 901 (2d Cir. 1989).

Given that they cannot show irreparable harm through economic injury, Petitioners argue that the temporary cessation of service imposes unredressable harm because they receive freight

¹² The Board found irreparable harm in this case because the complainant, without an injunction, would have been forced to replace 60 miles of track and had no mechanism to recover its costs. *Id.*

service up to five days per week. Petition at 13. However, in the very next sentence, Petitioners acknowledge that rail service can be replaced with truck transportation. *Id.* While reliance on trucking carries cost and logistical complications, the related harms again are economic losses of the type regularly addressed through damages.¹³ *Union Pac. Railroad—Petition for Declaratory Ord. & Preliminary Injunction*, FD 36197, slip op. at 4.

Petitioners’ other arguments fail for the same reason. For example, Petitioners assert that increased transportation costs will require them to raise prices and could result in the loss of goodwill. But Petitioners later acknowledge that if customers refuse to pay more, then they will absorb increased transportation costs by selling their product at a lower margin or below production costs. Petition at 14-15. While Amtrak appreciates that no business wants to reduce its margins or incur losses, Petitioners’ acknowledgement again illustrates that any harm would be redressable through damages.¹⁴ *See Union Pac. R.R.—Petition for Declaratory Ord. & Preliminary Injunction*, FD 36197, slip op. at 4.

For the same reason, speculative claims about whether customers will reject higher prices, search for alternative supply, fail to locate alternative supply, and then incur harm are not sufficient. Wright & Miller, *supra*, § 2948.1 (“Speculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant.” (footnote omitted)). Nothing in the Petition suggests that incurring any of the identified costs for approximately 45 days will present an existential or otherwise unredressable threat to Petitioners’ business. *Cf. City of Fishers, City of Noblesville, & Hamilton Cnty., Ind.—Petition for Partial Revocation of Exemption*, FD 36137, slip op. at 7 (“Although economic loss is not generally considered irreparable harm, where it

¹³ Plaintiffs also assert that relying on trucking for 45 days will adversely affect local roads and communities. But Petitioners make no effort to substantiate that assertion and, as a result, it must be disregarded.

¹⁴ Damages could also redress other asserted harms asserted in the paper, including alleged logistical complications that could diminish output.

threatens the very existence of the movant's business, such a loss may be considered irreparable.” (citation omitted)). In short, Petitioners have not shown that they would suffer anything other than potential economic losses, which do not constitute irreparable harm.

3. Amtrak will be substantially harmed by a preliminary injunction

In contrast, enjoining rehabilitation of the Subject Line would impose substantial harms on Amtrak. First, enjoining planned rehabilitation on the Subject Line will result in significant and immediate additional expense to Amtrak, which has already spent \$14 million in preparation for this project. *Verrelle V.S.* ¶ 7. An injunction would mean idling the 120-person work crew set to complete this important work and pushing the work into next year. Second, enjoining rehabilitation on the Subject Line will delay Amtrak's ability to bring the Subject Line to a state of good repair, which is necessary for the continuing safety of operations on the line, and the quality and reliability of service. *Verrelle V.S.* ¶ 3. Third, enjoining rehabilitation on the Subject Line will have cascading effects for other planned rehabilitation projects, and impact the five-year plan for Amtrak's rail network. *Verrelle V.S.* ¶ 17. For example, Amtrak has only one TLM, and mobilizing it requires a considerable amount of advanced planning and material placement. In the event of delay, Amtrak cannot easily redeploy the TLM from one location to another. *Verrelle V.S.* ¶ 10.

All of these harms could be compounded dramatically because Petitioners appear to seek an injunction that would prohibit Amtrak from moving forward *at all* until Amtrak and NS develop a plan that would provide Petitioners with continuous rail service, on the same terms and with the same frequency as such service is provided today, throughout the project. While Amtrak is confident that the parties can find an amicable resolution to issues presented by the Petition, Amtrak is not aware of any alternative methodology that would allow it to complete the needed rehabilitation with no impact to Petitioners in an efficient and commercially reasonable manner.

