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BY E-FILING

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

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Office of Proceedings
December 23, 2024
Part of
Public Record

Re: *Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C.
§ 24308(f)—For Substandard Performance of Amtrak's Sunset Limited Trains 1
and 2 (Docket No. NOR 42175)*

Dear Ms. Brown:

Attached for filing in the above-referenced docket is the Reply of Illinois Central Railroad Company to Opening Statement of National Railroad Passenger Corporation.

Sincerely,

/s/ *David A. Hirsh*

David A. Hirsh

Counsel for Illinois Central Railroad Company

Attachment

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP.
UNDER 49 U.S.C. § 24308(f) – FOR SUBSTANDARD PERFORMANCE OF AMTRAK’S
SUNSET LIMITED TRAINS 1 AND 2

**REPLY OF ILLINOIS CENTRAL RAILROAD COMPANY
TO OPENING STATEMENT OF
NATIONAL RAILROAD PASSENGER CORPORATION**

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December 23, 2024

Table of Contents

I.	CN WAS NOT THE TARGET OF AMTRAK’S COMPLAINT OR ITS OPENING STATEMENT.	1
II.	CN IS NOT A “HOST RAIL CARRIER” FOR THE SUNSET LIMITED, AS IT IS NOT DIRECTLY ACCOUNTABLE TO AMTRAK UNDER AN OPERATING AGREEMENT.	4
A.	Amtrak Concedes that the STB’s Investigation Is Governed by the Definition of “Host Railroad” in FRA’s Regulations, Which Requires an Agreement with Amtrak.	4
B.	Section 213 Confirms that FRA’s Regulations Correctly Require a Direct Agreement with Amtrak In Order to be a “Host Railroad.”	6
C.	CN Is Not a Host Rail Carrier for the Sunset Limited.	11
1.	The Sunset Limited Is Not Included in the CN-Amtrak Operating Agreement.	12
2.	CN Is Not a Host of the Sunset Limited by Acquiescence.	14
III.	THE BOARD’S INVESTIGATION UNDER 49 U.S.C. § 24308(f) MUST EXTEND TO ALL ROOT CAUSES OF DELAY AND CONSIDER SCHEDULE AND DATA ISSUES.....	16
IV.	THE BOARD’S RECOMMENDATIONS “TO IMPROVE THE SERVICE, QUALITY, AND ON-TIME PERFORMANCE” OF THE SUNSET LIMITED SHOULD BE TAILORED AND BALANCED.....	20
V.	AMTRAK “PREFERENCE OVER FREIGHT TRANSPORTATION IN USING A RAIL LINE, JUNCTION, OR CROSSING” MEANS ONLY THAT DISPATCHING MUST BE WEIGHTED IN AMTRAK’S FAVOR.....	24
A.	The Statute Only Requires that Dispatching Decisions Be Weighted in Amtrak’s Favor.	26
B.	Amtrak’s Interpretation of the Preference Requirement Would Harm All Users of the Rail Network, Including Amtrak Itself.....	32
VI.	THE BOARD SHOULD BE JUDICIOUS AND EXERCISE DISCRETION REGARDING THE SCOPE AND NATURE OF ANY REMEDIES AND DAMAGES IT MAY ORDER.	36

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In accordance with the Board’s decision served in this proceeding on August 19, 2024 (“August 19 Decision”), Illinois Central Railroad Company (“CN”) hereby replies to Amtrak’s Opening Statement (filed October 7, 2024) and to specific questions posed by the Board in that decision. Although CN is not the target of this investigation, the entire freight rail industry has a strong interest in the issues posed by the Board and the precedents that may be established herein.

**I. CN WAS NOT THE TARGET OF AMTRAK’S COMPLAINT OR ITS
OPENING STATEMENT.**

CN has infinitesimal involvement with Amtrak’s Sunset Limited service. Its contribution to delays to Sunset Limited trains is also negligible. Any efforts to address those minimal delays could have no material impact on the Sunset Limited trains’ customer on-time performance (“COTP”), or whether it falls below 80%. Not surprisingly, Amtrak has made no allegations against CN in this proceeding. Given Amtrak’s Complaint and Opening Statement, there is no basis for CN to be a focus of this investigation.

Neither CN nor the 2.2-mile segment of track between East Bridge Junction and Southport Junction near New Orleans, Louisiana (“EBJ-SPJ Segment”) that is used by the Sunset Limited service has been a target of Amtrak’s Complaint or its Opening Statement. Amtrak does not allege either in its Complaint or its Opening Statement that CN has been the cause of any inappropriate delays to its Sunset Limited trains that it attributes to CN. Nor does Amtrak allege that CN has denied Amtrak its right to preference under 49 U.S.C. § 24308(c) in handling those trains.

That is not surprising. CN is only a party to this proceeding because of its ownership of the EBJ-SPJ Segment. But this segment is only a tiny portion of the 1,993-mile Sunset Limited Route. Moreover, CN operates no trains over the EBJ-SPJ Segment, which since 2019 has been leased to the New Orleans Public Belt Railroad Commission for the Port of New Orleans (“NOPB”).¹ And while CN dispatches the portion of the Segment east of the interlocking at East Bridge Junction (the interlocking itself is dispatched by UP), NOPB maintains the Segment. There are no station stops on the EBJ-SPJ Segment. See the map of the EBJ-SPJ Segment at Attachment 1, hereto.

Amtrak’s self-reported data confirms CN’s minimal connection with the Sunset Limited. The minutes of delay on the EBJ-SPJ Segment attributed by Amtrak to CN only amounted to approximately 1% of total route delay minutes during the Relevant Period (October 1, 2021 to December 8, 2022).² And delays attributable to freight train interference (“FTI”), which are of

¹ See *New Orleans Pub. Belt R.R.—Lease & Operation Exemption—Line of Ill. Cent. R.R.*, Docket No. FD 36362 (STB served Dec. 13, 2019). The leased lines include approximately 1.16 miles of track not used by Amtrak, in addition to the 2.2 miles of the EBJ-SPJ Segment.

² See Response of Illinois Central Railroad Company to Appendix—Part I (Train 1) of the Surface Transportation Board’s February 13, 2024 Decision, at 5-6 (filed June 4, 2024).

most concern to Amtrak and the Board, amount to just 0.08% of the total delays.³ It remains the case that Amtrak has made no complaints to CN, raised any concerns with CN in this case, or sought any discussions with CN regarding Sunset Limited trains on the EBJ-SPJ Segment.

As CN has explained previously, Amtrak operates the Sunset Limited over the EBJ-SPJ Segment via long-held trackage rights granted to UP's predecessor by CN's predecessor.⁴ Before the creation of Amtrak, UP's predecessor Southern Pacific Transportation Company ("SP") operated the Sunset Limited as its own passenger train using trackage rights over the EBJ-SPJ Segment, which was then owned by CN's predecessor which had granted such trackage rights. Those trackage rights (which are limited to operation of passenger trains) remain in force today between CN and UP. Since Amtrak assumed the direct operation of the Sunset Limited in 1971, Amtrak has operated that service over the EBJ-SPJ Segment as SP had done, but as a subtenant of SP's, and now UP's, trackage rights.⁵ UP pays CN a flat annual fee for the use of UP's trackage rights over the Segment by UP's subtenant Amtrak. CN has no agreement with Amtrak for operation of the Sunset Limited trains over the EBJ-SPJ Segment, and Amtrak does not provide CN with any compensation for that operation. For this reason, as discussed in the

³ *Id.*

⁴ Response of Illinois Central Railroad Company to Amtrak's Complaint and Proposed Procedures at 8-9 (filed Jan. 27, 2023); Response of Illinois Central Railroad Company to Surface Transportation Board's Interrogatories and Document Requirements at 4-5 (filed Sept. 25, 2023); Response of Illinois Central Railroad Company to Appendix—Part I (Train 1) of the Surface Transportation Board's February 13, 2024 Decision at 5 (filed June 4, 2024).

⁵ Amtrak acknowledges that UP "has a contractual relationship with Amtrak that is applicable to" the EBJ-SPJ Segment. Amtrak's Opening Statement at 21 (filed Oct. 7, 2024) ("Amtrak Opening"). Amtrak incorrectly states that CN has argued that the Sunset Limited operates over the EBJ-SPJ Segment "via UP's trackage agreement with NOPB." Amtrak Opening at 20. CN never argued that. As discussed above, CN's predecessor, not NOPB, granted the relevant trackage rights to UP's predecessor on the EBJ-SPJ Segment.

next section, CN is not a “host” of the Sunset Limited service within the meaning of 49 U.S.C. § 24308(f).

II. CN IS NOT A “HOST RAIL CARRIER” FOR THE SUNSET LIMITED, AS IT IS NOT DIRECTLY ACCOUNTABLE TO AMTRAK UNDER AN OPERATING AGREEMENT.

A. Amtrak Concedes that the STB’s Investigation Is Governed by the Definition of “Host Railroad” in FRA’s Regulations, Which Requires an Agreement with Amtrak.

Amtrak argues that the 49 C.F.R. § 273.3 definition of a “host railroad,” adopted by FRA and Amtrak in the PRIIA Section 207 Metrics and Standards rulemaking⁶ under Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”) should be used by the Board for purposes of investigations under 49 U.S.C. § 24308(f).⁷ CN agrees. In Section 207 of PRIIA, Congress tasked FRA and Amtrak with promulgating implementing regulations to define the on-time performance standards that would trigger a Board investigation under Section 213 of PRIIA. FRA and Amtrak then worked jointly to promulgate rules in a notice and comment rulemaking, including triggers and implementing regulations for those triggers. That work effort answered the key question applicable to CN in the Sunset Limited proceeding: how is “host railroad” defined?

FRA and Amtrak’s answer, which has been promulgated as a final rule after notice and comment rulemaking, requires Amtrak to have a direct agreement with a railroad for that carrier to be a host. Section 273.3 expressly defines a “host railroad” as “a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.”

⁶ See Metrics and Minimum Standards for Intercity Passenger Rail Service, 85 Fed. Reg. 72,971,72,978 (Nov. 16, 2020) (codified at 49 C.F.R. Part 273) (“Metrics and Standards”).

⁷ Amtrak Opening at 15-16.

FRA’s regulation follows the statutory scheme established by Congress in PRIIA, which requires there to be a direct agreement between a rail carrier and Amtrak for a “host” relationship to exist. FRA’s definition of “host railroad” embodies “the best reading” of the statutory scheme, and therefore, must control.⁸

Section 207(c) of PRIIA confirms Congress’s understanding that a host is a railroad with something in the nature of an agreement with Amtrak concerning the Amtrak train(s) at issue – it instructs that Amtrak and its “host rail carriers incorporate the metrics and standards . . . **into their access and service agreements**” to the extent practicable (emphasis added). Indeed, the final rule implementing Section 207 again encouraged Amtrak and host railroads to amend their operating agreements given the final rule promulgated under PRIIA.⁹ This language makes no sense if any rail carrier across the country could be deemed a “host” even if it has no agreement with Amtrak for the service.

FRA and Amtrak’s rules defining triggers and “host railroad” under Section 207 of PRIIA set the framework for Board’s investigation under Section 213 when an Amtrak train’s COTP falls below 80% for two consecutive quarters. Indeed, both sections use synonymous terms for a host and were adopted in the same legislation. Importantly, the COTP standard adopted by FRA and Amtrak under Section 207 provides the **sole basis** for STB investigations of substandard Amtrak performance under Section 213. *See* 49 U.S.C. § 24308(f)(1) (referring to the minimum standards established under Section 207). To implement this interdependent statutory scheme, the meaning of an Amtrak “host” must be consistent. As the Eighth Circuit

⁸ *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024).

⁹ Metrics and Standards, 85 Fed. Reg. at 72,978 (“FRA encourages Amtrak and the host railroads to work toward aligning the bilateral operating agreements with the customer OTP metric and standard to ensure performance is measured, and appropriately incentivized, in a consistent manner.”)

explained when examining this statutory scheme, Congress likely did not intend for the Board to develop “potentially conflicting” definitions of terms under Section 213 from those adopted by FRA and Amtrak under Section 207.¹⁰ Consistent with the FRA and Amtrak definition of “host railroad” under 49 C.F.R. § 273.3, an agreement making the rail carrier directly accountable to Amtrak must exist. And if no agreement exists for Amtrak service, then the rail carrier is not a host. FRA and Amtrak’s definition of “host railroad” applies here, as Amtrak concedes, and, as discussed herein, it confirms that CN is not a “host” for the Sunset Limited trains.

B. Section 213 Confirms that FRA’s Regulations Correctly Require a Direct Agreement with Amtrak In Order to be a “Host Railroad.”

FRA and Amtrak’s definition of “host railroad” is plainly correct under principles of statutory interpretation that govern the Board’s implementation of Section 213 of PRIIA (amending 49 U.S.C. § 24308). Like the FRA/Amtrak definition of “host” from Section 207, such statutory interpretation confirms that an agreement with Amtrak is required for a railroad to be a “host.”

We turn first to the statutory provision where the term “host” is used.¹¹ The canons of interpretation strongly favor giving meaning to every word in the statute and giving different meanings to different terms.¹² The statute repeatedly refers to “a rail carrier” whose services or

¹⁰ See *Union Pac. R.R. v. STB*, 863 F.3d 816, 826 (8th Cir. 2017).

¹¹ See, e.g., *BedRoc Ltd. v. United States*, 541 U.S. 176, 183 (2004) (“The preeminent canon of statutory interpretation requires us to ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’ Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous.”) (citation omitted).

¹² See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 414 (2019) (“the interpretive canon against surplusage [instructs] that ‘every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.’”) (citation omitted); *Wisc. Cent. Ltd v. United States*, 585 U.S. 274, 279 (2018) (“We usually presume differences in language [in a statute] convey differences in

facilities Amtrak uses, or over whose tracks Amtrak operates. 49 U.S.C. § 24308(a)(1), (a)(3), (b), (c), (d), (e), (f)(1). By contrast, when the statute provides authority for the Board to order remedies, it does so only against a “host rail carrier.” 49 U.S.C. § 24308(f)(2)–(4).¹³ Congress must be understood to have intended that only a subset of rail carriers whose facilities and services Amtrak uses – “hosts” – be subject to such remedies.

We turn next to the broader statutory context.¹⁴ “[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”¹⁵ Section 24308(a) provides for a particular kind of host arrangement: if Amtrak wants to be able to treat a “rail carrier” as its host, it must either contract with that rail carrier on “terms on which the parties agree,” § 24308(a)(1), or, if Amtrak and the host railroad are unable to agree, Amtrak may secure a Board order “prescrib[ing] reasonable terms and compensation,” § 24308(a)(2)(A)(ii), governing Amtrak’s use of the rail carrier’s facilities or services.¹⁶ Reading § 24308 as a whole,

meaning.”); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) (“Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.”).

¹³ While 49 U.S.C. § 24308(f)(1) addresses in general terms the performance of “a rail carrier,” it more narrowly identifies a “host freight railroad over which Amtrak operates” as among the entities with standing to file a complaint to initiate a § 24308(f) proceeding. That distinction is consistent with the understanding, as articulated herein, that “host” status hinges on a contract or Board order making the putative host and Amtrak mutually accountable for specified facilities, services, compensation, and performance standards. The legal status of “host,” conferred by specific agreement or order, gives rise to the legal consequences of standing under § 24308(f)(1) and potential liability under § 24308(f)(2).

¹⁴ *Fischer v. United States*, 603 U.S. 480, 486 (2024) (terms must be construed in “the broader context of the statute as a whole” (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997))).

¹⁵ *King v. Burwell*, 576 U.S. 473, 492 (2015) (citation omitted).

¹⁶ In emergency circumstances, Amtrak can ask the Board to prescribe a temporary hosting arrangement on “reasonable terms” under 49 U.S.C. § 24308(b). To ensure a coherent statutory scheme and avoid constitutional problems, such terms must include compensation, just as longer-term agreements under § 24308(a)(2)(A)(ii) must.

it is the existence of such an agreement that distinguishes a “host rail carrier” from a mere “rail carrier.”

This reading is the only one that makes sense of the statutory scheme. Under 49 U.S.C. § 24308(f)(2)-(4), remedies are available in this proceeding only against a “host rail carrier.” Such remedies may reasonably be imposed on a host rail carrier that has an agreement with Amtrak on certain terms (e.g., penalty terms, 49 U.S.C. § 24308(a)(1)), and whose obligations to Amtrak are supported by its own voluntary consent (under § 24308(a)(1)) or by the Board’s prescription of reasonable compensation (under § 24308(a)(2)(A)(ii)). In the absence of such established terms, imposing remedies, including damages, would be unreasonable and is not authorized under the statute.

The canon of constitutional avoidance¹⁷ further supports the understanding that to be a “host” for purposes of 49 U.S.C. § 24308(f)(2)-(4), a rail carrier must have an operating agreement (that is, in the nature of an agreement under 49 U.S.C. § 24308(a)(1)). It would likely violate the Takings and/or Due Process Clauses to subject a rail carrier to damages or other remedies in favor of Amtrak in the absence of a pre-existing contractual arrangement that defines the carrier’s obligations to Amtrak, makes it directly accountable to Amtrak, and provides it compensation for taking on affirmative obligations and potential liabilities to Amtrak. Courts, the Board, and the Board’s predecessor, the Interstate Commerce Commission (“ICC”), have long recognized that incremental cost compensation is necessary, through the mechanism of an operating agreement (or Board order) under 49 U.S.C. § 24308(a), to provide the “just compensation” constitutionally required for Amtrak’s physical occupation of a host rail carrier’s

¹⁷ See, e.g., *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

rail lines.¹⁸ As the Board concluded in Amtrak’s case against CN under 49 U.S.C. § 24308(a), a host is entitled to an opportunity to recover, via an operating agreement, all “those costs that [it] has actually incurred, and that [it] would not have incurred ‘but for’ the presence of Amtrak,” including costs, such as freight delay costs, that may arise from the host’s obligation to provide preference.¹⁹ Amtrak cannot impose and enforce the obligations of a host rail carrier without paying just compensation in an operating agreement.

The meaning of “host rail carrier” articulated herein is not unduly restrictive and does not create any jurisdictional gaps. All it requires is the establishment of a specific hosting relationship, with terms and accountability, by agreement or Board order under 49 U.S.C. § 24308(a) (or, in emergency situations, (b)). Whenever Amtrak wants to establish such a relationship, it can do so under subsection (a). The necessary provisions of an agreement include the essential accountability requirements of subsection (a), that is, a penalty provision establishing expectations, and reasonable compensation. In practice, Amtrak is well aware of how to create the requisite host relationship. It has a long history of establishing such relationships through the use of “operating agreements,” such as those it has entered into with each of its Class I hosts. As discussed in Section II.C., below, it is evident that the Sunset Limited service is not part of the CN-Amtrak Operating Agreement (“Operating Agreement”).

Thus, to the extent the Board is asking whether a carrier merely fulfilling one or more functions such as ownership, dispatching, or maintenance – without a direct agreement with

¹⁸ See, e.g., *Metro. Transp. Auth. v. ICC*, 792 F.2d 287, 297 (2d Cir. 1986).

¹⁹ *Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry. Co.*, No. FD 35743, slip op. at 22 (STB Aug. 8, 2019); see also 49 C.F.R. § 200.5(c)(3) (providing for reduction in host compensation if a host is relieved from preference obligations, thus necessarily defeating Amtrak’s notion that it is entitled to receive preference from hosts without compensating them for their incremental costs of providing it).