Nor has Amtrak identified any workable way to deploy the TLM and Undercutter, without disrupting at least some amount of freight service to Petitioners. Granting an injunction prohibiting any disruption of service would jeopardize a \$167 million project, the preparation for which has already cost Amtrak more than \$14 million.

4. The public interest requires permitting this rehabilitation work to proceed

The public interest weighs in favor of permitting Amtrak to conduct this important rehabilitation work, for several reasons. First, ensuring that track is maintained in a state of good repair is essential to the traveling public and necessary for Amtrak to further the public interest in safe, efficient, and effective intercity passenger rail service. Second, ensuring that track is maintained in a state of good repair is important to maintaining the operational fluidity of the line and therefore benefits NS and freight customers like Petitioners. Third, delaying rehabilitation of the Subject Line will have cascading effects for Amtrak's other scheduled infrastructure work that is intended to advance the interests of passenger and freight operations. Finally, delaying this important work (or, worse, granting an injunction that in effect prohibits it) will impose considerable cost on the taxpaying public.¹⁵

In sum, Petitioners' request for injunctive relief should be denied. In the alternative, the Board should find the request premature and defer action on it pending further information from the parties on their efforts to reach an amicable resolution.

¹⁵ Amtrak respectfully submits that Petitioners' additional arguments on this element are speculative and lack merit. For example, Petitioners argue that proceeding with the work would harm their businesses, which produce goods consumed by the public, but acknowledge the existence of logistical alternatives that will allow them to continue producing those goods. Petitioners also argue that this situation will recur and will affect other shippers. However, the magnitude of the impact on shippers on this line is in large part due to the uniquely long distance—over 15 miles—between the interlockings where the track must be taken out of service for the work to be performed. In any event, Petitioners' speculative claims about future disruptions cannot satisfy their burden because the challenges presented by any particular service disruption must be evaluated in context, including the needs of affected parties and action taken or available to accommodate them.

III. THE REQUEST FOR A DIRECTED SERVICE ORDER SHOULD BE DENIED

As an alternative to their request for injunctive relief, Petitioners suggest that the Board issue a directed service order pursuant to Section 11123 to “preserve the *status quo* for at least 30 days.” Pet. at 17. But Petitioners cite no persuasive authority to support such extraordinary relief. A directed service order in this case would be both inconsistent with congressional intent under the pertinent statute and premature, given the parties’ imminent discussions to resolve this issue before any disruptions to Petitioners occur. For those reasons, as discussed below, a directed service order should be denied or, at minimum, deferred.

The issuance of a directed service order against Amtrak in its capacity as a rail line owner would be a novel and inapt use of the Board’s powers under Section 11123, especially in view of the Board’s limited powers over Amtrak. *See supra* at 10-12. In enacting the predecessor to Section 11123, Congress did not intend to give the Board a “general grant of emergency power.” *Atchison, T. & S. F. Ry. Co. v. United States*, 617 F.2d 485, 494 (7th Cir. 1980) (quoting *Peoria & Pekin Union Ry. Co. v. United States*, 263 U.S. 528, 534-35 (1924)). Rather, Congress had specific concerns in mind when it amended the statute to provide for a directed service order in the event of a “failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation.” 49 U.S.C. § 11123(a). As Congress stated, a directed service order with respect to Amtrak would arise “in the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation,” and was intended to “direct the continuation of the operations and dispatching, maintenance, and other necessary infrastructure functions related to the operations.” *Id.* § 11123(a)(5). The Board must interpret the plain text of this statute “in light of the purposes Congress sought to serve.” *Chapman v. Houston Welfare Rts. Org.*, 441 U.S. 600, 608 (1979).

As the legislative history makes clear, Congress added the references to Amtrak to Section 11123 through its 2004 Appropriations Act to “ensure that emergency commuter rail service is continued if Amtrak should cease operation”—a real risk given the contemporaneous concern that proposed funding levels would put Amtrak at “the brink of bankruptcy,” and Amtrak was “one catastrophe—such as a bridge or switch failure—away from an event that could shut down Amtrak operations and impact the operations of commuter rail trains that run on Amtrak’s bridges and tracks in the Northeast corridor.” H.R. Rep. No. 108-243 at 99, 263 (2003). Congress intended that the Board be able to direct action and funds to continue commuter and freight operations on the Northeast Corridor should Amtrak falter. Congress did *not* intend a broad grant of power to the Board that would actually prevent Amtrak from making necessary rail improvements on track that Amtrak owns. See 49 U.S.C. § 24301(c); *supra* at 10-12.

Even if the Board were to conclude that the narrowly focused 2004 amendment to Section 11123 gave the Board broad jurisdiction to issue a directed service order to Amtrak when freight shippers are impacted by Amtrak’s track renewal work, issuing such an order would be premature, as there is no “emergency situation” at this time. 49 U.S.C. § 11123(a). The title of Section 11123 refers to “situations requiring **immediate action** to serve the public.” (emphasis added). A directed service order is not necessary at this time, as Amtrak anticipates that the parties will be able to expeditiously negotiate a resolution without Board intervention. See *Foster Poultry Farms – Ex Parte Petition for Emergency Service Order*, FD 36609, slip op. at 4 (S.T.B. served Dec. 30, 2022) (Board Member Schultz noting, in dissent, that the Board’s decision to issue a directed service order in that case was “not necessary at [the] time and appear[ed] to be without legal authority”). While the first service disruption is weeks away, the parties are scheduled to meet tomorrow, Tuesday, May 2, 2023, for what Amtrak expects to be a productive conversation about resolving

this matter. Thus, at a minimum, the Board should hold the request for a directed service order in abeyance as the parties attempt to resolve the issues themselves.¹⁶

Delaying any decision on a directed service order would be “consistent with the Board’s preference for private-sector negotiation and resolution of disputes[.]” *Ashbro, Inc.—Petition for Declaratory Order—Wilson Spur Track in Denham Springs, LA*, FD 35171, slip op. at 1 (S.T.B. served Nov. 9, 2009). It would also allow the Board to conserve agency resources and, in light of the complex legal questions presented by the directed service order request, reflect an appropriate exercise of agency restraint. As examples, should the Board decide to proceed with a directed service order under Section 11123, it first will need to consider complex issues of funding and operational capabilities under Section 11123(c)(4), as well as the reimbursement of Amtrak for its costs under Section 11123(b)(3)(B). Given that the parties may be able to come to a resolution well before Petitioners experience any service disruption, a directed service order at this point is unnecessary. At a minimum, then, the Board should defer a decision pending an update from the parties indicating that a negotiated resolution cannot be reached.

¹⁶ Additionally, as set forth above, the Board should decline to enter any orders regarding rail service provided to Petitioners before verifying that the transportation at issue moves pursuant to common carrier, rather than contractual, obligations. *See supra* n.10.

CONCLUSION

For the foregoing reasons, Amtrak respectfully requests that the Board deny the Petition for a preliminary injunction and directed service order, or in the alternative, defer action on the requested relief pending further updates from the parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that I have this day served copies of this document upon all parties of record in this proceeding, by email on the service list to Finance Docket No. 36695.