Amtrak regarding specific trains –meets the definition of a “host railroad,”²⁰ the answer is “no.” As the 49 C.F.R. § 273.3 definition of “host railroad” requires and 49 U.S.C. § 24308(a) expressly contemplates, in order to establish a “host” relationship there must be a direct agreement between Amtrak and a rail carrier, and that agreement must contain the necessary accountability provisions (penalties and compensation). Amtrak’s suggestion that dispatching or joint facility agreements between rail carriers can somehow satisfy the “directly accountable” element of the Section 273.3 definition,²¹ makes no sense. Amtrak admits that it is typically not a party to these agreements and is therefore unaware of their provisions.²² More fundamentally, agreements between two or more freight rail carriers are not agreements with Amtrak itself and cannot make either carrier “directly accountable” to Amtrak, as required for host status.

The Board also poses the question of whether it is possible for there to be multiple hosts for an Amtrak service (here the Sunset Limited service) over a given portion of its route.²³ Counsel for CN knows of no such case. It would make no practical sense for Amtrak to enter into multiple operating agreements for the same train on the same segment. As discussed above, mere ownership, maintenance, or dispatching of a track segment over which Amtrak operates, without a direct contractual relationship with Amtrak containing the necessary terms and applying to the trains at issue, does not confer host status.²⁴

²⁰ See August 19 Decision at 3.

²¹ Amtrak Opening at 17.

²² *Id.*

²³ See August 19 Decision at 3.

²⁴ One of the many potential problems with treating multiple carriers as hosts is highlighted by Amtrak’s effort to justify, post hoc, its supposed methodology for picking and choosing between carriers for the assignment of host-responsible delays (“HRD”) where it now claims there are multiple hosts for a particular line segment. Amtrak states that it has based or will base its decisions upon its limited understanding and view of the existing contractual

The statute as a whole makes clear that Amtrak may not demand the statutory benefits of a “host” arrangement without having negotiated an agreement under 49 U.S.C. § 24308(a). For 49 U.S.C. § 24308(f)(2)-(4) to apply, there must be an existing agreement under 49 U.S.C. § 24308 that defines the carrier’s obligations to Amtrak, and provides it compensation for taking on affirmative obligations to Amtrak. A rail carrier is not a “host” subject to remedies merely because it dispatches an Amtrak train over a small segment of track that it owns or merely because Amtrak, in reporting PRIIA data, unilaterally says so.

C. CN Is Not a Host Rail Carrier for the Sunset Limited.

CN has repeatedly explained that it is not a host for the Sunset Limited, as it has no agreement with Amtrak (or Board order) making it directly accountable to Amtrak for that service. Nor does Amtrak compensate CN for hosting the Sunset Limited.²⁵ Amtrak appears to lack a clear position as to whether CN, which owns the segment, or UP, whose trackage rights over the EBJ-SPJ Segment Amtrak operates under, or both of them, is the “host” of the Sunset

relationships (to which Amtrak may not even be a party) and the “historical hosting relationships.” Amtrak Opening at 17-18 But it provides no objective criteria or parameters for these determinations. Its flawed effort to justify its assignment of HRD to CN for the EBJ-SPJ Segment illustrates the problem. Amtrak relies heavily on the fact that before 2019, CN dispatched the East Bridge Junction interlocking and on its claim that “CN still maintains and operates the tracks.” *Id.* at 21. But it ignores the more relevant historical facts that, for decades (since even before the creation of Amtrak), the Sunset Limited operated and that it now continues to operate over the EBJ-SPJ Segment via UP (formerly SP) trackage rights, and that CN in fact does not currently maintain or operate the segment, which has been leased to NOPB since 2019. See *New Orleans Pub. Belt R.R.—Lease & Operation Exemption—Line of Ill. Cent. R.R.*, Docket No. FD 36362 (STB served Dec. 13, 2019).

²⁵ See Response of Illinois Central Railroad Company to Appendix—Part I (Train 1) of the Surface Transportation Board’s February 13, 2024 Decision, at 4-5 (filed June 4, 2024) (“CN June 4 Response”); Response of Illinois Central Railroad Company to Surface Transportation Board’s Interrogatories and Document Requirements, at 3-5 (filed Sept. 25, 2023) (“CN Sept. 25 Response”); Response of Illinois Central Railroad Company to Amtrak’s Complaint and Proposed Procedures, at 7-10 (filed Jan. 27, 2023) (“CN Response to Complaint”).

Limited for that segment.²⁶ As CN has explained, the Sunset Limited service has operated over those UP trackage rights on the EBJ-SPJ Segment since before the creation of Amtrak, and continues to do so today.²⁷ But Amtrak primarily proffers two bases for treating CN as a host of the Sunset Limited: (1) the CN-Amtrak Operating Agreement;²⁸ and (2) acquiescence.²⁹ Both fail.

1. The Sunset Limited Is Not Included in the CN-Amtrak Operating Agreement.

CN is a “host rail carrier,” within the meaning of 49 U.S.C. § 24308(f)(2)-(4), for certain Amtrak trains and services, pursuant to its Operating Agreement with Amtrak, which has been extended by Board order during the pending proceeding between CN and Amtrak under 49 U.S.C. § 24308(a) (Docket No. FD 35743). As that agreement and that proceeding reflect, CN and Amtrak understand what kind of arrangement is required for a rail carrier to “host” Amtrak. Such an arrangement entails train- or service-specific agreements (or a Board order) specifying schedules, host performance standards, penalties, and compensation. The CN-Amtrak Operating Agreement contains no such provisions with respect to the Sunset Limited.³⁰ The Sunset Limited service is never mentioned even once in the Operating Agreement, whereas all of the covered services are repeatedly and specifically referenced throughout the agreement. For

²⁶ See Amtrak Opening at 21.

²⁷ See *supra*, Part I (explaining the history of the Sunset Limited’s operation).

²⁸ Amtrak Opening at 21.

²⁹ *Id.*

³⁰ See Amtrak_STB_0014530-Amtrak_STB_0014724. Amtrak submitted the Operating Agreement to the Board as a highly confidential exhibit to Amtrak’s Response to the Board’s Interrogatories and Document Requirements; Appendix A–Part III (filed Dec. 5, 2023) (“Amtrak Suppl. STB Response”). CN does not consider the general references herein to the Operating Agreement to be confidential and accordingly does not treat it as such here.

example, Appendix II provides schedule skeletons for the covered services, but it does not include a schedule for Sunset Limited.³¹ Appendices V and VI³² include penalty and performance provisions for covered services, but they do not include anything with respect to the Sunset Limited. Appendix VII contains various forms for calculating monthly compensation for covered services, but it does not include the Sunset Limited.³³ Further, the Operating Agreement requires Amtrak to pay at least minimum mileage-based charges for the services CN hosts.³⁴ Amtrak has never paid CN such charges – or anything – with respect to the Sunset Limited. Nor does Amtrak argue otherwise.³⁵

Amtrak cites scattered references in the Operating Agreement to CN's tracks that include the EBJ-SPJ Segment used by the Sunset Limited.³⁶ This does not advance Amtrak's argument as those references relate to the City of New Orleans service, which is explicitly included in the Operating Agreement and whose route overlaps with the Sunset Limited service route between

³¹ App. II (Amtrak_STB_0014620-Amtrak_STB_0014651).

³² App. V (Amtrak_STB_0014681-Amtrak_STB_0014689) and App. VI, Exhibit A (Amtrak_STB_0014698-Amtrak_STB_0014699) (including parameters for checkpoint arrival and departure times, run time, recovery time, dwell time, and tolerances).

³³ App. VII-6 to App. VII-9 (Amtrak_STB_0014706-Amtrak_STB_0014709).

³⁴ See Amtrak_STB_0014655 (compensation Item Nos. 6, 10(a), 10(b), 15, 17(a), 17(b)).

³⁵ Amtrak previously suggested that the Operating Agreement includes no penalty provision relating to the Sunset Limited because CN's involvement with the service is minimal. Amtrak Suppl. STB Response at 17 n.29. It is minimal, but the statutory requirements for a host-Amtrak legal relationship creating the direct accountability required for the application of 49 U.S.C. § 24308(f)(2)-(4) are not subject to de minimis exceptions, and the Operating Agreement lacks, not merely a penalty provision, but **any** provisions whatsoever explicitly relating to the Sunset Limited. Further, Amtrak's explanation for why the Sunset Limited is absent from all the key provisions of the Operating Agreement appears to be nothing more than a post-hoc rationalization. Amtrak has offered no evidence that it raised the exclusion with CN prior to this proceeding (or even after), much less that it sought or received CN's agreement to such an exclusion, and Mr. Scott Kuxmann (CN's Manager of Passenger Operations and NRPC Officer), who is verifying this reply, is not aware of any such proposal or discussions.

³⁶ Amtrak Opening at 20.

East Bridge Junction and Southport Junction. Indeed, Amtrak’s argument is inconsistent with the statutory framework. Congress provided that when Amtrak wants to add a new train to a host arrangement, it must secure a new agreement or Board order setting terms specific to that additional train (49 U.S.C. § 24308(e)), and it likewise framed the Board’s jurisdiction in terms of individual Amtrak trains (see 49 U.S.C. § 24308(f)(1)). That same train-by-train approach governs host status for purposes of 49 U.S.C. § 24308(f)(2)-(4).³⁷ The Operating Agreement does not cover the Sunset Limited service as it makes no mention of that service. And Amtrak cannot change that reality by pointing to the portion of the Operating Agreement for the City of New Orleans service between Chicago and New Orleans and claim that this separate service somehow *sub silentio* created an agreement between CN and Amtrak as to the Sunset Limited.