May 1, 2023

/s/ Jessica Ring Amunson

Jessica Ring Amunson

**BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36695**

**PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF – RAIL
SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES**

**AMTRAK’S REPLY TO PETITIONERS’ REQUESTS FOR INJUNCTIVE RELIEF AND A
DIRECTED SERVICE ORDER**

**VERIFIED STATEMENT OF
AMTRAK VICE PRESIDENT ENGINEERING SERVICES
RAY VERRELLE**

1. My name is Ray Verrelle. I am the Vice President Engineering Services at the National Railroad Passenger Corporation (“Amtrak”). In this role, I am responsible for overseeing Amtrak’s Engineering Design and Standards for Amtrak’s infrastructure throughout its rail system. Pursuant to those responsibilities, I am aware of and have overseen personnel directly involved in Amtrak’s efforts to rehabilitate a segment of track along its Harrisburg line (the “Subject Line”). Accordingly, I am aware of the process for identifying the Subject Line’s need for rehabilitation, determining the scope and extent of the rehabilitation project, developing an operational work plan to execute the rehabilitation project including associated costs, analyzing and evaluating potential operational alternatives, and other matters addressed below.

2. Amtrak is deeply committed to operating safely. That commitment extends to the rehabilitation and maintenance of its physical plant. For Amtrak, achieving its safety goals requires taking a forward-looking and data-driven approach to identifying and mitigating risk. As part of that process, Amtrak’s engineering team regularly assesses the need to repair or rehabilitate components of Amtrak-owned rail lines. Amtrak’s engineering team identified the Subject Line as requiring total track structure renewal.

3. Amtrak’s engineering team determined that the total track structure renewal was necessary for the continued safety of operations, for both passenger and freight trains on the track. That determination was based on a number of factors, including the life cycle of relevant assets and equipment, daily inspections, and ground penetrating radar (“GPR”) inspections, among other things.

4. Amtrak’s engineering team determined that the track rehabilitation project will provide significant impacts and benefits to safety and reliability by reducing future outages from unplanned maintenance delays and asset failures, by reducing outages from planned maintenance

delays, and by reducing the need for speed restrictions. The team also determined that the project would deliver other benefits, like improving customer satisfaction and ride quality and reliability for passenger rail customers.

5. In connection with the total track structure renewal, Amtrak's engineering team determined that the rehabilitation project will involve replacing a significant number of degraded wood ties with more durable concrete ties and renewing roadbed that has reached the end of its useful life. Specifically, the track rehabilitation project will require 14.8 miles of track structure to be renewed; 37,400 concrete ties to be installed; 149,600 linear feet of rail to be installed and de-stressed; 74,800 feet of track to be undercut; 261,800 feet of track to be surfaced; and 21,000 tons of stone to be unloaded.

6. The total cost of completing the necessary track rehabilitation work is expected to exceed \$167 million and is being funded by the Federal Railroad Administration ("FRA").

7. Executing the needed repairs associated with a project of this magnitude is an extremely challenging task, requiring significant coordination, time, and resources. To date, Amtrak has already expended about \$14 million in the preparation phase of this project.

8. Through a robust investigation and analysis of options, Amtrak's engineering team determined that the best way to proceed with a project of this magnitude and scope was to use its Track Laying System ("TLS") and an Undercutter, in tandem with one another. The Track Laying System is a system that moves along the rails and replaces ties, cleans ballast,¹ and installs and aligns track. It consists of a large Track Laying Machine ("TLM") and several other maintenance vehicles that extend over a significant length of track. In Amtrak's experience, use of the TLS is

¹ The TLS can clean and push ballast, however its ability to do so is limited. GPR data showed that the TLS would be insufficient for the level of work needed to address the ballast on the Subject Line and that an Undercutter is needed for this project.

(far and away) the most efficient way to perform major track replacements and the most practical way to perform certain types of track work, including the installation of concrete ties.

9. Similarly, use of the Undercutter is the most effective and efficient way to address fouled ballast.² The Undercutter functions by removing, cleaning, and when feasible returning ballast to the roadbed. Importantly, it can ensure that tracks are not elevated during the rehabilitation process, which is critical when working on electrified track like the Subject Line.

10. Amtrak's determination that the best way to rehabilitate the Subject Line involved use of the TLS and Undercutter was driven by many factors, including (among others) the need to maintain overhead clearances and the state of the track, railroad ties, and roadbed.³ In order to clear overhead catenary, Amtrak determined (based on GPR data) that undercutting was necessary.⁴ However, mobilizing and coordinating use of the TLS and Undercutter is not easy. Amtrak possesses only one TLM, therefore every project requiring its use must be coordinated and scheduled. Machinery like the TLM and undercutter cannot easily be redeployed from one location to another. Amtrak anticipates that approximately 120 individuals will be required to complete the rehabilitation project.