2. CN Is Not a Host of the Sunset Limited by Acquiescence.

Finally, Amtrak asserts that CN is “contractually, directly accountable” to Amtrak because CN supposedly did not dispute any HRD until after Amtrak filed its complaint in this matter and CN initially agreed to certify the Sunset Limited schedule in response to a general certification letter.³⁸ That claim fails on the law and on the facts.

As to the law, as discussed above, and as Amtrak acknowledges, a “host” for purposes of the Board’s investigation under Section 213 means a railroad “that is directly accountable to Amtrak by Agreement,” in accordance with the definition of “host railroad” adopted by FRA/Amtrak’s implementing regulation for Section 207 of PRIIA. And the statutory context of

³⁷ Amtrak’s apparent suggestion to the contrary – that an Amtrak-host operating agreement providing for one Amtrak train to run over a track segment necessarily allows Amtrak to run other trains over that segment – is clearly wrong. See Amtrak Opening at 20. If Amtrak were correct, it would never have to seek further agreement or Board authority to add new or different trains over a track segment subject to an existing host-Amtrak operating agreement.

³⁸ Amtrak Opening at 21.

49 U.S.C. § 24308 makes clear that a “host” relationship for purposes of subsection (f)(2)-(4) must be established by an affirmative agreement between the railroad and Amtrak. A lack of objection to an Amtrak schedule, or to Amtrak’s reported PRIIA data, does not turn a non-host into a host. Whether and when CN raised such objections has no bearing on whether, in Amtrak’s own terms, there is an “agreement” making CN “directly accountable” to Amtrak with respect to the Sunset Limited, or on whether the penalty and compensation provisions required under 49 U.S.C. § 24308(a) for a host relationship are in place.

As to the facts, prior to Amtrak’s complaint, CN specifically disclaimed being a host for the Sunset Limited service.³⁹ CN thus had little reason to expend resources or object to Amtrak’s schedule or its HRD data. Amtrak never treated CN as a host of the Sunset Limited in other respects; it did not provide CN performance-based (or any) compensation with respect to the Sunset Limited, and it never raised or sought discussions with CN regarding any operational concerns with the Sunset Limited.⁴⁰ Nonetheless, in light of Amtrak’s claims in this proceeding, CN has for well over a year been disputing Amtrak’s treatment of CN as a host for purposes of its delay coding for the Sunset Limited. As for Amtrak’s request for schedule certification, it was made as part of a form letter that was not specific to the Sunset Limited and included a long list of Amtrak trains for other services. CN later sent a follow-up letter to FRA and Amtrak, which “correct[ed] the record” regarding schedule certification and “formally request[ed]” that

³⁹ See CN Response to Complaint, Attach. B, Ex. A (Letter from Robert Reilly, CN EVP & COO, to Scot Naparstek, Amtrak EVP, dated March 23, 2022, at 1 (“CN is not a host for the Sunset Ltd., which is operated by UP via trackage rights over only a tiny segment of CN.”)).

⁴⁰ See CN Response to Complaint at 9.

FRA and Amtrak “stop incorrectly referring to and treating [CN] as a ‘host railroad’ for Amtrak’s Sunset Limited service.”⁴¹ Even if acquiescence mattered, there is none.

III. THE BOARD’S INVESTIGATION UNDER 49 U.S.C. § 24308(f) MUST EXTEND TO ALL ROOT CAUSES OF DELAY AND CONSIDER SCHEDULE AND DATA ISSUES.

In this and any future proceedings under 49 U.S.C. § 24308(f), it is essential that the Board conduct the objective investigation called for by the statute (specifically § 24308(f)(1)). That includes closely reviewing the actual causes of Amtrak delays, rather than relying on Amtrak’s flawed train performance data, as well as investigating how schedules and congestion contribute to delays.

In reviewing delays and their causes, the Board must consider delays caused by Amtrak itself and third parties, not just delays Amtrak alleges were caused by a host railroad.⁴² Amtrak’s delay reporting may provide a starting point for such an investigation, but as CN has explained in other proceedings, Amtrak’s coding is not based on the root cause of delays, but on the immediate observation of the conductor (i.e., a windshield view), and its delay attribution can be

⁴¹ See CN Response to Complaint, Attach. B, (Letter from Michael A. Matteucci, CN Senior Dir. to Michael W. Lestingi, FRA Exec. Dir. and Dennis Newman, Amtrak EVP, dated Jan. 26, 2023), at 1.

⁴² Under Amtrak’s delay reporting system, when an Amtrak train is delayed on any segment of its route, causing the train to take more time to traverse that segment than the pure run time provided in the train’s schedule, the train’s conductor creates a record of the delay (the conductor delay report, or “CDR”), which attributes that delay to one of 26 causes, each represented by a three-letter code, assigned on the basis of information immediately available to the conductor. Amtrak categorizes the delays represented by these codes as HRD, “Amtrak responsible delays,” or “third party delays.”

inaccurate and incomplete both in how delays are categorized as Freight Train Interference (“FTI”) and HRD and how conductors record delays.⁴³

The FTI category itself is overbroad and misnamed. The title “freight train interference” wrongly implies that freight traffic has been dispatched in preference over Amtrak. One of the most extreme examples of delays that are not within the control of a host railroad is Amtrak’s treatment of delays at interlockings that are not controlled by a “host” railroad for the track segment Amtrak is traversing. Amtrak codes delays at such interlockings against the segment “host,” recording it as FTI, even though such delays are beyond the “host’s” reasonable control.

The fact that Amtrak’s reporting is generally based on the cause immediately apparent to the conductor also means the Board cannot assume Amtrak’s coding reflects the underlying cause of the delay.⁴⁴ For example, when a signal is knocked out due to flooding, Amtrak sometimes assigns a delay code of DCS (“Signal Delays,” a category of HRD), even though the underlying cause is the flood (i.e., weather), over which the railroad has no control. It is important, therefore, that the Board question and look beyond Amtrak’s coding.

Amtrak would rather the Board not do so. It argues that its coding, and thus its assignment of responsibility for delays, must be accepted or relied upon without question or review because Amtrak “relies on host railroads to satisfy their obligation to dispute any Host-Responsible Delays that are assigned to them.”⁴⁵ The Board should reject that claim. There is,

⁴³ See, e.g., Post-Interim Decision Opening Submission of Illinois Central Railroad Company and Grand Trunk Western Railroad, *Application of Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry.*, Docket No. FD 35743, at 33-36 (filed May 27, 2022; refiled Nov. 30, 2022 incorporating errata pursuant to Board order).

⁴⁴ The Board appears to agree. It requested and received from the rail carrier parties root cause explanations for a selection of the delays listed by Amtrak at the outset of this proceeding. See STB Decision, served February 13, 2024, at 2-3.

⁴⁵ Amtrak Opening at 18. See, also, *id.* at 21, 29.

in fact, no “obligation” under FRA’s regulations that railroads dispute erroneous delay codes. In response to railroad complaints about inaccuracies both with Amtrak’s delay code categorization and with Amtrak coding generally, FRA provided that railroad could, if they wish, dispute the coding of individual delays.⁴⁶ FRA, however, did not make disputing Amtrak’s coding mandatory, and railroads have been free to decide whether or not to dispute individual Amtrak coding.⁴⁷ For these reasons, Amtrak’s effort to validate its delay data by reference to the percentage of such delays that were “disputed” is meaningless at best and misleading at worst.

In investigating Amtrak performance in a Section 213 investigation the Board must also examine the schedules for the trains at issue and consider whether those schedules are realistic and reasonably attainable.⁴⁸ Doing so is particularly important, where, as here, the schedules

⁴⁶ Metrics Standards, 85 Fed. Reg. at 72, 982 (discussing commenters’ “concern about Amtrak’s identification of root causes of delay” and “disagree[ment] on how to assign responsibility for any particular delay”; explaining that FRA’s “train delays metric includes the reporting of disputed delays where Amtrak and the host railroad are unable to agree on a delay category”); *see also* 49 C.F.R. § 273.5(d) (“The train delays metric is also reported by the number of non-Amtrak host-responsible delay minutes disputed by host railroad and not resolved by Amtrak.”).

⁴⁷ To systematically dispute Amtrak’s delay coding, a carrier must commit the time and resources to setting up an internal system to do so. Further, carriers have little incentive to dispute Amtrak delays when they know there are fundamental disagreements with Amtrak and it will simply reject their claims and publish the on-time performance number while inappropriately attributing delays to the host railroad. In addition, a host railroad may have little incentive to dispute coding for purposes of PRIIA if doing so would have little or no impact on the actual compensation they receive from Amtrak under their operating agreements (e.g., because different coding applies under that agreement or the disposition of certain delays will not impact compensation).

CN, for example, formerly did not dispute any of Amtrak’s coding for delays on the 2.2 miles of the Sunset Limited route that CN owns (the EBJ-SPJ Segment), both because CN has never regarded itself as a host of the Sunset Limited and because correcting erroneous coding would bring no monetary benefit to CN. After the Board’s initiation of this proceeding, CN began disputing Amtrak’s erroneous attributions of delay of the Sunset Limited trains to CN.

⁴⁸ *See* 49 U.S.C. § 24308(f)(1) (“[a]s part of its investigation, the Board has authority to review . . . the extent to which scheduling . . . contribute[s] to delays.”).

have not been certified and significant issues have been raised during the investigation concerning those schedules.⁴⁹ Even for those schedules that have been certified, the Board should not assume that “certification” of schedules under the Metrics and Standards conclusively resolves that question. FRA itself recognized “the importance of reviewing schedules periodically to ensure their integrity,” because, as it noted, even “certified schedules are impacted by future events.”⁵⁰

The relationship of schedules to on-time performance and delay analysis cannot be overstated. If a schedule is too short in any of its elements (pure running time (PRT), recovery time, or dwell time),⁵¹ or time is allocated inappropriately within a schedule, on-time performance is likely to be reduced. Assuring that PRT is accurate and sufficient is critical not only to on-time performance, but also for accurate analysis of delays. Amtrak’s coding system generates “delays” based on PRT, not based on overall scheduled arrival times. Thus, whenever a train fails to traverse a segment within its PRT, even if that train is “on time” under its schedule, Amtrak generates a delay that must be coded by its conductor. This may result in

⁴⁹ Union Pacific Railroad Company’s Response to Amtrak’s Complaint and Petition and Proposed Procedures at 5-8 (filed Jan. 27, 2023); Union Pacific Railroad Company’s Response to Appendix A, Part IV at 12-18 (filed Sept. 25, 2023) (response to Request No. 4). UP did not certify the Sunset Limited schedules, and CN retracted its errant certification because it is not a host for the service, as explained in Part II, above.