11. In order to safely operate the TLS and Undercutter in tandem, Amtrak must maintain considerable distance between the pieces of equipment and respective work crews. In total, Amtrak expects to maintain a safe working distance of over three miles during rehabilitation of the Subject Line.

² Ballast is a permeable layer of crushed rock meant to support the track, hold it in place, spread out the load, and facilitate drainage.

³ Amtrak's engineering team determined that ballast on the Subject Line was so fouled that it could not be cleaned in place and needed to be removed.

⁴ Freight railroads, in contrast to Amtrak, do not have catenary and are therefore able to utilize different approaches to rehabilitating roadbed.

12. Amtrak's engineering determined that the complexity of the rehabilitation operation for the Subject Line means that the work cannot be performed in an efficient and commercially reasonable manner without disrupting access to sidings that service certain rail shippers on the Subject Line, including the Petitioners.

13. So far as I know, during discussions between Amtrak's engineering team and NS, NS did not suggest an alternative approach to using the TLS and Undercutter to conduct the track rehabilitation project, or an alternative approach to the work that could avoid any disruption to freight service. Again so far as I know, no member of our team has identified an alternative approach or methodology for the rehabilitation project that would allow Amtrak to complete it in manner that is efficient, commercially reasonable, and would avoid any impact to freight customers.

14. In an effort to ensure that NS and local rail shippers would have sufficient time to make logistical adjustments and arrange for alternative transportation methods, Amtrak first contacted NS about this project in September of 2022. Over the following weeks, Amtrak conferred with NS about the project, including the nature of the rehabilitation work, the anticipated disruptions to freight service, and the scheduling information NS and the local rail shippers would need to arrange for alternative transportation and ensure the continuity of their operations. Beginning in November of 2022, Amtrak's engineering team convened bi-weekly meetings with the appropriate NS personnel to coordinate with NS regarding this project. One potential solution that Amtrak discussed with NS was whether NS could service rail shippers from Line 2, but NS did not adopt that suggestion.

15. Amtrak's engagement with NS continued into 2023, as Amtrak refined and finalized the workplan for the track rehabilitation project. On January 20, 2023, Amtrak personnel

provided NS with updated time periods for the service disruptions to each NS siding impacted by the rehabilitation project. The updated time periods, slightly revised from previous estimates Amtrak had provided to NS, reflected an increased duration of freight service disruptions. Amtrak's engineering team decided to update the time periods in an attempt to account for uncontrollable circumstances, like weather delays or equipment malfunctions. The updates were also meant to increase the likelihood that the rehabilitation work would be completed within the estimated time period and reduce the risk that NS and local rail shippers might need to make additional, last-minute arrangements. Put differently, Amtrak communicated revised time periods for freight service disruptions related to the track rehabilitation project to NS and local rail shippers to provide them with more certainty regarding the anticipated timeframe of freight service disruptions. Amtrak is making, and will continue to make, every effort to reduce the length of the service disruptions, if possible.

16. In March of 2023, Amtrak's Host Railroad Group conveyed that NS had requested Amtrak evaluate operational alternatives for the rehabilitation project that could structure the service disruptions to local rail shippers into multiple outages that would not last more than ten days each. The request would have allowed NS to access the shipper sidings every ten days during the project, rather than experience one longer service disruption. Amtrak's Infrastructure and Construction Services ("IMCS") and Capital Delivery ("CAPD") engaged in a careful study to evaluate that request and potential operational alternatives.