⁵⁰ Metrics and Standards, 85 Fed. Reg. at 72,979 & n.25.

⁵¹ Amtrak schedules have three primary components: PRT, recovery/miscellaneous time, and dwell time. PRT is intended to represent the theoretically shortest time, given established track speeds, in which a given Amtrak train can traverse its assigned route if there is no other traffic on the rail line and all operating conditions are perfect. Recovery/miscellaneous time is an amount of time built into train schedules to provide a cushion to allow for reasonably foreseeable contingencies and delays that are an inevitable part of practical railroading, so that the train’s schedule can be met with regularity. It is one of the standard building blocks of train schedules. Dwell time is the amount of time a train is scheduled to stop at a station to load and unload passengers and bags, change crews, service locomotives, or perform any other required work.

additional delays being wrongly attributed to a host, as conductors have an incentive not to code delays against themselves (based on their failure to operate the train at optimal speed) or Amtrak more generally.⁵²

In short, the Board is charged in a proceeding under 49 U.S.C. § 24308(f) with broadly investigating the reasons for Amtrak’s underperformance. In doing so, it should understand the limitations of Amtrak’s delay data and not accept it without examination. Insofar as issues are raised concerning Amtrak’s schedules, the Board should investigate those issues, particularly where the schedules are disputed.

IV. THE BOARD’S RECOMMENDATIONS “TO IMPROVE THE SERVICE, QUALITY, AND ON-TIME PERFORMANCE” OF THE SUNSET LIMITED SHOULD BE TAILORED AND BALANCED.

Congress’s primary goal for a § 24308(f)(1) investigation is clear: the Board should elucidate facts and make “recommendations” to facilitate cooperation between the parties that will improve performance on the specific service going forward. Congress instructed the Board to take a balanced, constructive look at all the issues, including not just Amtrak’s allegations against a rail carrier but also “whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks

⁵² When a train fails to traverse a segment within its PRT without having suffered a specific delay, it should be coded as an OTH (miscellaneous delay). That code suggests that the conductor may have failed to maintain normal speed. Conductors may be reluctant to record such a delay, which reflects on their own performance, and thus stretch to find a different code attributing the delay to the host, or they may attribute greater delay minutes to other delays, including delays attributable to its host. *Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a) – Canadian Nat’l Ry. Co.*, Docket No. FD 35743, Opening Evidence of Ill. Cent. R.R. Co. and Grand Trunk W. R.R. Vol. 1, Tab A, Joint V.S. of Paul E. Ladue and Scott Kuxmann at 38-39 (filed Sept. 4, 2015); *id.*, Rebuttal Submission of Ill. Cent. R.R. Co. and Grand Trunk W. R.R. Vol. 1, Joint Rebuttal V.S. of Paul Ladue and Scott Kuxmann at 22 (filed Sept. 14, 2017).

the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators,” and “the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.” 49 U.S.C. § 24308(f)(1).

Rather than present the Board with a tailored and thoughtful list of potential recommendations, however, Amtrak has used this investigation to instead provide a wish list of nineteen recommendations that are not specific to Sunset Limited trains or hosts, that include no recommendations for Amtrak itself, and that are grossly overreaching and imbalanced against freight traffic and hosts. Amtrak’s recommendations do not even attempt to account for its own responsibility for delays. Nor does Amtrak consider any impacts of those recommendations on the freight network, freight customers, or other passenger train operators. Nor do the recommendations address any issues with Amtrak’s train performance data, scheduling, or existing congestion on a line, all of which are significant factors to be considered under § 24308(f)(1).

In presenting its over-broad and unworkable set of recommendations, Amtrak misconceived the Board’s task. It has treated this proceeding as if it were a rulemaking intended to adopt generally applicable rules solely for the benefit of Amtrak, without regard to the facts of this proceeding or the impacts of its recommendations on the freight industry. Yet, the Board is tasked with “mak[ing] recommendations to improve the service, quality, and on-time performance *of the train*” – here the Sunset Limited trains– and not the industry as a whole. 49 U.S.C. § 24308(f)(1) (emphasis added). As a party that has not been the target of any Amtrak allegations or complaints concerning the Sunset Limited, and as to whom no evidence has been adduced, CN objects to having any of the recommendations that may emerge from this proceeding directed toward it or treated as precedent for future cases, where they would have

unclear application and could have unintended consequences. Amtrak has not shown that any such recommendations are necessary for CN, and an insufficient record exists in this investigation to support any such recommendations. The same is obviously true for trains other than those that are the subjects of this investigation. Any recommendations that emerge from this Section 213 investigation should apply to and be tailored to those specific trains alone.

Amtrak's recommendations in this case should be rejected because they are unbalanced, unreasonable, and overreaching.

First, they seek to enshrine Amtrak's overbroad and unreasonable view of its right to preference. They repeatedly go too far in seeking to prohibit freight operations that could in any way result in an Amtrak delay, regardless of the impact of the proposed recommendation on freight customer traffic and overall network fluidity.⁵³

Second, and more generally, Amtrak's recommendations are cast in overly broad and extreme terms. Many are framed as mandatory "[e]xcept in the event of an emergency," as if the recommendation was actually a requirement that must be followed in order to avoid violating preference.⁵⁴ Amtrak, however, has not demonstrated that any of its recommendations must be followed to avoid violating preference, and many have nothing to do with granting Amtrak priority. Others of its recommendations are framed in terms such as "rail carriers should" or "rail carriers should not."⁵⁵ Whatever recommendations may be adopted by the Board, a more exacting approach to application should be adopted.

⁵³ See, e.g., Amtrak Opening at 114-116 (Recommendations 1, 3, 4, 6, 10).

⁵⁴ See, e.g., *id.* at 114-15 (Recommendations 1-9).

⁵⁵ *E.g., id.* at 114-17 (Recommendations 1, 2, 10-19).

Third, many of Amtrak's recommendations would impose unreasonable burdens and costs on Amtrak hosts, solely for Amtrak's benefit, but without any indication that Amtrak is willing to compensate its hosts for those costs.⁵⁶ Under 49 U.S.C. § 24308(a), Amtrak is required to compensate its hosts for their incremental costs or in accordance with other agreed-upon terms.⁵⁷ If Amtrak wishes to make recommendations that would impose costs on its host for its own benefit, it should clarify that it is willing to compensate the host for those costs.

In all of these respects, Amtrak has failed to provide a useful, thoughtful list of recommendations that the Board can reasonably expect a host to embrace. Given that the ultimate purpose of such recommendations is to have parties adopt them as part of an effort to improve the on-time performance of a particular Amtrak train, it is important that they be adequately focused and balanced such that the Board can have a reasonable expectation that the parties may actually adopt the recommendations and seek to implement them. Unfortunately, Amtrak's generalized, overbroad, and one-sided wish list does little to advance that goal.

Indeed, Amtrak's recommendations ignore entirely Amtrak's own role in causing or contributing to delay. Amtrak clearly bears significant responsibility for the performance of its own trains. It should redouble efforts to work with its host to resolve schedule issues and it should work to improve communications with its hosts regarding its own delays and late arrivals. It should also review its own processes and equipment in order to reduce its own locomotive and rail car breakdowns and failures as well as late departures from stations and various other ways (including staffing issues) in which Amtrak causes or contributes to delays of its train or its

⁵⁶ *E.g., id.* at 116-17 (Recommendations 15-17).

⁵⁷ *See, e.g., Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry. Co.*, Docket No. FD 35743, slip op. at 22 (STB served Aug. 9, 2019).

failure to meet the 80% COTP standard.⁵⁸ Any reasonable set of recommendations should recognize that Amtrak has a role to play in improving its own service and should include ways in which Amtrak can do so, by itself and in concert with its hosts and others.

In the end, whatever recommendations the Board develops and issues as a result of this investigation should be balanced to protect freight transportation for freight rail customers and our nation's supply chains, should adhere to the cost compensation provisions of the statute, and should be tailored to apply only to the party-specific (whether Amtrak, a host, or third party) issues demonstrated to have a significant impact on the on-time performance of one or more of the Sunset Limited trains.

V. AMTRAK “PREFERENCE OVER FREIGHT TRANSPORTATION IN USING A RAIL LINE, JUNCTION, OR CROSSING” MEANS ONLY THAT DISPATCHING MUST BE WEIGHTED IN AMTRAK’S FAVOR.

Under 49 U.S.C. § 24308(c), “[e]xcept in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing,” unless the Board grants relief from the preference requirement in accordance with that subsection. Further, § 24308(f)(2) provides that, if the Board finds that delays or failure to achieve minimum standards established under Section 207 of

⁵⁸ Equipment breakdowns and failures have been a continuing issue for Amtrak. For recent examples, see Bob Johnston, *Passenger in 2024: Gains across the board despite challenges*, Trains (Dec. 20, 2024), <https://www.trains.com/trn/news-reviews/news-wire/passenger-in-2024-gains-across-the-board-despite-challenges/> (“Many cancellations, tardy terminal departures, and en-route breakdowns afflicting Midwest regional service could be traced to misbehaving Siemens Charger locomotives, limited spare equipment, and staffing insufficient to get trains out on time.”); Bob Johnston, *Mechanical problems cancel Texas Eagle round trip en route*, Trains (Dec. 22, 2024), <https://www.trains.com/trn/news-reviews/news-wire/mechanical-problems-cancel-texas-eagle-round-trip-en-route/> (“After attempting to rectify ‘ongoing mechanical issues’ following the westbound Texas Eagle’s on-time arrival in St. Louis on Saturday evening, Dec. 21, Amtrak decided to cancel the train across the rest of its route to San Antonio, Tex., leaving Texas travelers with a lump of coal.”).