17. Based on that work, IMCS and CAPD determined that the primary operational alternative to its existing workplan would not allow it to reduce the length of freight service disruptions to ten days *and* would increase project costs by up to \$30 million dollars. Amtrak further determined that the primary operational alternative would delay the project, resulting in

cascading effects for other planned rehabilitation projects, and impacting the five-year plan for Amtrak's rail network. Although Amtrak evaluated additional options, each was deemed operationally unsafe or would have been more disruptive to NS and local rail shippers, for example requiring two separate significant outages rather than one. Because the equipment for this project is extremely large and complicated, it cannot easily be moved once the project is underway. Accordingly, the project team's recommendation was to proceed with the original workplan.

VERIFICATION

I, Raymond Verrelle, Jr., declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement on behalf of Amtrak.

Executed on this 1st day of May, 2023.



Raymond Verrelle, Jr.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36695**

**PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF – RAIL
SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES**

**AMTRAK’S REPLY TO PETITIONERS’ REQUESTS FOR INJUNCTIVE RELIEF AND A
DIRECTED SERVICE ORDER**

**VERIFIED STATEMENT OF
AMTRAK ASSISTANT VICE PRESIDENT HOST RAILROADS
JIM BLAIR**

1. My name is Jim Blair. I am the Assistant Vice President Host Railroads at the National Railroad Passenger Corporation (“Amtrak”). In this role, I oversee Amtrak’s relationships with freight railroads on all the lines on which Amtrak runs throughout the country. I joined Amtrak in March 2008 as a Principal Host Railroads. I have been directly involved with Amtrak’s efforts to engage with Norfolk Southern (“NS”) and the Surface Transportation Board’s Office of Public Assistance, Government Affairs, and Compliance (“OPAGAC”) regarding Amtrak’s rehabilitation of a segment of track along its Harrisburg line (the “Subject Line”). Pursuant to those efforts, I have been directly involved in coordination between Amtrak’s Host Railroads, Infrastructure Maintenance and Construction Services (“IMCS”), and Capital Delivery (“CAPD”) Groups.

2. For nine years prior to joining Amtrak, I served in variety of capacities for transportation consulting firms where, among other things, I produced transportation policy analysis for federal, state and city governments; coordinated intermodal highway, rail and air cargo analysis; provided strategic consulting, network, and merger analysis for Class 1 railroads; and assisted in the development of a strategic route network plan for a Class 1 railroad. Prior to that, from 1987-1998, I was employed by Consolidated Rail Corporation (“Conrail”). For a portion of that time, I was Senior Director-Strategic Planning, where, among other things, I analyzed and helped lead efforts to acquire control of \$3 billion in railroad assets. I also served as Director-Planning and Logistics, where among other things, I developed network analyses and recommendations for five-year strategic business plans.

3. In January 2023 members of the Host Railroad Group began engaging with NS about the planned Track 1 rehabilitation project involving the Subject Line. Prior to that time, information related to the project had been provided to NS through Amtrak’s IMCS, CAPD and

Operations departments exclusively. The Subject Line is located on railroad track owned by Amtrak, but Norfolk Southern (“NS”) provides rail service to shippers over the Subject Line pursuant to an operating agreement and freight easement. In my experience, in pursuing needed repairs to its rail network, Amtrak attempts to balance several priorities, such as the efficient use of its resources and the needs of partners that provide or access freight or commuter service over its lines.

4. Amtrak’s Operating Department and Host Railroad Group conducts annual track maintenance coordinating meetings with our various host railroad partners, including NS. It was during that annual coordinating meeting in January 2023 that NS expressed a concern to members of the Host Railroad Group about the potential impact of the rehabilitation project on NS service to shippers on the Subject Line. Amtrak Operating personnel on that call reiterated the workplan for the rehabilitation of the Subject Line and agreed to continue the dialogue with NS as the start of work approached.

5. In early March of 2023, OPAGAC contacted me to let me know a local rail shipper on the Subject Line had submitted an inquiry to OPAGAC regarding the freight service disruptions related to this rehabilitation project. Amtrak’s Host Railroads Group immediately engaged with OPAGAC to provide it with requested information, to answer questions about the rehabilitation project, and to ensure that lines of communication between Amtrak, NS, and the local rail shippers remained open. I also coordinated a weekly call with OPAGAC to continue discussions about the inquiry.