PRIIA are caused by failure of a host rail carrier to provide preference under § 24308(c), then the Board may impose damages or other relief on the host. Congress has not defined “preference.” The Board has asked the railroad parties to address “what . . . would constitute a ‘failure to provide preference to Amtrak’ under 49 U.S.C. § 24308(f).”⁵⁹

CN’s provision of preference to Amtrak’s Sunset Limited trains is not at issue in this case. CN operates none of its own freight trains on the 2.2-mile EBJ-SPJ Segment (the only portion of the Sunset Limited route owned or dispatched by CN⁶⁰), so CN has no occasion to accord or deny the Sunset Limited preference relative to CN’s own trains. Nor has Amtrak complained, in this proceeding or in the ordinary course of business, about CN’s dispatching of the Sunset Limited trains. Nevertheless, CN here addresses the Board’s questions regarding preference because of their importance for future cases.

“Preference” under 49 U.S.C. § 24308 must be understood as relative, not absolute. Providing Amtrak preference means giving it the highest priority in dispatching, that is, giving greater weight, when dispatching trains, to avoiding delays to Amtrak’s passenger trains than to avoiding delays to freight trains seeking to use a rail line, junction, or crossing, so as to minimize, to the extent practicable, delays to Amtrak. Amtrak’s notion that its trains have an “absolute” right to proceed like a presidential motorcade, as if rail carriers ran no freight trains on their rail lines,⁶¹ ignores the text of the statute, Congressional intent, the realities of mixed

⁵⁹ August 19 Decision at 3-4.

⁶⁰ CN owns the EBJ-SPJ Segment, but only dispatches the portion between Southport Junction and the eastern end of the East Bridge Junction interlocking. UP dispatches the East Bridge Junction interlocking.

⁶¹ Amtrak Opening at 68, 74

(freight and passenger) use, the Board’s mission of protecting freight customers as well as passenger interests, and the basic property and constitutional rights of rail carriers.

A. The Statute Only Requires that Dispatching Decisions Be Weighted in Amtrak’s Favor.

The statutory requirement of preference is stated in terms of rights to “us[e of] a rail line, junction, or crossing.” 49 U.S.C. § 24308(c). That language assumes the existence of particular rail infrastructure which freight and passenger trains are competing to use. It says nothing about what rail infrastructure should be built, about who should pay for it, about how it should be maintained, or about the number and length of trains a freight rail carrier runs on its own railroad to serve customers. Instead, it addresses how access to a given “rail line, junction, or crossing” should be prioritized between different trains – *i.e.*, dispatching. To the extent that Amtrak asserts that preference imposes obligations on a host railroad that go beyond dispatching, it has no support in the statutory language. A requirement that a railroad build additional infrastructure to accommodate Amtrak or avoid running freight trains (or freight trains of a certain length) on a segment owned by the freight railroad would raise major questions of policy and substantial constitutional questions under the Takings and Due Process Clauses.⁶² There is no basis for inferring such a dramatic imposition on commerce from a brief phrase – “preference over freight

⁶² “[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems.” *Jennings*, 583 U.S. at 286. It has generally been held that the imposition of costs on a host railroad is constitutionally permissible subject to the payment of incremental cost compensation pursuant to 49 U.S.C. § 24308(a)(2)(B). *See, e.g., Metro Transp. Auth.*, 792 F.2d at 297. But compelling a host to serve Amtrak, including to serve Amtrak in a particular manner, without such compensation would likely be unconstitutional. And constitutional concerns would be exacerbated if Amtrak’s arguments were accepted.

transportation in using a rail line, junction, or crossing” – that is most naturally construed as addressing only dispatching decisions.⁶³

Properly understood, preference means that when a dispatcher’s decision could affect an Amtrak train and a freight train, the dispatcher must place a greater weight on avoiding delays to an Amtrak train than on avoiding delays to a freight train. A rail carrier’s dispatching team meets its preference obligation by normally making a freight train wait for an Amtrak train rather than *vice versa*. And a rail carrier’s dispatching should not be deemed as violating preference even if sometimes Amtrak trains have to wait. Such circumstances could include when Amtrak trains pass one another, when an Amtrak train arrives out of slot, when an Amtrak train is delayed in reaching the host’s line, or when a short Amtrak delay is necessary to avoid much longer delays to other trains or is necessary to maintain reasonable network fluidity.

That is the natural and ordinary meaning of the word preference. Someone who prefers reading a book over watching a movie will normally read a book, but also occasionally watch a movie. A sports coach who prefers one player to other members of a team will give that player more playing time but will sometimes replace that player with a substitute. A host may prefer to delay low-urgency local freight trains rather than delay more urgent intermodal freight trains, but that does not mean it never accepts a brief delay to an intermodal train to avoid a lengthy delay to local trains that could harm overall efficiency and network fluidity. And in another context, federal law entitles eligible veterans to “preference” over other applicants for government jobs,

⁶³ Whether freight railroads should ever be required to substantially exclude their own trains from parts of their own network to improve Amtrak on-time performance would be a dramatic regulatory imposition that should not be inferred without clear and explicit congressional authorization. *See, e.g., West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“Extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle device[s].’”) (citation omitted). *See also Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (Congress does not “hide elephants in mouseholes.”).

but veterans' preference "does not guarantee veterans a job"; it simply adds points to veterans' scores in the numerical system used to rank applicants.⁶⁴

An understanding of Amtrak's preference as relative is also essential for the reasonable and efficient operation of mixed passenger and freight trains on a rail network.⁶⁵ Dispatchers should generally delay freight trains rather than Amtrak trains when they have to choose which train to delay at a control point or an interlocking. But "preferring" Amtrak should not dictate delaying a freight train for hours to potentially avoid delaying an Amtrak train for five minutes. Nor should preference entail delaying multiple freight trains and creating gridlock over a broad swath of the rail network to avoid delaying an Amtrak train ten minutes. More generally, preference for Amtrak should not mean disregarding the interests of freight rail customers, as represented by delayed freight trains, or the interests of passengers on commuter rail trains or a subsequent Amtrak train who could be impacted by network gridlock created by extreme efforts to prevent any immediate delay to an Amtrak train.

⁶⁴ U.S. Office of Personnel Management, *Veterans and Transitioning Service Members*, <https://www.opm.gov/fedshirevets/veteran-job-seekers/vets/>.

⁶⁵ As a general matter, protecting freight train customers by ensuring the efficiency and fluidity of the freight rail system is a high priority of Congress, as reflected in the Rail Transportation Policy, 49 U.S.C. § 10101, and a key aspect of the Board's mission, see, e.g., *Growth in the Freight Rail Indus.*, Docket No. EP 775, slip op. at 2 (STB served July 15, 2024) ("Freight rail is critically important to the nation's economy, and the Board has an interest in the health and growth of the industry and the need for rail customers to move their goods efficiently and reliably."); *Reciprocal Switching for Inadequate Serv.*, Docket No. EP 711 (Sub-No. 2), slip op. at 6 (STB served Apr. 30, 2024) ("There is a clear public interest in adequate rail service—a matter of fundamental concern under the Interstate Commerce Act.") (citations omitted). Further, in the context of the statutory provisions governing host-Amtrak relations, Congress has conditioned Amtrak's rights on not materially or unreasonably impairing freight transportation. 49 U.S.C. § 24308(c), (e)(2)(A).

Amtrak, on the other hand, insists that it has an “absolute right to preference,”⁶⁶ meaning, according to Amtrak, that if a host railroad does not resolve every individual dispatching decision at a rail line, junction, or crossing in favor of Amtrak, then the host has failed to provide preference over the freight train in using that rail line, junction, or crossing.⁶⁷ It claims that this reading of the statute is compelled by the “ordinary meaning” of “preference.” But the definitions and synonyms Amtrak cites only serve to make CN’s point – terms like “advantage, priority, or privilege,” “act of preferring; estimation or choice of one thing or person over another,” “practical advantage given to one over others,” or “a giving of priority or advantage,”⁶⁸ are relative, not absolute, in nature. (Having an “advantage,” for example, does not guarantee winning.) And Amtrak fails to address the realities of dispatching a complex, multi-use railroad system. Doing so is both art and science and requires experience, skill, and expertise – simplistic “absolute” rules would neither be practical nor efficient for dispatching over complex networks. Dispatching necessarily involves thousands of daily fact-specific judgments, involving preference, to be sure, but also involving considerations of safety, efficiency, minimizing total delays, and preserving network fluidity. Moreover, all of these decisions must be made against a backdrop of inherent operational uncertainty, given the inevitability of delays and unforeseen occurrences.

If Congress intended Amtrak trains to be treated like a presidential motorcade, as Amtrak implies, it could easily have said so. Congress could, for example, have prohibited FTI by providing that absent an emergency, rail carriers shall ensure that Amtrak trains using their rail

⁶⁶ Amtrak Opening at 74.

⁶⁷ *Id.* at 69.

⁶⁸ *Id.* at 62-63.

lines, junctions, or crossings are not delayed due to the presence of freight trains. But Congress chose not to do that, because it would be disastrous for the freight transportation network, freight rail customers, and the U.S. economy. Instead, Congress chose the relative term “preference.” By requiring preference, Congress placed a thumb on the scale of dispatching decisions in Amtrak’s favor. But dispatching remains a situational judgment that properly considers safety, network fluidity, probabilistic judgments about when and where trains might meet, and how much delay is at stake. Dispatchers can, and should, use their professional judgment in the best interests of all – passenger and freight – users of the network, albeit with extra emphasis on minimizing delays to Amtrak.