6. Following the local rail shipper’s inquiry to OPAGAC, I participated in several internal calls with IMCS and CAPD about the project, and designated a member of my staff to

receive direct outreach from local shippers¹. However, the designated member of my staff never received any direct outreach from local rail shippers located on the Subject Line. OPAGAC's recommendation to me was that Amtrak continue to work through NS, rather than work directly with the local rail shippers. Pursuant to OPAGAC's recommendation, my team continued to work directly with NS to address the submitted inquiry, and the concerns about the rehabilitation project. My group had multiple exchanges with NS over the next several weeks, regarding shippers' commodities, service patterns, transload options, on-site storage capacities and non-rail logistics alternatives. My group and I shared this information with others within Amtrak who were involved with the rehabilitation project.

7. Based on my coordination with IMCS and CAPD, I understand that the rehabilitation project will involve the simultaneous use of Amtrak's Track Laying System ("TLS") and an Undercutter. So far as I know, during discussions and consultations that I and members of the Host Railroad Group conducted with NS and OPAGAC, no party suggested a viable alternative approach to using this equipment to conduct the track rehabilitation project, or a viable alternative approach to performing the track rehabilitation that could avoid any disruption to freight service. We invited and obtained input from NS and OPAGAC, and evaluated each alternative, but no alternative approach or methodology for the rehabilitation project could be identified that would allow Amtrak to complete it in manner that was efficient, commercially reasonable, and avoided any impact to freight customers.²

8. As part of Amtrak's discussions with NS about potential alternatives or solutions to address shippers' concerns, Amtrak inquired whether NS could service rail shippers, like the Petitioners, from Track 2. NS rejected that suggestion.

¹ We provided the contact name, email and telephone number to OPAGAC for sharing with the concerned shippers.

² Amtrak passenger service will also be affected to accommodate the planned work.

9. In March 2023, during my discussions and consultations with NS about freight service disruptions related to the rehabilitation project, NS requested that Amtrak assess whether Amtrak could reduce the length of any service disruption to not more than ten consecutive days. NS represented that ten days was the approximate length of time that local rail shippers had indicated they could operate without arranging for alternative transportation methods, like trucking, to assist with needed deliveries. NS's request would have involved permitting NS access to each of the shipper sidings every ten days over the life of the project, rather than experience a single outage of approximately forty-five days.

10. Amtrak evaluated NS's request carefully. Following consultation between the IMCS, CAPD, and Host Railroad Groups, and careful study involving personnel from each group, Amtrak determined that the next most practical operational alternative to the existing workplan for the rehabilitation project would increase project costs by up to \$30 million and would still fail to reduce the length of freight service disruptions related to the rehabilitation project to ten days.

11. Amtrak's engineering team further determined that the alternative work plans would cause significant delay to the project, which would cause cascading effects for other planned rehabilitation projects, and impact Amtrak's five-year plan for its rail network.

12. Accordingly, Amtrak informed NS that it could not implement an operational alternative that would achieve the requested reduction in the length of any service disruption time period to ten days.

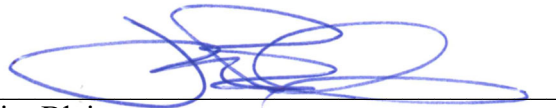
13. Since informing NS of its determination, and while I continue to communicate regularly with my NS counterpart, I have not received any communication from any local rail shipper about the rehabilitation project and, so far as I know, neither have other members of the Host Railroads Group.

14. Amtrak remains committed to partnership and working with Petitioners and NS to find a reasonable solution to the concerns raised by the shippers.

VERIFICATION

I, Jim Blair, declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement on behalf of Amtrak.

Executed on this 1st day of May, 2023.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Jim Blair