The Board recognized this when, in Docket No. EP 728, it proposed a policy statement (later withdrawn) that called for “a systemic, global approach in determining whether a host carrier has granted the intercity passenger trains preference.”⁶⁹ In that statement, the Board recognized that the statutory preference requirement is not absolute and thus does not require that “a host rail carrier . . . resolve every individual dispatching decision between freight and passenger movements in favor of the passenger train.”⁷⁰ As the Board explained, “a dispatching decision that may appear, in isolation, to favor freight over passenger efficiency may ultimately promote efficiency and on-time service for passenger trains on the network generally (including,

⁶⁹ *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Docket No. EP 728, slip op. at 3 (STB served Dec. 28, 2015) (“Proposed Policy Statement”).

The Board withdrew its proposed statement and terminated the EP 728 proceeding on the ground that “§ 24308(c) preference issues are fact-specific in nature” and that it would be preferable for it to develop and refine “its approach to preference issues . . . in the context of specific § 24308(f) cases.” *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Docket No. EP 728, slip op. at 3 (STB served July 28, 2016).

⁷⁰ Proposed Policy Statement at 3.

for the long run, trains on the particular route at issue.).”⁷¹ Accordingly, a host railroad cannot reasonably be found to have denied Amtrak its right to preference unless it is found to have engaged in “an identifiable and longstanding pattern of systemic failures to provide Amtrak trains with the statutory preference.”⁷²

This is also the only approach and view of preference that makes any sense in terms of the Board’s resources. Focusing on whether there have been systemic failures to weigh dispatching decisions to minimize delays to Amtrak trains would be a significantly more productive and efficient use of the Board’s resources than attempting to find a few individual decisions that might be subject to second-guessing, as would be required by an approach assuming that individual dispatching decisions could, in isolation, violate the preference requirement.

In sum, preference is an approach to dispatching that weights avoiding delays to Amtrak over avoiding delays to freight trains. So long as that approach is implemented faithfully and professionally, there should not be – and Congress has not provided for – liability for either delays that cannot reasonably be avoided or occasional misjudgments. In determining whether a host railroad has violated preference in a particular case, the Board should follow the course it planned in Docket No. EP 728, and examine “whether or not [the] host carrier made identifiable, consistent efforts to minimize total delays for intercity passenger train movements while on the host carrier’s network and on whether or not such efforts have in fact done so.”⁷³

⁷¹ *Id.* at 4.

⁷² *Id.*

⁷³ *Id.*

B. Amtrak's Interpretation of the Preference Requirement Would Harm All Users of the Rail Network, Including Amtrak Itself.

Amtrak's reading of preference as giving Amtrak an "absolute right" to proceed unimpeded would lead to absurd results, which cannot be what Congress intended when it enacted the preference requirement.⁷⁴ Under Amtrak's reading, for example, a host railroad would be required to hold a freight train for hours if doing so could save an Amtrak train from being delayed behind that freight train for ten minutes. And the host would be required to clear its main line, even in single-track territory, to allow an Amtrak train to proceed unimpeded, regardless of whether doing so would destroy network fluidity and might ultimately increase delays to both freight and Amtrak trains.⁷⁵

A mistaken understanding of preference as requiring every individual dispatching decision to be decided in favor of the Amtrak train could even harm Amtrak itself. As the Board correctly observed in Docket No. EP 728, "a requirement of absolute preference might not, in the long run, promote efficient passenger service."⁷⁶ Furthermore, "[a]n individual dispatching decision involving two trains may have efficiency consequences for the network; therefore, a dispatching decision that may appear, in isolation, to favor freight over passenger efficiency may ultimately promote efficiency and on-time service for passenger trains on the network generally

⁷⁴ "[N]othing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." *In re Chapman*, 166 U.S. 661, 667 (1897) (citations omitted).

⁷⁵ Amtrak asserts that "[a]ny attempt to narrow the preference right—for example, to consider only aggregate delays of a passenger train across the host railroad's network or to prioritize impacts on network fluidity—would be contrary to the statute's use of singular and specific points at which preference must be afforded." Amtrak Opening at 64. But Amtrak's reading would preclude *any* consideration of total delays to passenger trains or of network fluidity.

⁷⁶ Proposed Policy Statement at 4.

(including, for the long run, trains on the particular route at issue).”⁷⁷ Indeed, Amtrak itself has acknowledged that its view of preference, if applied in real life, “could cause rail traffic in certain areas of high traffic volume and chokepoints to shut down.”⁷⁸

At one time, Amtrak understood the absurdity of the position it now holds, as can be seen from public statements by its executives. When Congress was considering the legislation that enacted the preference requirement, Amtrak President Roger Lewis testified before Congress that a rule requiring absolute preference, such as Amtrak is now demanding, “just is not a real-world approach.”⁷⁹ And a few years after enactment of the preference requirement, then-President Paul

⁷⁷ *Id.*

⁷⁸ OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION, ROOT CAUSES OF AMTRAK TRAIN DELAYS, at 5 (FRA Report No. CR-2008-076) (Sept. 8, 2008).

Amtrak suggests (Amtrak Opening at 73) that freight railroads and the Board should not be troubled by the prospect that reading “preference” as an absolute requirement could lead to disruption of freight and passenger rail operations, even to the point of a shutdown in some places, because those consequences can be avoided by seeking and obtaining relief from the preference requirement in accordance with the preference statute itself:

A rail carrier affected by [the preference requirement] may apply to the Board for relief. If the Board, after an opportunity for a hearing under [the Administrative Procedure Act], decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms.

49 U.S.C. § 24308(c). But the predictable result of adoption of Amtrak’s reading of “preference” would be a flood of requests from host railroads seeking relief to avoid potentially devastating consequences of absolute priority. A reading that would inevitably lead to such a flood and the consequent burden on the Board’s resources, just so that railroads can operate their systems in a reasonable way without risking shutdown, is not a reasonable interpretation of the statute.

⁷⁹ *Financial Assistance to Amtrak: Hearings Before the Subcomm. on Transp. & Aeronautics of the H. Comm. on Interstate and Foreign Commerce*, 93d Cong. 32 (1973) (testimony of Amtrak president Roger Lewis). President Lewis stated further:

Well, this question of freight train interference is complicated. There are cases in railroad operations, a number of them, where freight train interference might be justified. For example, maybe in an operation in an area where you had a siding that would take five cars, which would be enough to accommodate that particular passenger train, but would

Reistrup rejected the notion that “putting a passenger train into a sidetrack should never happen.”

Yet this is what Amtrak now insists upon. As that President testified to Congress:

Being a former operating man, I would disagree with that. We can actually get faster passenger trains in some cases, depending upon the situation, by putting a passenger train, which is short, into the siding and getting that freight past it on the main line, particularly when the freight train won’t fit in the siding. This is just prudent operation.⁸⁰

Not only would Amtrak’s extreme “absolute” conception of preference harm the public interest by imposing excessive and disproportionate costs and inefficiencies on freight service, it would harm Amtrak (and taxpayers who subsidize Amtrak’s services) by making Amtrak liable to compensate hosts for the resulting excessive and disproportionate costs. It is well-established – and constitutionally unavoidable – that under 49 U.S.C. § 24308(a)(2)(B), a host railroad is (absent contrary agreement) entitled to payment from Amtrak of its full incremental costs reasonably incurred by fulfilling its statutory obligation to host Amtrak.⁸¹ As the Board has found, hosts are entitled to be compensated for the costs associated with providing preference to Amtrak, insofar as those costs can be adequately demonstrated.⁸²

not accommodate a 100-car freight train, it would be sensible to put the passenger train aside and get the freight train out of the way, not only for that segment, but for all of the operations that that train might later interfere with.

Id.

⁸⁰ *Dep’t of Transp. and Related Agencies Appropriations for Fiscal Year 1977: Hearings before a Subcomm. of the S. Comm. on Appropriations*, 94th Cong. 548 (1976) (testimony of Paul Reistrup).

⁸¹ *See, e.g., Metro Transp. Auth.*, 792 F.2d at 297; *see also* 49 U.S.C. § 24308(a)(3) (conditioning Amtrak’s rights on payment of that compensation).

⁸² *See Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry. Co.*, Docket No. FD 35743, slip op. at 20 (STB served Aug. 9, 2019) (summarizing Amtrak’s argument); *id.* at 22 (defining compensable incremental costs as “those costs that [it] has actually incurred, and that [it] would not have incurred ‘but for’ the presence of Amtrak,” without any preference-related limitation). Moreover, a regulation implementing subsection (c), 49 C.F.R. § 200.5(c)(3), confirms that the provision of preference is compensable

Finally, Amtrak claims that history supports its view of preference because, it says, before the creation of Amtrak, railroads that operated both freight and passenger trains “recognized that prioritizing trains carrying passengers over slower freight trains carrying cargo was critical to providing a viable and reliable passenger service.”⁸³ According to Amtrak, it was understood at the time of Amtrak’s creation by the Rail Passenger Service Act of 1970 that railroads relieved of their common-carrier obligation to provide passenger service would voluntarily provide Amtrak trains with the same “priority” or “preference” they were accustomed to providing their own passenger trains. In Amtrak’s telling, when the host freight railroads failed to carry out this understanding, Congress enacted the preference requirement as part of the Amtrak Improvement Act of 1973 to make that understanding a legal obligation.⁸⁴

Amtrak provides no evidence whatsoever that before 1970, the passenger common carrier obligation required railroads to accord presidential motorcade treatment to passenger trains. It is implausible that mixed (passenger and freight) railroads would have voluntarily incurred grossly disproportionate costs or subjected their networks to gridlock to avoid any delay at all to a passenger train. Instead, as the contemporaneous presidents of Amtrak recognized, before 1970, and indeed after 1970, railroads prioritized passenger trains, but did so in a reasonable manner, delaying freight trains rather than passenger trains where the amount of delay is comparable and network fluidity can be preserved, but not entirely sacrificing freight rail customers’ interests for

by providing for a reduction in host compensation if a host is relieved from preference obligations.

⁸³ Amtrak Opening at 65.

⁸⁴ *Id.* at 66-67.

marginal or speculative benefits to passengers.⁸⁵ In enacting the preference requirement, Congress no doubt sought to ensure that those dispatching practices would be maintained notwithstanding that Amtrak would provide passenger service. But it did not enact a requirement for presidential motorcade treatment that would have been unsupported by prior practice and that would harm the overall public interest.

VI. THE BOARD SHOULD BE JUDICIOUS AND EXERCISE DISCRETION REGARDING THE SCOPE AND NATURE OF ANY REMEDIES AND DAMAGES IT MAY ORDER.

In its August 19 Decision, the Board asked whether its authority under 49 U.S.C. § 24308(f)(2) to award damages is “limited to damages for the failures to provide preference that would cause Amtrak to fall below 80 percent [OTP] for any two consecutive calendar quarters,” or whether the Board has “authority to award damages for any delays attributable to the host rail carrier’s failure to provide preference, even if the host rail carrier’s failures to provide preference would not, standing alone, cause Amtrak to fall below 80 percent for any two consecutive calendar quarters.” August 19 Decision at 3-4. The Board should not interpret that statute as permitting an award of damages unless a rail carrier’s failure to provide preference caused delays that would result in COTP falling below 80% for two consecutive quarters.

The statute states that the Board “may” award damages under certain circumstances, 49 U.S.C. § 24308(f)(2), but does not require that it do so. In exercising its discretion, CN urges the Board to reserve any award of damages to an instance where the host rail carrier – rather than Amtrak itself or other causes – has hampered Amtrak from meeting the COTP standard. Doing

⁸⁵ As noted above, in the 1970s, Amtrak President Roger Lewis testified before Congress that a rule requiring absolute preference, such as Amtrak is now demanding, “just is not a real-world approach.” Similarly, as also noted, his successor, Paul Reistrup, rejected the notion that “putting a passenger train into a sidetrack should never happen.”

so would ensure that damages are rightfully limited to cases where a host's failure to provide preference impairs Amtrak's service so that performance falls below the 80% COTP standard for two consecutive quarters.

It would be incongruous for the Board to award damages for a host's conduct that could not, by itself (or at least in the aggregate) even be investigated under § 24308(f). This can be illustrated by comparing two hypothetical scenarios in which a host railroad denies Amtrak preference in violation of § 24308(c), but the consequences of that denial are too minor, taken by itself, to cause Amtrak's train to fail to meet the 80% COTP standard.

In one scenario, the effects of delays to Amtrak's trains from all causes are insufficient to drive performance below the 80% COTP standard. In that case, the Board could not investigate the violation under § 24308(f), much less award damages. This limitation appropriately ensures that the Board's investigative resources are reserved for significant and persistent conditions, and host railroads are only subject to investigation and potential damages for preference denials with significant impacts.

In the second scenario, the host railroad takes the same preference-denying actions as in the first hypothetical, with identical impacts on OTP of passenger trains, but other factors (which might include weather, slow-order delays that apply equally to freight and passenger trains, failure of Amtrak's own equipment, or conduct by third parties) cause delays that, either by themselves or combined with those caused by the host's preference violations, result in failure of at least one Amtrak train to meet the 80% standard. In this case, unlike in the first scenario, the Board may launch a § 24308(f) investigation, but it would be equally inappropriate – as it was in the first scenario – to award damages against the host railroad. After all, the host railroad's conduct is identical to that in the first scenario and has the same impact on passenger

transportation. If a railroad is to be made answerable in damages under § 24308(f)(2) in one case but not another, fundamental fairness and regulatory consistency require that the different outcome result from a difference in the railroad's own conduct, not in the surrounding circumstances.

In exercising its discretion regarding damages, the Board should also take into account the host rail carrier's operating agreement with Amtrak. The operating agreements between Amtrak and host rail carriers contain the basic terms and conditions regarding passenger train operations to which Amtrak has voluntarily agreed (or the Board has imposed), including performance incentives and penalties. The Board should consider, in particular, whether Amtrak is operating within the terms of the agreement, whether the host rail carrier is violating the agreement, and whether the host carrier is subject to penalties for poor performance. Simply put, if Amtrak has agreed to accept, and has only paid for, a certain level of performance, the Board should not give it a windfall under § 24308(f)(2) and punish a host rail carrier that has done what the host contracted to do.

CONCLUSION

CN appreciates the opportunity to address the issues raised in Amtrak's Opening Statement and the questions posed by the Board in its August 19 Decision. While CN is not, and should not be, a target of this investigation, any decision by the Board in this case regarding those issues could set precedents affecting the entire rail industry, including in any subsequent cases under 49 U.S.C. § 24308(f). The answers provided by CN in response to the Board's questions are intended to assist the Board in carrying out Congress's objective to balance the interests of Amtrak's passengers with those of freight railroad customers and their supply chain partners.

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Respectfully submitted,

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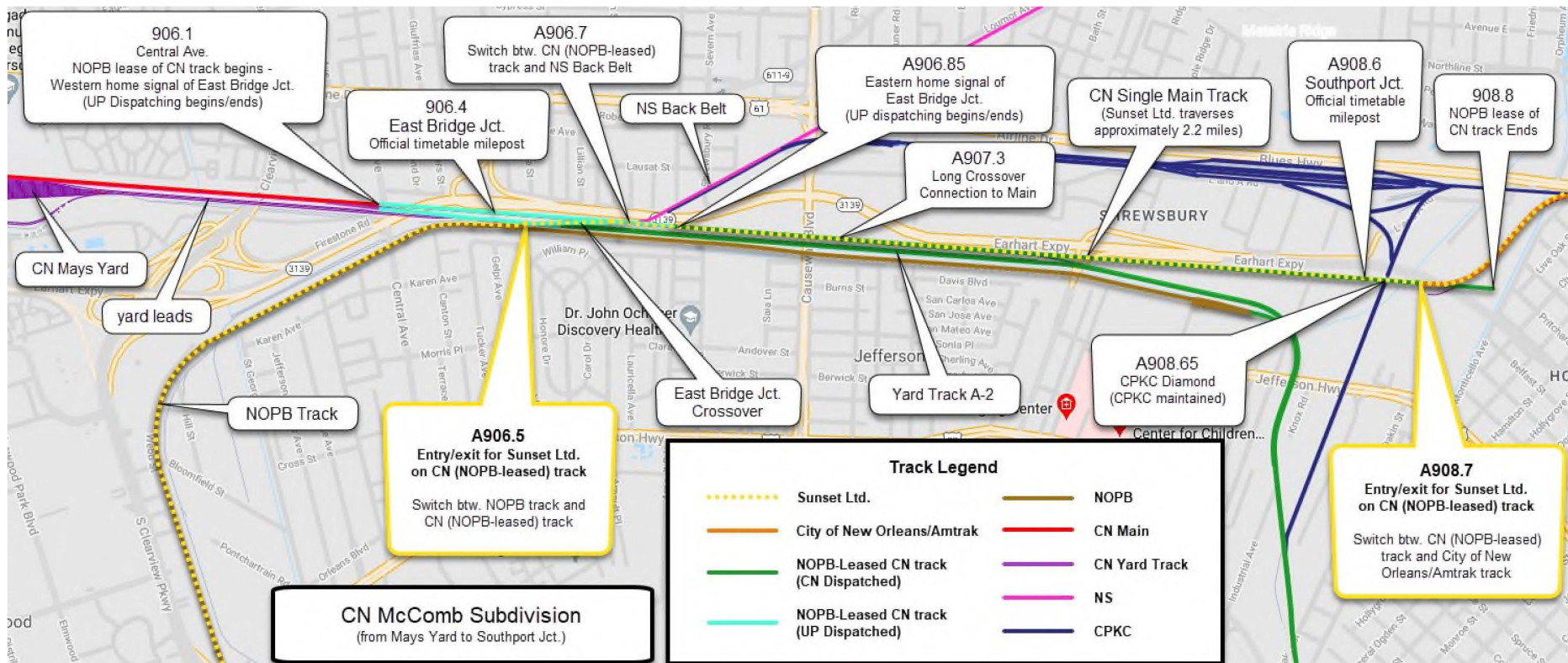
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December 23, 2024

Attachment 1

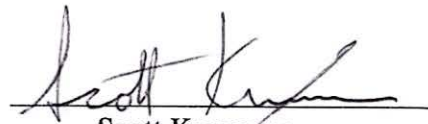
Map of CN McComb Subdivision (from Mays Yard to Southport Jct.)



VERIFICATION

I, Scott Kuxmann , certify under penalties of perjury that I am Manager of Passenger Operations, as well as the designated NRPC Officer, for Canadian National Railway Company and its subsidiaries (including Illinois Central Railroad Company), that I have reviewed the foregoing Reply of Illinois Central Railroad Company to Opening Statement of National Railroad Passenger Corporation and that the facts stated therein are true as stated. I further declare under penalties of perjury that I am qualified and authorized to make this certification on behalf of Illinois Central Railroad Company and its affiliates.

Executed on December 23, 2024.



Scott Kuxmann

CERTIFICATE OF SERVICE

I, James M. Guinivan, hereby certify that I have, this 23rd day of December, 2024, caused the foregoing Reply of Illinois Central Railroad Company to Opening Statement of National Railroad Passenger Corporation to be served by email upon all parties of record.

/s/ James M. Guinivan
James M. Guinivan